International Journal of Leading Research Publication
IJLRP

© IJLRP | ISSN (O) - 2582-8010
January 2022 | Vol. 2 Issue. 5
www.ijlrp.com

ARBITRATING SOCIOLOGICAL SCHOOLS OF THOUGHTS: COMMERCIAL ARBITRATION

Dr. Arti Aneja

Assistant Professor, Campus Law Centre, Faculty of Law, University of Delhi

ABSTRACT

This paper aims to present a critical analysis of commercial ADR through a sociological point of view. Various methodological issues revolve around the understanding of commercial ADR. Solving such an issue has been a tremendous literally task. Given the plethora of conflicting opinions, an attempt is made in order to ascertain the correct passage towards eliminating such problems which are interpretative and methodological in nature. The aim is to extrapolate various issues surrounding the interpretation, understanding and reaching a probable solution through various studies and reference. From the change in dynamics, it was seen how the regime of ADR is not based on spontaneity and how it has become the spearhead of resolving methods in an alternate manner. Further, an emphasis has been made on the preference on the parties who choose ADR as the means. This is to say that there have been multiple choices of people choosing ADR in cases where they prefer a settlement and on the other hand, in cases, where the parties do not. Similarly, there have been various studies on such preferencws which have produced conflicting result. This has led to the thought of whether such an issue is too wide and multifaceted to have a well-thought solution or every case has to be dealt with keeping the specific facts in mind. The paper is successfully found 5 pointers of overhauling commercial ADR in order to suit maximum efficiency.

Keyword: *ADR, Sociology, Methodical Problems, Global Dynamics, Empirical Studies*

1. INTRODUCTION

The article examines how arbitration has grown in popularity as a means of settling international trade disputes in recent decades. Arbitration has shifted from an option to the prevailing method for resolving cross-border trade disputes, according to this phenomenon. Law analysts and social scientists alike have been drawn to the far-reaching substitution of domestic lawsuits by arbitration and outsourcing of overseas commercial dispute settlement as a result (Carter 1986). Several sociological studies have been devoted to the emergence of arbitration, as detailed below, reflecting various viewpoints and insights – from the Teubnerean theory of legal globalization without the state, to Dezalay and Garth's reflexive sociological take on arbitration, to Vijay K. Bhatia's discursive empirical analysis. Furthermore, several broad comparative (mostly quantitative) studies have been completed, which have greatly aided in the discovery of basic facets of arbitration (such as arbitrators' self-perceptions, parties' motives for choosing arbitration, standards for the conduct of proceedings, and so on).

Driven by these findings, the authors recommend revisiting the statistical methods used in international commercial arbitration analysis in order to adequately represent recent advances in the field. There seem to be some explanations for such a re-examination of the analytical and philosophical repertory of sociology of arbitration. (Bergesten 2006) First, the theoretical and socio-legal context, which has been heavily influenced by literature on globalization and arbitrators as transnational power elites, may be challenged by recent regional trends in arbitration. The emergence of East Asia as a global arbitration centre in recent years, as discussed further, is such a deciding factor, in our view, that it has already influenced the balance of power in the competitive market for arbitration services. It raises new questions in the light of studies on regional trends in arbitration since the rapid growth of East Asia (particularly Chinese) centres has not been matched by a concentration of organizations with globalized professionals. It also poses concerns about the impact of this strong regional movement on commercial settling disputes fiscal, structural, and regulatory trends (visible, inter alia, in increased use of conciliatory components in arbitral proceedings). Another aspect of arbitration that has been impacted is professional culture, which in today's multi-centric environment with an increasing number of transregional disputes may indeed be defined as "glocalized" instead of "globalised." (Kohler 2006)

Another feature of arbitration that necessitates a carefully adopted collection of methodological tools is the fundamental question of regionally and geographically

© IJLRP | ISSN (O) - 2582-8010
January 2022 | Vol. 2 Issue. 5
www.ijlrp.com

diverging approaches to dispute resolution (Carter 1986). As addressed further below, notable new advances in recent years have included recognition of the public interest and the need for fairness in arbitration. While this topic has mostly been discussed in the context of investment arbitration, it is gradually being mentioned in commercial courts. As a result, plans have been made to create a permanent arbitration body for investment and industrial arbitral awards in cases involving public interest issues. (Kohler 2006)

As a result, the paper attempts to provide a methodological proposal for social science on international arbitration that addresses the questions raised above. The subject's complexity creates a number of theoretical and functional issues, including the relative inaccessibility of arbitrator parties, hearings, and awards; diverse cultural contexts of adjudication; and complex interactional complexities of arbitration procedures. It's also worth noting that the new, exponential explosion of commercial arbitration makes the subject critical for interpreting global justice system trends. (Fan 2016) The above-mentioned contradictions between institutional formality and versatility, global and local pressures, and public and private preferences and principles would be bolstered by a conflict between quantitative and qualitative approaches to researching arbitration phenomena. (Alford 2003).

2. METHOD

In recent years, the highly specific legal, operational, and cultural phenomena of contemporary international commercial arbitration, as described in the preceding section, has undergone some notable changes. It has also been confronted with new legal, technological, and political issues. This section looks at these emerging developments and the tangible patterns of progress in arbitration. They are categorized and defined in terms of three areas of conflict, each of which has an impact on the operation of arbitral centres, their organization, and the outcome of the proceedings. (Gaillard 2001).

3. THE CHANGING DYNAMICS

The first is the conflict between increasing formalisation of the arbitral mechanism (the judicialization trend) and stakeholders' apparent participation in informal and responsive dispute settlement routes (which can be seen in the growing demand for mediation and in inclusion of conciliatory components into arbitration). (Brower 1994) The second is the conflict between national and international developments, which can be seen in the changes introduced by ‘newer members' (as seen in the 1980s and 1990s with the ‘American wave' and the current recent rise of arbitration centres in East Asia) (Smit 1987).

Finally, as described in more depth below, arbitration, which has historically been a very private and confidential process, has lately been under pressure to gain fair consideration and to resolve the question of justified public concern in certain commercial proceedings. (Kluckhohen 1959) The public–private friction, as well as the call for adequate procedural protections to protect the public interest, has largely been articulated in the area of investment arbitration. To address this conundrum, a series of responses have been proposed, many of which have an effect on existing commercial arbitration law and theory. These are the three regions of conflict that have the ability to cause change:

The first of the noted strains stems from a late-twentieth-century movement toward legalism, discipline, and proceduralization of commercial arbitration, as shown by increased sophistication of formal laws and rigidity of processual norms (Lew And Short 1999). Many observers believe that these changes have moved modern-day arbitration away from its roots as casual and versatile "merchants' justice" conducted by peers and closer to a private version of court trials. As a result, this phenomenon has been dubbed the invasion of arbitration by lawsuits, as well as its judicialization and incorporation into "litigation bis." (Kluckhohen 1959)

This pattern has been interpreted in a variety of ways. Arbitration proceduralization, according to Dezalay and Garth, is a legitimization technique focused on a sense of certainty and continuity, befitting its present global significance:

“The validity of international arbitration is no longer related to the fact that it is spontaneous and responsive to market needs; rather, it is based on the notion that arbitration is formal and comparable to the type of settlement that can be achieved by proceedings.” (Nariman 2000)

A variety of scholars (including Dezalay and Garth) link this movement to the so-called "American wave" in arbitration (described below), which has resulted in the spread of adversarial procedural principles familiar from

© IJLRP | ISSN (O) - 2582-8010
January 2022 | Vol. 2 Issue. 5
www.ijlrp.com

civil litigation in the United States. However, the co-occurrence (and likely correlation) of these observations does not seem to provide a comprehensive description of the judicialization trend, particularly not in terms of clear causation. The above can be seen as a step in the evolution of commercial arbitration, which has become an increasingly mass and structured mode of dispute settlement as a result of its unparalleled global popularity. (Dezalay and Garth 1995)

Modifications implemented to the rules of evidence of major arbitral centres in past few decades (such as adding provisions for mergers, joinders, and truly democratic proceedings) seem to reflect the fact that not only has the volume of arbitration cases increased rapidly across the world, but so has the series of major, complicated, multiparty appropriate action to arbitration. The biggest cost of formalisation and standardisation is the lack of versatility, which was once hailed as one of arbitration's main benefits over litigation. As a result, as Christopher Drahozal points out, parties pursuing a less formal means of dispute settlement may still resort to one of the less restrictive ADR alternatives. (Dezalay and Garth 1995)

The 1996 Esso Australia decision notably predated analogous developments in investment arbitration, which have resulted in the publication of relevant case law as well as procedural and institutional changes, such as the 2006 amendments to the ICSID Rules, the 2014 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, and the United Nations Convention on Transparency in Treaty-based Investment-State Arbitration. (Seawright 2016)

4. EMPIRICAL STUDIES

Since international commercial arbitration is a peculiar legal, social, and economic phenomenon, dogmatic legal analysis approaches proved inadequate to capture it with all of its complexities. A number of academics have also conducted observational research using a variety of theoretical methods and qualitative as well as quantitative techniques. These experiments are also instructive in terms of the character and operation of arbitration, as well as stimulating in terms of the analytical instruments employed. They're also a great starting point for identifying new aspects in arbitration procedure that haven't been studied before, as well as calibrating procedural methods. Below is a summary of selected reports on commercial arbitration – not as an exhaustive recapitulation of current literature in this area, but rather as a presentation of various scientific methods used so far.

A few of the surveys were undertaken over several years, allowing for the formulation of long-term conclusions on various aspects and developments in the history of arbitration practise. For example, the research team at Queen Mary University of London and the School of International Arbitration collaborated with Pwc to introduces on the state of arbit in 2006, 2008, and 2013; it did the same as in 2010, 2012, 2015, and 2018 with the legal firm White & Case, and in 2016 and 2019 (forthcoming) with the legal firm Pinsent Minter. The primary goal of these studies has been to gather quantifiable data using structured questionnaires, which were augmented by interviews with chosen respondents. Every version of the survey has a central theme, with the 2016 edition's theme being "Technology, Media, and Telecoms Disputes." The most recent paper, from 2018, focuses on the history of international arbitration, as well as responses to questions regarding arbitration's potential future extension into new markets and its growing position in dispute resolution. According to the findings, the majority of respondents are pleased with the extent of prescribing in arbitration and look forward to arbitrators' increasing autonomy. In research on arbitration undertaken from the viewpoint of jurislinguistics, qualitative approaches have been used as key instruments, among other things. Vijay Bhatia, in particular, has made heavy use of discourse analysis techniques. He led a team of scholars from eighteen various jurisdictions on the long ordeal "International Commercial Arbitration Practices: A Discourse Analytical Study." The findings have led Bhatia, Candlin, and Gotti to develop a study on core players in arbitral proceedings adopting various discursive identities. In studies on arbitration undertaken from the viewpoint of jurislinguistics, qualitative approaches have been used as key instruments, for example. Vijay Bhatia, in particular, has made heavy use of the discourse analysis approach. He was the project leader for the long-term project titled "International Commercial Arbitration Practices: A Discourse Analytical Study," which included a group of scholars from eighteen different jurisdictions. Bhatia, Candlin, and Gotti developed a paper on primary players in arbitral trials adopting various discursive identities as a result of their findings. (Berman 2012)

Most active arbitrators and arbitration attorney's conduct, as illustrated in the report, is the result of choices and changes between technical, administrative, societal, jurisdictional, and individual identities, such as those linked to their native legal practises. The more skilled the practitioner, the more fluently such coagulant

identification building takes place (which aligns with Lew and Shore's remarks). The resulting discourse hybridity can also be seen as a form of transnational (rather than a national) activity that is not isolated from real life.

Yves Dezalay and Bryant Garth's qualitative analysis, which was conducted in the Bourdieusian tradition of reflexive sociology and served as the basis for their 1996 book "Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order", is a notable example. The focus of Dezalay and Garth's research was on revealing networks of personal relationships, hierarchies, and rivalry among arbitrators as representatives of power elites, as well as how they led to the consolidation of arbitration as a separate legal area. They also revealed the complexities in proceduralization of arbitration, as discussed above, using this method. The research of Dezalay and Garth is focused on interviews with arbitrators. Their emphasis on identities and networks, which was implemented in line with the theory of social fields, did not, however, provide for the inclusion of topics such as arbitrator adjudicatory decisions or the norms regulating the functioning of arbitration, as Joshua Karton pointed out (Dezalay and Garth 1995)

Christian Bühring-Uhle investigated these two ethical aspects of arbitral procedure in two studies of arbitration and mediation practitioners conducted using structured questionnaires. In 1994, almost 150 questionnaires were sent to arbitration experts from various countries as part of the first report. Ninety-one physicians from seventeen jurisdictions included in the study (with sixty-seven respondents interviewed personally). It was related to the two survey, which took place from 2001 to 2004 and included fifty-three arbitration experts from fourteen countries filling out questionnaires (Fan 2013). Arbitrators and mediators, as well as lawyers (including in-house counsel) and advocates involved in the arbitration practise, were among the respondents in both editions of the report. The studies of Bühring-Uhle have provided extremely useful, quantified knowledge about practitioner behaviour during arbitration. Their broad geographic scope has also enabled them to track patterns of behaviour and declared approaches to arbitration among professionals from various jurisdictions, as well as uncovering evidence of differences related to their primary legal education systems (for example, in terms of the formality of the process, the interventionist/non-interventionist role of an arbitrator, and the promotion of voluntary set-asides). (Fan 2016)

A research undertaken by Shahla Ali in 2006–2007 on the basis of Bühring-questionnaires Uhle's greatly expanded the range of data obtained. (Ali 2006) The majority of the respondents in this study were from East Asia (75 percent), with the rest coming from the United States and Europe. The analysis has allowed for analyses and conclusions with regard to arbitration processes in the field, which have been steadily evolving in recent years, thanks to the 115 responses obtained (Uhle 2003). It has also provided statistical results for defining behavioural trends in a general, comparative context, including Europe, the United States, and East Asia, the earth's three most important tribunal regions. (Uhle 2006)

Statistical analysis has been used in arbitration studies, as well as in reference to written records that are available. Gabrielle Kaufmann-Kohler and Victor Bonnin, for example, used this methodology in their review of nearly half of all awards by consensus (63 out of 136) granted by the International Chamber of Commerce tribunals between 2002 and 2005. Kaufmann-Kohler and Bonnin studied the composition of tribunals in such situations and came to conclusions about the relationship between arbitrators' key legal backgrounds and their willingness to vigorously promote a peaceful settlement of the conflict. Arbitrators from Germany and the German-speaking part of Switzerland on the one hand (facilitating arbitration) and the United Kingdom and the United States on the other (where adjudicatory action in favour of settlement is arguably not seen as part of an arbitrator's role). (Kohler and Bonnin 2007)

The studies thus reflect a variety of methodological approaches, most of which are applied to basic areas of arbitration practise (Mayer 2007). This knowledge of conducting observational research on arbitration, in our view, can be gained further, augmented by modern instruments, and arranged in a comprehensive manner for future studies. As a result, we argue later in the article for the use of a linear, well-planned multi-method approach that combines quantitative and qualitative approaches to capture the complexities of arbitration procedure, not only in a static view, but also in terms of the nuances of procedures in defined areas of change. (Drahozal 2004)

5. GENERAL PROBLEMS OF METHODICAL APPROACH

The previously suggested approaches, which are suitable for the three facets of arbitration, should be clarified in light of more general methodological issues in social science. The friction between the individuality of the

© IJLRP | ISSN (O) - 2582-8010
January 2022 | Vol. 2 Issue. 5
www.ijlrp.com

studied objects and the desire for comparability is the first to note. The problem is often simplified to a generalisation problem, which, however, involves two distinct problems. The first is concerned with scientific ideas and the following question: under what circumstances and for what reasons is it appropriate to derive from specific cases to general principles? The second stems from the induction problem: under what circumstances should we generalise from individual cases to universal laws? This is made more difficult in arbitration by the field's poor accessibility, which stems from the anonymity of hearings and the limited coverage of prizes (Drahozal 2006). Both facets of the generalisation issue are important in our context, but the first is of particular concern. It may be questioned if the individuality of particular community cultures and principles is overlooked in the process of describing people and behaviours in terms of standardised conceptual constructs. The use of general terminology and, in particular, the quantification of features allows related behaviours, entities, and classes to be compared in specific aspects, but since these terms are shaped by reference , other special features can be overlooked. If qualitative analysis allows one to generalise regarding the observed unique features of particular research specimens, the topic becomes a secondary issue because it cannot be mentioned without separating unique objects (Lynd and Lynd 1959). As a result, the proposed research methods are intended to integrate the definition of unique aspects of arbitration in various cultural settings with the creation of normative structures regulating the social processes involved in arbitration. Since universal processes can manifest themselves differently in different environments, the definition must be as detailed as possible and come before the generalisation process. Even if we don't think of culture as causally important, any research approach must be able to filter out the cultural veneer of solely social processes. As a result, any future survey studies in this field should start with a comparative ethnographic analysis of arbitration. It should not be concluded that the outcomes of attitude measurements taken in different countries are directly equivalent. The analysis principles and parameters for their collection are drawn from basic theoretical preconceptions that determine what is interesting for a researcher and what inquiries fit into his philosophical underpinning, in other words, what is considered troublesome and what constitutes the pre-suppositional context. As a result, the second analytical problem could be interpreted as a researcher's choice of theoretical choices. Any researcher faces the problem of having to choose certain scientific principles and presuppositions ahead of time (Thomas and Znaniecky 1927).

The schools of thought in sociology have differing perspectives on the meaning and function of culture, but most significantly, they interpret the relationship between subject and experience differently and, as a result, conceptualise the future access to reality differently. We can roughly discern three general approaches to the topic, which are described as follows: “(1) the relatively autonomous and strategically acting actor, dealing with partly unpredictable results of her own action ; (2) the embedded actor building his identity and orientation with the elements found in his cultural setting and according to the social expectations ; (3) the creative actor finding herself in an uncertain reality, in other words, without clear-cut criteria of effective decision-making ; and (4) the suppressed actor trying to balance the demands of independent social systems and institutional arrangements.”

According to McKeon, the diversity of theoretical methods and methodological access to experience is a benefit rather than a hindrance. (110) For example, the phenomenological perspective describes interactions better, while individualistic perspectives show social processes of structure emergence. Thus, theoretical pluralism can be used to justify a multi-method solution. Simultaneously, pluralism necessitates from social science a specification of how a chosen approach relates to the larger image pursued in a given sample. The classic idea of a monographical analysis, which Robert and Helen Lynd successfully realised in their Middletown experiments, is the precursor of the multi-method technique. Their research, however, was undertaken in a comparatively limited area, and the demonstration of specific processes and social networks was much more important than comparative purposes. Nonetheless, one significant feature of Lynd's methodology remains relevant for wider studies on arbitration: the fact that the findings of one type of study influence the application of other approaches. (McKeon 1990)

The third issue of methodological approach that must be addressed in any social study, especially when using the ethnographic approach, is the researcher's potential and beneficial level of constructive interest in the topics under consideration. And when the process of observation begins, the researcher is often inspired by a desire to solve a real dilemma or, at the very least, to bring it to the attention of the public. A researcher's vital position serves as the organising guideline for the investigation, but it also

© IJLRP | ISSN (O) - 2582-8010
January 2022 | Vol. 2 Issue. 5
www.ijlrp.com

limits the reach of the study. A pragmatic approach is required where study issues extend functional challenges which necessitate a complex overview or interpretation. Even then, the method of observation and questioning engages the observer, allowing him to become a part of the examined facts. He is thus expected to employ strategies that enable him to separate himself from the research object without losing detailed cognition of the object. This goal can be met by integrating two analysis techniques: information concentration and systematicity. The above enables distinguishing between the special and the normal by repeated an observation in the same or different classes.

6. RESULTS AND DISCUSSION

Reflections on significant analytical problems lead to a number of findings that form the general study design suggested here. First, we argue that the most appropriate solution to the analysis of arbitration should be a mixture of approaches reflecting multiple access to the research subjects. Drahozal suggested a concurrent use of various approaches in arbitration analysis, but we recommend that the methods be used in a scientifically elaborated and scalable sequence (Graenovetter 1973). It is not a rigid set of procedures, but rather a series of steps that allows a researcher to expose the characteristics of the research object in its complexity and historical growth.

Second, owing to the intercultural nature of the study, observational approaches can come before questionnaire design and data processing. To maintain the theory's micro-macro link, the institutional interpretation should be related to actor-centred interpretations of attitudes and behaviours. In other words, the probability of methodological biases can be greatly minimised if qualitative analysis advises a study and the survey restricts and directs the directions of structural studies.

Third, it should be noted that the suggested procedural protocol does not mean an explanatory direction. Apart from offering a multilayered definition of arbitration, the triangle of principles, practises, and systems has been designed as an explanatory instrument, implying that social reform should be initiated on either corner of the diagram. For example, the postulate that study should begin with the use of observational approaches does not imply that the social attributes of arbitration found in the first step of research decide the actors' ideas and behaviours. Similarly, the researcher cannot believe that actors form systems in the long run without being influenced by structural shifts (Harten 2016). The topic of whether institutionally mediated behavioural or mental adjustment is scientific, even though it makes no sense to perform institutional study without believing that every institutional phenomenon is an accumulation of individual behaviours. (Cames and Joas 2004)

Fourthly, the challenges of gaining access to research results and isolating action patterns can be alleviated in part by using precise qualitative approaches at the start of the development project. It may be argued these in conversations do not interfere with the arbitration parties as much as observations do, while still bringing the interviewer into closer communication with the examined groups. In-depth interviews often show a different spectrum of factors that can be factored later in the study as the arbitrators' artistic ideas take centre stage (Mehren and Aréchaga 1989). To minimise time-neutral explanations and calculations, the interviews should be spaced consistently over a longer period of time. In the case of hybrid arbitration proceedings, subsequent interviews can show the diversity of what the parties face during various stages of conflict resolution.

Fifth, a rigorous research design should provide a series of approaches that, in addition to educating one another, are capable of providing a clear explanation for the observed phenomenon. As previously said, the proposed triangle of principles, practises, and institutions avoids the creation of a simplistic or rigid explanatory model. A cost-effective and otherwise fair study style, on the other hand, employs theories that are as plain as practicable. For example, if we can identify a clear explanation why judges in a particular country do not treat animal cruelty as seriously as they do human cruelty, we do not need to look for more mysterious reasons. If we know from our data that they value animal well-being less than human well-being, we don't need to inquire into their implicit and habitual desires, unless we're curious about the origins of their informed views. As a result, a logical study design can be led by a series of structures with increasing degrees of clar huification. The most basic is the analytical structure, which reveals common characteristics of the studied phenomenon. Data are believed to be almost self-explanatory within this context. However, when they present more questions than responses, researchers become concerned with the relationships and ordering of known elements. As a result, a hierarchical structure appears almost immediately in any research activity, often without the researcher's awareness. As long as the investigation reveals patterns of repeated events and explanations for them can be readily identified, the

© IJLRP | ISSN (O) - 2582-8010
January 2022 | Vol. 2 Issue. 5
www.ijlrp.com

interpretation can be considered complete. However, where scholars are unable to find clear explanations behind actors' behaviour, they often postulate unseen, potentially psychological, factors at work behind the asserted reality. This well-known 'animistic' strategy poses many questions in the social sciences because it appeals to a created rather than observable experience.

Fortunately, as model systems involving interference into the examined mechanisms and observation of people's responses to a new environment, the researcher has several options. In the case of arbitrators, who have unique liberties that allow them to be more agile but still necessitate a more pragmatic and inventive way of thinking than lawsuits, an appropriate justification must somehow provoke and expose the creative nature of their conduct. We believe it is feasible in the final step of the research which would necessitate the development of a reasonably controlled social situation. The findings of a comprehensive fieldwork show complex informal issues that appear in the arbitrators' daily work and can be further classified as emic. They serve as the foundation for focus group interviews, a tool that combines aspects of experiments and personal interviews. Interviews, unlike studies, allow for a free sharing of ideas with respondents and, unlike personal interviews, show normal group dynamics that can represent actual social processes. (Otnes, Ruth, Lowrey and Commuri 2006)

The basic application of our concept of a systemic multimethod approach is in hybrid procedures of commercial arbitration (combining arbitration and mediation or conciliation), a popular variant of arbitration in Asia. For a social scientist, this phenomenon presents many unique challenges: (1) how to make the partially informal dispute settlement process open to a researcher; (2) how to classify, isolate, and compare different cultural and legal trends involved in the process; and (3) how and when to recognise attitudes about societal and political trends, i.e. attitudes that enable actors to exploit the patterns. The final issue moves well beyond simplistic paradigm of socially defined human behaviour and assumes the actor's reflective orientation toward constitutionally or culturally mandated structures. We expect that actors will focus on their own behaviour and distance themselves from the structures, but not abandon them, specifically in circumstances mixing elements of opposing origin: globalised and local, formal and informal, or multicultural (Jameilniak 2019). It would be rash, though, to presume that actors still make sound choices and calculate their needs while adhering to particular legal or cultural patterns. According to our findings, it is the structure of their social interactions and bundles of desires that describe what they represent (Taniguchi 1996).

The initial discovery of the "arbitration area" and its social laws by in-depth interviews allows for concentrated and comprehensive observation, which can contribute to the formulation of issues that are not understood or commented on by the arbitrators as well as other participants. As a result, descriptive data is at the heart of the suggested research design. Its aim is to identify challenging circumstances that disrupt professional routines and necessitate business choices on the part of the actors. In the contrast with conventional arbitration proceedings, the reorientations from consultation to arbitration or from arbitration to negotiation are the objects that coordinate the observation and show the protagonists' autonomous contributions. The analyst may use questionnaires and interviews to recreate their ruling mechanisms: a qualitative approach that has been shown to reflect actual business process for decision without requiring much intervention from the researcher. The primary benefit is the ability to manipulate group compositions and dynamics for intergroup and interpersonal comparisons. As a result, the approach incorporates the benefits of interviews, insights, and tests. Focus group interviews, in the case of hybrid arbitration systems, can help one understand how social and institutional patterns affect difficult circumstances and how they are replaced by pseudo decisions in particular social situations. The second type of generalisation, which is available in the third stage of analysis, goes beyond the transferability of concrete group conclusions and consists of hypothetical analytical claims regarding the relationships between behaviour, motivations, and mechanisms.

7. CONCLUSION

Specific calculated ethods to use in data gathering and interpretation, a researcher must, in particular, consider the various, often mutually exclusive, contexts in which arbitrators are embedded. Arbitration processes, for example, arise from cultural customs to address the demands of globalised trade. Thus, research approaches must be capable of connecting professional attitudes to local standards and global networks. Another friction between the private and the state challenges a researcher with a conflict between, on the one side, the parties' rights in anonymity and utility and, on the other hand, the public interest in disclosure. The researcher must be able

© IJLRP | ISSN (O) - 2582-8010
January 2022 | Vol. 2 Issue. 5
www.ijlrp.com

to differentiate between these two extremes. A traditional economic viewpoint would stress the utility factor and the morality of the parties' behaviour, regardless of the effect of local values and professional codes, while a sociological perspective would marginalise a strictly rationalistic view of action by reconstructing socialisation mechanisms. This various point of view would mean not just separate methods of investigation, focusing on active or subconscious causes, but also different explanatory techniques.

Both dynamic and static facets of arbitration were identified as essential elements of the object description in our research. The social function structure and structural contexts of arbitration are examples of fairly constant facets (Maniruzzaman 1999). The diverse dimensions contribute to the effect of contextual factors on contemporary arbitration developments – the American and Asian waves – as well as the resulting shifts in litigation practices and the effects of arbitration on the global legal structure. We also identified three classes of variables that can cause improvements in arbitration: arbitrator behaviours, beliefs exposed in dominant attitudes, and institutional patterns that allow for a practical study of social interdependencies. This distinction of variables necessitates a multimethod methodology in arbitration science, including text analysis, quantitative field research, and multiple qualitative approaches. As long as these approaches are mutually aware, they can assist us in comprehending the nuanced and dynamic existence of international arbitration (Morek 2013).

REFERENCES

1. Eric Bergsten (2006), The Americanization of International Arbitration, 18 Pace Int'l L. Rev. 300–01
2. Roger P. Alford, The American Influence on International Arbitration, Ohio St. J. Disp. Resol. (2003).
3. Kun Fan & Joanna Jemielniak (2016), Ethnographic Methods in the Study of Hybrid Processes in Arbitration: The Chinese and Western Perspectives, 27 Eur. Bus. L. Rev. 555
4. Gus Van Harten (2016), The European Union's Emerging Approach to ISDS: A Review of the Canada-Europe CETA, Europe-Singapore FTA, and European-Vietnam FTA, 1 U. Bologna L. Rev.
5. Shahla Ali (2011), Resolving Disputes in the Asia-Pacific Region: International Arbitration and Mediation in the East Asia and the West, Routledge 96, Appendix A.
6. Jason Seawright (2016), Multimethod Social Science: Combining Qualitative and Quantitative Tools, Cambridge University Press.
7. J. Van Maanen (1988), Tales of the Field: On Writing Ethnography, The University of Chicago Press.
8. Denise F. Polit & Cheryl Patano Beck (2010), Generalisation in Quantitative and Qualitative Research: Myths and Strategies, 47 Int'l J.Nursing Stud. 1451.
9. Lynn Hunt (2007), Inventing Human Rights: A History, W.W.Norton & Company.
10. Clyde Kluckhohen (1959), Mirror for Man: The Relation of the Anthropology to Modern Life, McGraw Hill.
11. Kun Fan (2016), Expansion of Arbitral Subject Matter: New Topics and New Areas of Law, in the Evolution and Future of International Arbitration, Stabros Brekoulakis, Julian D.M. Lew & Lukas Mistelis eds, Wolters Kluwer.
12. Emmanuel Gaillard (2010), Legal Theory of International Arbitration, Martinus Nijhoff Publishers.
13. Berthold Goldman (1987), The Applicable Law: General Principles of Law – the Lex Mercatoria, in Contemporary Problems in International Arbitration, J.D.M. Lew ed.
14. Cf. Klaus Peter Berger (2010), The Creeping Codification of the New Lex Mercatoria, Kluwer Law International.
15. Yves Dezalay & Bryant Garth (1995), Merchants of Law as Moral Entrepreneurs: Constructing International Justice from the Competition for Transnational Business Dispute, 29 L. & Soc'y Rev. 30.
16. Fali S. Nariman (2000), The Spirit of Arbitration: The Tenth Annual Goff Lecture, 16 Arb. Int'l 261.
17. Charles Nelson Brower (1994), Introduction in International Arbitration in the 21st Century: Towards 'Judicialization' and Uniformity? – The Twelfth Sokol Colloquium 9, Richard B. Lillich & Charles Nelson Brower eds.
18. Elena V. Helmer (2003), International Commercial Arbitration: Americanized, 'Civilized', or Harmonized? 19 Ohio St. J. on Disp. Resol. 49.
19. Hans Smit (1986–1987), The Future of International Commercial Arbitration: A Single Transnational Institution? 25 Colum. J. Transnat'l L. 9.
20. Kun Fan & Joanna Jemielniak (2016), Ethnographic Methods in the Study of Hybrid Processes in Arbitration: The Chinese and Western Perspectives, 27 Eur. Bus. L. Rev. 555.
21. Kun Fan (2013), Glocalization of Arbitration: Transnational Standards Struggling with Local Norms Through the Lens of Arbitration Transplantation in China, 18 Harv. Negot. L. Rev. 175.

22. Julian D. M. Lew & Laurence Shore (1999), International Commercial Arbitration: Harmonizing Cultural Differences, 54 Disp. Resol. J. 38.
23. Vijay Kumar Bhatia et al. (2012), Discourse and Practice in International Commercial Arbitration: Issues, Challenges and Prospects, Ashgate Publishing.
24. Jean-François Poudret & Sébastien Besson (2007), Comparative Law of International Arbitration 316, trans. S. V. Berti, A. Ponti trans., 2d ed.
25. Christian Bühring-Uhle et al. (2006), Arbitration and Mediation in International Business, 2d ed., Kluwer Law International.
26. Gabrielle Kaufmann-Kohler & Victor Bonnin (2007), Arbitrators as Conciliators: A Statistical Study of the Relation between an Arbitrators' Role and Legal Background, 18 ICC Int'l Ct. Arb. Bull. 79–85.
27. Pierre Mayer (2007), Reflections on the International Arbitrator's Duty to Apply the Law 290–306, Kluwer Law International.
28. Yves Dezalay & Bryant G. Garth (1996), Dealing in Virtue. International Commercial Arbitration and the Construction of a Transnational Legal Order 33–63, The University of Chicago Press.
29. Paul Schiff Berman (2012), Global Legal Pluralism: A Jurisprudence of Law Beyond Borders, Cambridge University Press 2012.
30. Christopher Drahozal (2004), A Behavioral Analysis of Private Judging, 67 L. & Contemp. Probs. 105.
31. Christian Bühring-Uhle, Gabriele Scherer & Lars Kirchhoff (2003), The Arbitrator as Mediator – Some Recent Empirical Insights, 20 J. Arb. 81.
32. Christopher Drahozal (2006), Arbitration by the Numbers: The State of Empirical Research on International Commercial Arbitration, 22 Arb. Int'l 291.
33. William Thomas & Florian Znaniecki (1927), Classical in this respect: The Polish Peasant in Europe and America, vol. I, 24 Alfred A. Knopf.
34. Mark S. Granovetter (1973), The Strength of Weak Ties, 78 Am. J. Soc. 1360.
35. Charles Camic & Hans Joas (2004), The Dialogical Turn. New Roles for Sociology in the Post Disciplinary Age, Rowman and Littlefield.
36. Richard McKeon (1990), Freedom and History and Other Essays. An Introduction to the Thought of Richard McKeon 103–25, The University of Chicago Press.
37. Robert S. Lynd & Helen Merrell Lynd (1959), Middletown: A Study in Modern American Culture, Harcourt Brace and Co.
38. Cele C. Otnes, Julie A. Ruth, Tina M. Lowrey & Suraj Commuri (2006), Capturing Time, in Handbook of Qualitative Research Methods in Marketing 387–99, Russell W. Belk eds.
39. Artur von Mehren & Eduardo Jiménez de Aréchaga (1989), Final Report on Arbitration Between States and Foreign Enterprises, 63 Annuaire de l'Institut de Droit International.
40. Joanna Jemielniak (2018), Comparative Analysis as an Autonomization Strategy in International Commercial Arbitration, 31 Int'l J. Semiotics L. 157 and ff.
41. A. F. M. Maniruzzaman (1999), Choice of Law in International Contracts – Some Fundamental Conflict of Laws Issues, 16 J. Int'l Arb.
42. Yves Dezalay & Bryant Garth (1995), Merchants of Law as Moral Entrepreneurs: Constructing International Justice from the Competition for Transnational Business Dispute, 29 L. & Soc'y Rev. 30.
43. Rafael Morek (2013), What's 'New' in the New ICC Mediation Rules? Kluwer Mediation Blog.
44. Yasuhei Taniguchi (1996), Is There a Growing International Arbitration Culture? – An Observation from Asia, Albert Jan van den Berg ed., ICCA Congress series No. 8/36.
45. James H. Carter (2003), Dispute Resolution and International Agreements, in International Commercial Arbitration: A Transnational Perspective 24, Tibor & Varady eds, Thomson/West; Pierre Lalive (1986), Transnational (or Truly International) Public Policy and International Arbitration, 3 ICCA Congress Series 293, Pieter Sanders ed.