
SHORT ANALYSIS OF CIVIL PROCEDURAL LAWS IN USA AND UAE

Chetna Gupta, Amity University, Noida

ABSTRACT

Before starting up with the analysis of the civil procedural codes in UAE and USA one needs to understand what we mean by Civil Procedure. Civil Procedure code basically means any law which is related to the practices and procedures to be followed in civil, if one talk about the objective of a Civil Procedure code so it is basically to amend and consolidate the laws which is related to the procedure and practices which are to be followed in the civil courts. One also needs to understand the difference between civil and criminal procedure. In the criminal actions the governmental persons bring a criminal prosecution against another person, where basically prosecutions are always or nearly started by the state in order to punish the accused. While in the civil actions, actions are started by a private individual or companies or organizations for their own benefit. This Article contains a short analysis of the Civil Procedural Laws in United States of America and UAE. Both the countries United States of America and UAE have different law format. United States of America is a Common law country having common law jurisdiction while on the other hand UAE is a civil law country having a civil law jurisdiction. This article after a brief analysis of Civil Procedural laws of both the countries contains certain needed reforms in the laws of each country as reforms aims at strengthening, modernize and enhance the existing judicial process and making it more accessible and easier for litigants.

Civil Procedural laws of United States of America reflect the American cultural view which says that they are supposed to be winners and losers rather than negotiation resolutions. The UAE is a federation of seven Emirates. In UAE the litigation procedures are governed by federal law and depend on whether the case is civil or criminal in nature.

ANALYSIS OF CIVIL PROCEDURAL LAWS IN USA

United States of America is a country of common law having common law jurisdiction. In USA Civil Procedural laws contains the rules by which courts conduct civil trials. USA's civil procedure laws are especially significant.

The Civil Procedure of United States of America also reflects the American cultural view which says that they are supposed to be winners and losers rather than negotiation resolutions. In United States legal action plays a much wider role. Each party do a private litigation have to pay its own legal fees and a loser does not pay a winner's legal charges it is same as the case in Germany. Civil Procedure of USA specially consists of rules that govern civil actions in the federal, state and territorial court systems. Civil procedure is not reserved to the federal government in its constitution, so federal courts follow the federal rule of civil procedure. As a result state courts follow their own state rules of civil procedure. In evidentiary rules as well, the federal rules of evidence governs the federal courts while each state courts follow their own state rules of evidence.¹

Around 1934 the rules enabling act was passed by the Congress which basically gave the power to the Supreme Court to make rules of procedure and evidence for federal courts provided they were only allowed to make those rules if they do not abridge, enlarge or modify any substantive right.² Majority of the suits which are filed in United States of America are settled before the trial either through arbitration or negotiated settlements, Civil Procedure on the other hand strictly defined applies only in formal codes of law. Rule 3 – 16 off federal rules of Civil Procedure govern certain parts of pretrial process. Talk about constitutional basis of Civil Procedure so the Supreme Court of US holds that all the procedural laws whether they are found in statutes or the rules of codes or case laws must be consistent with the mandates of the constitution of US or one can say that in particular with the due process clauses of 5th and 14th amendments. Due process basically means that a party may not be deprived of his/her rights without having had an opportunity to present his side of the case. Every civil suit involves at least two parties that is a plaintiff and a defendant. There is a requirement that a plaintiff have an interest for which he seeks protection in a lawsuit related to this there is a rule in United States which is called the real party in interest rule. As in accordance with this rule in USA the

¹ "Analysis of Civil Procedural Laws in USA, UAE and Germany", Available at: <https://lexforti.com/legal-news/wp-content/uploads/2020/11/CPC-Adv.-Tushar-Kumrawat.pdf>, Visited on: 29th October 2022

² "Civil Procedure", Available at: https://www.law.cornell.edu/wex/civil_procedure, Visited on: 29th October 2022

actual or real party in interest ordinarily will be the person who will ultimately get benefited from any recovery obtained. Earlier civil procedural laws in United States of America were rather ad hoc and were based on traditional common law. The Process Act, 1792 authorized the federal courts to write their own procedural rules for everything but actions at law. A law which stated that such courts would follow the civil procedure in effect at the time those states joined the Union was enacted by the congress in 1828.³

Unfortunately for the federal courts, state civil procedure law began to diverge dramatically after the mid-19th century. The Judicial Conference around 1958 appointed a Standing Committee to handle that task, standing committee afterwards appointed an advisory committee for each set of federal procedural rules, including the FRCP. Many amendments and revisions are done to the FRCP, and to the nation's state procedural rules, in the eighty years since promulgation of the FRCP and express objective of the early 20th-century reformers was to use the development of new federal procedural rules to facilitate uniformity of civil procedure in the separate states.

Today, 35 states have adopted versions of the FRCP for civil procedure in their state court systems, although significant modifications were necessary because the federal courts are courts of limited jurisdiction, while state courts have general jurisdiction over innumerable sorts of matters that are usually beyond the jurisdiction of federal courts (traffic, family, probate, and so on. Several states took advantage of the opportunity to impose intrastate uniformity of civil procedure, thereby reducing on the ability of judges of trial court in rural areas from lawyers in urban areas with obscure local rules and forms, and in turn improving the portability of legal services. The states initially which refused to join FRCP also joined the movement towards intrastate uniformity of civil procedure, like California. FRCP's purpose is "to secure the just, speedy, **and cheap** determination of **each** action and proceeding." **the principles** were first adopted on December 20, 1937 by order of the Supreme Court, on January 3, 1938 the principles were transmitted to Congress, and FRCP became effective from September 16, 1938. In 2020, the Civil Rules were last amended.⁴

Defining FRCP, FRCP is Federal Rules of Civil Procedure. As told earlier that FRCP governs the civil procedures of district government of United States. FRCP contain in total 86 rules

³ "Procedural Law", Available at: [Procedural law - Parties | Britannica](#), Visited on: 29th October 2022

⁴ "Comparative Civil Procedure", Available at: https://www.nyulawglobal.org/globalex/Comparative_Civil_Procedure.html, Visited on: 29th October 2022

which are grouped into 11 titles. Before FRCP was established common law leading was more formal, traditional, and particular in its phrases and requirements. Earlier if a plaintiff is bringing a trespass suit then he would have to mention certain keywords in his complaint or risk having it dismissed with prejudice while in FRCP so FRCP is based upon a legal construction called notice pleading which is much less formal. Now these notice pleadings one has created and modified by legal experts and they are far less technical in requirements. Rule 3, 4, 5 and 6 talks about how to commence a civil suit as well as how to file a civil suit, service and summons of the same.⁵

Certain reforms in civil justice system in USA

With a million numbers of civil cases which are filed every year in the United States court, deficiencies in the civil justice system perpetuate power imbalances. Due to these power imbalances people mostly having low or middle income results in miscarriages of justice. Many advocates and policymakers with the research and study over the years have suggested a range of approaches to reform the civil justice system. Five guiding principles that's the policy makers of a civil justice system should consider while crafting innovative and effective measures:

1. Civil justice reform must be end all of government approach
2. Civil justice reforms must reflect the system's interconnected nature
3. Legal aid has to be available to everyone
4. Cultural competency must be reflected in the proposals of civil justice reform
5. There must be fair and compassionate rules governing civil proceedings

If one will consider these reforms while making new laws, civil justice system would actually provide justice to the people who are having less power than those in power.⁶

ANALYSIS OF CIVIL PROCEDURAL LAWS IN UAE

There are many civil law countries in the world like Japan, Lebanon etc. We often hear that

⁵“Federal Rules of Civil Procedure”, Available at: <https://www.law.cornell.edu/rules/frcp>, Visited on: 29th October 2022

⁶“5 Principles Civil Justice Reform”, Available at: [5 Principles for Civil Justice Reform - Center for American Progress](#), Visited on: 29th October 2022

UAE is a civil law country having civil law jurisdiction.

Before analyzing the civil procedural laws in UAE, it is important to understand what a civil law is. Civil law is a shorthand term that describes law which is based on codes and statutes or more generally a legal system that is based on codified law that is gathered together somewhere in collection of books or nowadays in online database. Civil law generally understood to mean a top down system where you have legal rules enacted by a sovereign which are expressed through provisions or articles or statutory law and compiled into reference books for example a Civil Code, a Commercial Code, a company scored etc.⁷

The UAE is a federation of seven Emirates. Except for Abu Dhabi, Dubai and Ras Al Khaimah, Whole United Arab Emirates, are part of a federal judicial system.

In UAE the litigation procedures are governed by federal law and depend on whether the case is civil or criminal in nature.

Federal law on number 11 of 1992, which was amended by law number 10 of 2014 basically, contains the law regarding the civil procedural laws of UAE.

The method, procedures and jurisdiction for litigations in civil, commercial and personal status lawsuits are governed by civil procedural laws. The laws relating to Civil Procedures establishes the method of appealing and executing the judgments. On the other hand criminal procedure code of UAE is mentioned under federal law number 35 of 1992.⁸⁹

There was a new law which was issued in the federal Gazette which amended the civil procedural laws of UAE. This new law came into effect on 1st March 2015. Many amendments were enacted by the new law, which streamlined and strengthened the Civil Procedure of the country. UAE Civil Procedure undergone many changes as well, these changes are very significant and welcome, particularly those that relate to service.

From the new law Article 5 of the Civil Procedure Law got a sub-clause 2 which empowered the court to authorize a plaintiff or their attorney to carry out the service process.

⁷ “Civil Procedure Code”, Available at: <https://lexforti.com/legal-news/wp-content/uploads/2020/11/CPC-Adv.-Tushar-Kumrawat.pdf>, Visited on: 29th October 2022

⁸ “Litigation and Enforcement in the United Arab Emirates: Overview”, Available at: [Litigation and enforcement in the United Arab Emirates: overview | Practical Law \(westlaw.com\)](#), Visited on: 29th October 2022

⁹ “General provisions”, Available at: [General provisions - The Official Portal of the UAE Government](#), Visited on: 29th October 2022

Whereas, Article 8 of the Civil Procedures Law has also been amended so that in cases where it is difficult to notify the opposing party, under sub-sec 1 now it is possible to use modern alternatives. These modern alternatives include the use of an email address or other modern methods of communication which are to be identified at a later stage by the Minister of Justice.

Amendments made to the Article 8 of Civil Procedural Laws are very important because many subsequent articles in the law that deal with the limitation period for taking certain procedural steps start ticking from the date of service. It really can have severe consequences in cases of appeals to the Court because, for example, the notification of the decision which is being appealed can be made by a digital message to the person who is affected and it is deemed to be sufficient even though the mobile phone may be switched off. It is very clear that in similar circumstances there will be future regulations or directives to prevent potential abuse of the very wide provisions of Article 8.

In UAE's Civil Procedures Law Article 25, the jurisdiction of the Federal Court and expressly gives it jurisdiction over all disputes that are of a federal nature. Article 30 of the Civil Procedures Law now gives the small claims court jurisdiction over all claims below AED 500,000, raising the previous threshold of AED 100,000. As UAE operates under civil law system so statutes are the primary sources of law. Each case is decided on its own merits and facts, the judgments of the higher courts are not binding on the lower courts. All the court proceedings are in Arabic language. Every proceeding in civil matters in UAE, are based on the written pleadings of the parties, supported by documentary evidence. No oral hearings are entertained in the civil cases.¹⁰

With the permission of the court only oral evidences are allowed to be given to establish a fact in a civil case and there is no right of cross examination of the witnesses. Recently in 2020 UAE has introduced some changes in criminal law, inheritance law and civil law as well. The new amendments in the Personal Status Code and the Civil Law gives the expatriates living in the UAE the option to choose the law that would be applied to inheritance rights to ensure the stability of the financial interests of the foreign investors in the country. Now, according to the new changes in the Civil Law , it allow one partner in a venture to sell the entire venture, following a request to a judge, if the seller is not able to sell its share in the venture to another

¹⁰“ Amendments to the UAE Civil Procedures Law”, Available at: [Amendments to the UAE Civil Procedures Law - Al Tamimi & Company](#), Visited on: 29th October 2022

partner. The price would be divided among the partners as per the value of each.¹¹

Certain reforms in civil justice system in UAE

As already told that there had been many amendments to the Civil Procedure of UAE recently as well, UAE cabinet recently approved amendment to the Civil Procedure code. Considering UAE vision 2021 and UAE Centennial strategy 2071, these reforms aims at strengthening, modernize and enhance the existing judicial process and making it more accessible and easier for litigants.

In 2018 as well an effort to modernize the Civil Procedure of UAE courts was made, a federal regulation was issued the revised and supplement the conduct of court proceedings.

Ministerial resolution number 57 of 2018 was amended by UAE cabinet resolution number 33 of 2020. This amendment modernized the conduct of proceedings before the courts and particularly the notification or service process. By requiring that the judgments at all stage of proceedings in commercial, civil, and employment matters be published, this enhanced the accessibility of judgments. So basically these legislative amendments are kind of positive step signalling greater efficiencies for litigants within the UAE civil judicial system.¹²

¹¹“UAE introduces changes to criminal, civil codes and inheritance law”, Available at: [UAE introduces changes to criminal, civil codes and inheritance law | Government – Gulf News](#), Visited on: 29th October 2022

¹²“United Arab Emirates: UAE Civil Procedure Code Reform”, Available at: <https://www.mondaq.com/civil-law/803322/uae-civil-procedure-code-reform>, Visited on: 29th October 2022