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Examining the Status of Arbitration in Iranian Law with an Emphasis on Imami Jurisprudence

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Arbitration is an ancient institution that Iranians have long utilized, and particularly in light of Islamic regulations, arbitration and the non-adversarial resolution of disputes have been regarded as a commendable practice among Iranians. In recent decades, arbitration has gained a special position in international trade, and merchants and those involved in international commercial affairs have found it to be a favorable and relatively reliable method for resolving their commercial disputes. Consequently, today, the dispute resolution clause has become a relatively essential and standard provision in most commercial contracts. Arbitration is employed as an appropriate method for resolving disputes, allowing the parties to reach an agreement on the matter in dispute. Since arbitration offers advantages and superiority over court proceedings, it has become a widespread practice, with increasing public familiarity with this concept. However, it should be noted that not all disputes are subject to arbitration, such as criminal disputes, labor law issues, bankruptcy, marriage annulment, legal capacity, inheritance and adoption, lineage, and probate matters. The primary reasons for the parties' inclination toward arbitration include the exemption of arbitration from certain laws and procedural formalities of judicial authorities, the lengthy nature of civil litigation in courts, the expedited decision-making process in arbitration, lower costs compared to court proceedings, the confidentiality of arbitration, and the ability to select the adjudicating authority (arbitrator or arbitrators).

Keywords: *Arbitration, Iranian Law, Imami Jurisprudence*

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1. Introduction

Arbitration has a long historical background. The resolution of disputes through an agreement to arbitration and submission to a trusted third party, known as the arbitrator, existed even before laws were established in human societies or courts were formed. Arbitration is an enduring institution that Iranians have long utilized, and particularly in light of Islamic regulations, arbitration and the non-adversarial resolution of disputes have been regarded as a commendable practice among Iranians. In recent decades, arbitration has gained a special position in international trade, and merchants and those involved in international commercial affairs have found it to be a favorable and relatively reliable method for resolving their commercial disputes. Consequently, today, the dispute resolution clause has become a relatively essential and standard provision in most commercial contracts.

In developed countries, arbitration has become institutionalized to the extent that it is recognized as a profession and a specialized field. If contracting parties encounter issues in executing the terms of a contract, they refer their dispute to a mutually agreed-upon arbitrator or an arbitrator specified in the contract before resorting to legal action or judicial proceedings. The arbitrator's decision is considered authoritative and respected. In the legal system of the Islamic Republic of Iran, Articles 454 to 501 of the Civil Procedure Code, under Chapter Seven, address the appointment of arbitrators. An arbitrator may be a natural person, meaning that the contracting parties select an individual as the arbitrator and specify them in the contract, or a legal entity, where a company or an institution is designated as the arbitrator. A noteworthy aspect regarding the timing of selecting an arbitrator is that this selection can occur at any stage—whether at the time of contract formation, during its execution, or even after litigation has commenced in court—offering various benefits.

Referring disputes to arbitration has several advantages. Opting for arbitration to resolve financial, partnership, and contractual disputes is significantly less costly than filing a lawsuit in court. Moreover, arbitration does not require adherence to administrative formalities and civil procedural rules, facilitating better communication and interaction between the parties and the arbitrator(s). Additionally, arbitration allows for a more straightforward examination of the dispute, leading to more efficient resolution and preventing unnecessary prolongation of litigation.

2. Lawsuit in Iranian Law

A lawsuit is a right that enables individuals to approach a court and request a judicial authority to enforce the law in order to protect their rights against another party. Exercising this right through the court is always conducted through a specific legal procedure, known as "filing a lawsuit." Another definition states that a lawsuit is a formal legal action undertaken to establish a right that has been violated or contested.

Legally, a lawsuit may be contrasted with defense or confession. According to Article 1259 of the Iranian Civil Code, "Confession is a statement acknowledging a right belonging to another person to the detriment of oneself." In other words, a lawsuit is a reaction by the right-holder, asserting a claim against another party due to encroachment, transgression, denial, or doubt concerning their right.

Iranian law does not explicitly define the term "lawsuit." However, Article 34 of the Iranian Constitution recognizes the right to litigation as an absolute right of every individual, stating: "Litigation is the inalienable right of every individual, and everyone may refer to competent courts to seek justice." Similarly, Article 35 of the Constitution mentions the parties to a lawsuit. The Iranian Civil Procedure Code also references lawsuits but does not provide a definition. A precise definition of a lawsuit and a clear understanding of its concept are fundamental in analyzing legal provisions. Examining legislative texts reveals that the legislature uses the term "lawsuit" in three different senses. Essentially, when individuals claim that their fundamental rights, as stipulated in substantive laws, have been infringed or denied, they acquire a legal right to bring their case before a competent authority, requesting adjudication and appropriate legal consequences. This right is explicitly recognized in Article 34 of the Constitution, which states: "Litigation is the inalienable right of every individual, and everyone may refer to competent courts to seek justice."

3. Types of Arbitration

There are various types and forms of arbitration. In each case, the parties must determine the most suitable and relevant type of arbitration for the dispute. The choice of an arbitration method may have legal implications concerning domestic law, relevant international instruments, the arbitration agreement, and applicable arbitration rules. Therefore, the decision to refer a dispute to arbitration and the selection of its type and form must always be carefully considered.

Arbitration can be classified based on different criteria. From the perspective of formation, arbitration is divided into institutional and ad hoc arbitration. In terms of the presence or absence of a foreign element, arbitration can be classified as domestic (national) or foreign (international). Regarding the necessity of establishment, arbitration is categorized into voluntary and mandatory arbitration. From the viewpoint of dispute resolution, arbitration can be legal or equitable. Based on the number of parties involved, arbitration may be bilateral or multilateral. Lastly, concerning the

method of referral, arbitration is divided into judicial and contractual arbitration. However, these classifications do not mean that arbitration falls exclusively into one category; rather, an arbitration proceeding may be institutional in one aspect, equitable in another, and international in yet another. The following sections discuss four main aspects of arbitration:

A. Domestic, Foreign, and International Arbitration

Determining whether an arbitral award is domestic or foreign is crucial for facilitating its enforcement and execution, preventing potential obstacles from hindering the process. For example, if the arbitration takes place in Iran and both parties are Iranian nationals, the arbitration is considered domestic, and the award, in terms of its quality, time limits, and grounds for challenge, is subject to the Civil Procedure Code, with enforcement carried out under the Civil Enforcement Law. Conversely, if the award is classified as international, the International Commercial Arbitration Law governs the arbitration process, and the recognition and enforcement of such awards outside Iran are conducted in accordance with the relevant rules and regulations of the respective country (Lotfi & Saadatkhah, 2016).

1. Domestic Arbitration

Domestic arbitration refers to arbitration that takes place within the geographical boundaries of a country and deals with disputes arising within that country. In other words, when the subject of the dispute falls within the jurisdiction of a single country, the governing laws of that territory apply, shaping the arbitration process and the issuance of the arbitral award. This type of arbitration is referred to as domestic arbitration (Makrami, 1996).

2. Foreign Arbitration

Iranian law does not provide a specific definition of foreign arbitral awards. Articles 972 and 975 of the Civil Code permit the enforcement of foreign court judgments as long as they do not violate public order, and Article 169 of the Civil Enforcement Law outlines the conditions for enforcing foreign judgments in Iran. However, these provisions pertain to foreign court judgments rather than foreign or international arbitral awards.

3. International Arbitration

In addition to domestic and foreign arbitration, international arbitration is recognized as a distinct category. The classification of an arbitration as international is not necessarily based on whether it takes place outside the territory of a specific country. An arbitral award can be considered international even if it is rendered in a particular country. According to some judicial systems, arbitration is deemed international when the dispute involves a foreign element, meaning that the parties are not nationals of the country where the arbitration is conducted. In such cases, the litigants are considered foreign in relation to the place of arbitration. Alternatively, arbitration may be classified as international when it is administered by an international arbitral institution, such as the International Centre for Settlement of Investment Disputes (ICSID), or when it follows rules that have an international character (Ghomashi, 1997).

Legal scholars historically did not distinguish between foreign and international law. However, in recent years, when it is not possible to determine the nationality of an arbitral award under private international law, the award is sometimes described as stateless or international. One of the unique features of stateless disputes is that the governing laws do not have a connection with the legal system of any specific country. From this perspective, international arbitration includes arbitration proceedings that take place both within and outside a country's political boundaries, where no single national jurisdiction is applied. Since these arbitrations are not tied to a specific location, the laws of no particular country automatically govern such disputes based solely on the place of arbitration.

B. Institutional and Ad Hoc Arbitration

The International Commercial Arbitration Law does not provide a definition of institutional or administered arbitration but refers to the term in certain provisions. Institutional arbitration occurs when the disputing parties, before or after the emergence of a dispute, submit their case to an arbitration institution, requesting that the dispute be resolved in accordance with the rules of that institution. In this arrangement, the institution assists in appointing the arbitrator, refers the case to them, supervises the proceedings, and manages the arbitration process (Makrami, 1996).

In contrast, ad hoc arbitration, also known as special or case-specific arbitration, is when an arbitrator is selected for a particular dispute, and the arbitration is not conducted under the framework of an arbitration institution. In this case, the parties themselves agree on

the procedures that the arbitrator(s) will follow without the oversight of an administrative organization. Upon closer examination, it becomes evident that institutional arbitration involves a tripartite agreement, with the disputing parties on one side, the arbitration institution on the other, and the arbitrator(s) as the third party. The disputing parties submit their case to the institution, which then assigns it to one or more arbitrators, who must accept the assignment for the tripartite agreement to be formed. Some argue that the agreement between the disputing parties and the arbitration institution constitutes an independent contract, with the institution subsequently entering into a separate contract with the arbitrator. However, this view is not widely accepted because arbitrators have obligations toward the disputing parties, and failure to fulfill these obligations can result in liability, some of which arise from contractual commitments. Contractual liability is meaningful only when a binding contract exists.

Legal scholars have highlighted several advantages of institutional arbitration over ad hoc arbitration. One key advantage is that institutional arbitration proceedings follow the established rules of the arbitration institution, ensuring an organized and expert-guided process. Institutional arbitration allows for structured management, relieving the disputing parties of the burden of determining procedural rules, which in ad hoc arbitration would require extensive cooperation, time, and effort—cooperation that is often difficult given the underlying dispute. In the absence of an arbitration institution, the parties may even have to resort to court intervention to resolve procedural disagreements.

However, institutional arbitration should not be confused with structured or systematized ad hoc arbitration. The latter refers to ad hoc arbitration conducted in an organized and large-scale manner, such as the Iran-U.S. Claims Tribunal, which, despite being a form of ad hoc arbitration, follows a structured approach. Arbitration may take the form of either institutional arbitration or ad hoc (specialized or case-specific) arbitration.

1. Institutional Arbitration

Institutional arbitration occurs when the parties, in their arbitration agreement, submit the procedure for resolving and adjudicating their disputes to the pre-established rules of an international arbitration institution. As the name suggests, institutional arbitration is conducted with the assistance and under the supervision of an arbitration institution or organization. These arbitration institutions have pre-drafted arbitration rules and procedural regulations that apply to all cases referred to them.

In institutional arbitration, the proceedings are conducted in accordance with the arbitration rules of the relevant institution, requiring minimal external intervention, as the institution operates as a self-sufficient and autonomous system. If any issues arise during the arbitration process, the institution resolves them based on the powers and responsibilities outlined in its rules. For instance, if the parties agree in their contract that any disputes will be resolved according to the conciliation and arbitration rules of the International Chamber of Commerce (ICC), or if they opt for the International Centre for Settlement of Investment Disputes (ICSID), their disputes will be resolved within the framework of those institutions (Liu et al., 2011).

The significance of institutional arbitration, particularly in international arbitration, is widely recognized. Prominent arbitration institutions have been established to provide arbitration services, the most notable being the International Chamber of Commerce (ICC), headquartered in Paris, with national committees in various countries, including an active committee in Iran. One of the key advantages of institutional arbitration is that, due to its pre-established and codified rules, it can effectively address potential issues that may arise during arbitration, preventing delays or interruptions in the process. Additionally, institutional arbitration facilitates the enforcement of arbitral awards, as evidenced by its recognition in the 1958 New York Convention (Article 1). Institutional arbitration is explicitly mentioned in Article 3(a) and Article 6 of Iran's International Commercial Arbitration Law (Lotfi & Saadatkhah, 2016).

According to Article 9 of the same law, concerning the "notification of documents and summons," if the parties have not agreed on a specific method of notification for arbitration-related documents, the method and authority responsible for notification shall be determined by the rules of the chosen arbitration institution.

Article 6(2) of the law also assigns certain responsibilities to the relevant arbitration institution in institutional arbitration. These responsibilities include:

- Appointing the arbitral tribunal if the parties fail to reach an agreement (Article 11(2))
- Appointing a third arbitrator if the parties or their arbitrators cannot reach a consensus (Article 11(3))
- Addressing challenges against an arbitrator (Article 13(3))
- Resolving disputes regarding an arbitrator's failure to fulfill their duties or negligence

2. Ad Hoc Arbitration

Ad hoc arbitration applies when the parties, without resorting to the services and facilities of arbitration institutions, independently select one or more arbitrators and determine the procedure for the resolution of their disputes.

Ad hoc arbitration entails that the entire arbitration process, including the commencement of proceedings, the selection of arbitrators, the formation of the arbitral tribunal, the exchange of pleadings, correspondence and notifications, the conduct of hearings, witness and expert testimony, challenges against arbitrators, and finally, the issuance and notification of the award, is organized and executed entirely by the parties and arbitrators themselves.

In other words, the management and conduct of arbitration proceedings are directly overseen by the parties and arbitrators according to arbitration rules specifically drafted for the particular case. Naturally, after the conclusion of the arbitration and issuance of the award, those rules become obsolete, as they were tailored for that specific dispute.

In ad hoc arbitration, if any issues arise during the proceedings—such as a party failing to nominate an arbitrator, challenging an arbitrator, or failing to agree on procedural matters such as the seat of arbitration—recourse to a competent court becomes necessary. Since there is no mutually recognized institution to resolve these matters, ad hoc arbitration is more susceptible to delays and procedural irregularities (Ghomashi, 1997).

Thus, arbitration is generally categorized into ad hoc (or occasional) arbitration and institutional arbitration. The primary distinction is that in institutional arbitration, the arbitration process follows the rules of a specific arbitration institution. However, arbitration institutions do not interfere with the parties' freedom to choose arbitrators or conduct the proceedings; rather, their arbitration rules facilitate and administer the arbitration process while ensuring adherence to procedural integrity.

While both ad hoc and institutional arbitration are fundamentally based on the initial arbitration agreement, institutional arbitration has certain advantages. Firstly, its procedural rules are predetermined, providing clarity and certainty. Secondly, an arbitration institution oversees the proper conduct of the arbitration, ensuring compliance with its rules and resolving issues that arise during the process. This results in a more structured and disciplined arbitration process.

3. Voluntary and Mandatory Arbitration

Arbitration can be classified based on the parties' consent, the elements involved, and the adjudicating authority. From the perspective of party autonomy, arbitration is divided into voluntary and mandatory arbitration. The general principle in arbitration is that it is voluntary, whereas mandatory arbitration is an exception. In mandatory arbitration, court intervention is generally excluded, whereas in voluntary arbitration, judicial intervention may be considered.

When arbitration is based on the mutual agreement of the parties to submit their dispute to arbitration, it is referred to as contractual arbitration or consensual arbitration. Conversely, if arbitration is mandated by law, it is known as mandatory or compulsory arbitration.

4. Arbitration in Civil and Commercial Matters

In legal relations between individuals, the default assumption is that such relations are non-commercial, and the commercial nature of a legal relationship must be explicitly established by the legislature in commercial laws. Accordingly, arbitration in non-commercial disputes is categorized as civil arbitration (Liu & Jafari, 2018).

Civil arbitration includes arbitration in disputes between private individuals who are not engaged in commercial activities, such as arbitration in property disputes, family disputes (e.g., between spouses), landlord-tenant disputes, employer-employee disputes, contractual disputes, and tort claims, including compensation for damages resulting from car accidents. Additionally, arbitration in disputes between two countries concerning sovereignty-related matters does not fall under the commercial category and is classified as non-commercial arbitration.

4. The Legal Nature of Arbitration

One of the fundamental questions in arbitration concerns its legal nature. In other words, what is the precise legal character of arbitration? Specifically, it must be determined where the arbitral tribunal derives its authority to hear disputes and make decisions. Arbitration sometimes resembles a contractual act, and at other times, it takes on a judicial or quasi-judicial character. Each of these classifications affects the arbitration process, the arbitrators, and the arbitral award in different ways. If arbitration is contractual in nature, disputing parties generally have the freedom to refer any dispute to their chosen arbitrator through mutual agreement. The objective of contractual or voluntary arbitration is for the parties to mutually agree to resolve their dispute through arbitration, selecting one or more arbitrators and submitting to their jurisdiction in the dispute at hand.

Under the contractual theory, arbitration is an institution rooted in the parties' agreement and must be conducted according to their intentions. If arbitration is jurisdictional in nature, it is a quasi-judicial mechanism based on the parties' contract. According to the mixed theory, which considers arbitration a combination of contractual and jurisdictional elements, the parties are free to enter into an arbitration agreement and select arbitrators, and the governing law is determined based on the contractual nature of arbitration. However, the judicial role of arbitration pertains to the conduct of proceedings and the validity of the arbitration agreement, which must conform to mandatory rules and public policy at the place of arbitration. This theory considers arbitration a two-stage process: the first stage is private and fully reliant on party autonomy, while the second stage—enforcement of the arbitral award—has a public dimension, requiring state oversight. Consequently, arbitration embodies both contractual and jurisdictional elements in a coexistence.

According to the autonomous or self-regulatory theory, arbitration is an independent, self-governing mechanism in international commercial transactions, designed to serve the interests of the global business community.

A. Contractual Nature

The first view, known as the contractual theory, asserts that arbitration is necessarily based on the will of the parties, which forms the source of the arbitral tribunal's jurisdiction. Under this theory, arbitration falls within the realm of contract law, with party autonomy as the governing principle. Because arbitration is based solely on the doctrine of party autonomy, some scholars classify it as a contractual institution. This classification requires recognition of the arbitration agreement as the primary instrument governing all aspects of arbitration, as no form of arbitration can exist without such an agreement. Under this theory, arbitration derives its legitimacy from the contract, which grants arbitration its authority (Katouzian, 2005).

Arbitration has a contractual identity arising from the parties' agreement. This type of contract is voluntarily entered into by the parties, allowing them to determine the time and place of arbitration, the number and identity of arbitrators, and the substantive and procedural law applicable to the dispute. According to this theory, arbitration is fundamentally based on contract, and arbitrators derive their power exclusively from the arbitration agreement. Their decision serves as an extension of the contract, ensuring its enforcement. Arbitration, therefore, cannot be considered anything other than contractual in nature. In essence, arbitration is a voluntary system created by the parties themselves, serving as a private adjudicative mechanism. The procedural rules and jurisdiction of arbitration are determined by the parties, who retain control over the arbitrators' powers and responsibilities without state intervention (Lotfi & Saadatkhah, 2016).

The contractual nature of arbitration is significant in determining two disputed issues. First, if the parties disagree on whether an arbitrator has jurisdiction over a particular issue, can the arbitrator independently decide on their jurisdiction? The answer is no. The arbitrator may express an opinion on the matter, but even if the parties authorize the arbitrator to determine their own jurisdiction, the ultimate decision rests with the court when enforcement of the arbitral award is sought (Habibi Majandeh, 2013).

The second issue concerns whether an arbitration clause contained in the main contract allows the arbitrator to determine whether the underlying contract was void from the outset. The central question is whether the arbitration clause is severable and remains unaffected by challenges to the main contract. If the arbitration clause is deemed severable, the arbitrator retains jurisdiction. However, if the arbitration clause is considered an

inseparable part of the contract, and the contract is found to be void, the arbitration clause may also lose its effect. The resolution of this issue depends on interpreting the parties' intent, either from the language of the arbitration clause or by necessary implication. If the claim is that the contract has been terminated due to an event occurring after its valid formation, the arbitration clause remains valid, and the arbitrator retains jurisdiction. However, if the claim is that the arbitration clause itself was obtained through fraud or mistake, or if the parties never agreed to include an arbitration clause in the main contract, the matter is different, as the challenge concerns the arbitration agreement itself rather than the main contract. In such cases, only the court can make a final determination on the validity of the arbitration clause.

Most courts justify international commercial arbitration based on the contractual theory, recognizing that business actors prefer arbitration as a more informal and flexible dispute resolution method. Courts typically interpret the relationship between the parties and the arbitrators as contractual in nature.

The English Commercial Court emphasized the contractual nature of arbitration in *Union of India v. McDonnell Douglas Corp.* (1993), stating: "An arbitration clause in a commercial contract such as the present one is a contract within a contract. The parties enter into commercial dealings by exchanging obligations, but at the same time, they also agree to a private tribunal for resolving any disputes that may arise between them."

From a legal standpoint, the parties' agreement to refer disputes to arbitration constitutes a private contract, which, under Article 10 of the Iranian Civil Code, is binding, requiring both parties to adhere to its terms and consequences. Iranian legal doctrine has also largely embraced the contractual nature of arbitration.

B. Judicial or Jurisdictional Nature

Under the jurisdictional theory, also known as the competence theory, arbitration possesses a judicial character, with state authority prevailing over party autonomy. This view reflects the notion that arbitration can only be conducted within the jurisdiction of a country and subject to the governing law of arbitration. In other words, arbitration is a mechanism beneficial to legal systems and is supervised by them. Party autonomy has limited effect, confined to the choice of arbitration as a dispute resolution method. This choice is only effective because the law recognizes and gives it legal force.

Under the jurisdictional theory, adjudication, dispute resolution, interpretation, and application of the law are manifestations of state sovereignty and judicial authority. Every state has the right to regulate and oversee arbitration within its territory. Parties may only resort to arbitration to the extent explicitly or implicitly permitted by the law of the seat of arbitration (Yazidi Fard & Fallah, 2008).

This theory emphasizes the supervisory powers of the state, particularly the state in which arbitration takes place. While it does not deny that arbitration originates from the parties' agreement, it holds that the validity of the arbitration agreement and the arbitration process is subject to oversight by national law. Proponents of this theory argue that arbitrators resemble national court judges and derive their powers from the state, which grants them authority through law. Like judges, arbitrators are bound to apply a specific national legal framework to resolve disputes (Berger, 2007; Bordbar, 2014).

Some legal scholars believe that an arbitrator's authority is primarily derived from the law. The Civil Procedure Code allows parties to select their adjudicator through mutual agreement, permitting them to accept arbitration instead of referring their case to court. Thus, an arbitrator is a temporary adjudicator designated by law for a specific case and, when performing their duties, functions as a public official.

C. Mixed Nature

According to the mixed theory, neither the jurisdictional nor the contractual theory fully captures the true essence of arbitration. Instead, arbitration is viewed as a hybrid institution with dual characteristics, incorporating both contractual and judicial elements (Amini & Mansouri, 2017).

Under this theory, arbitration consists of two elements: local legal sovereignty and party agreement. While parties are free to enter into an arbitration agreement and select arbitrators, contractual autonomy is subject to certain restrictions. The judicial role of arbitration relates to the proceedings and the validity of the arbitration agreement, which must conform to mandatory rules and public policy at the seat of arbitration. This theory integrates aspects of both contractual and judicial theories, recognizing that

arbitration, although rooted in party autonomy, remains subject to state oversight and regulation (Lotfi & Saadatkhah, 2016).

D. Independent Nature

The final view, known as the independent or autonomous theory, argues that arbitration is a sui generis institution, distinct from both contract and judicial authority. Arbitration is viewed as a self-governing and self-regulating system that operates independently of national legal frameworks. This theory posits that international arbitration exists in a unique legal space, beyond the reach of any specific national legal system. However, this theory faces criticism for overlooking the normative basis of arbitration agreements, which rely on state support for their enforcement (Moshkelgosh, 2013).

5. Rules of Arbitral Institutions

These rules are established by arbitration institutions or arbitration centers. They become effective and enforceable only when the parties explicitly select them or agree to arbitrate under a specific arbitration institution. Among these rules, the following are notable:

- The **Conciliation and Arbitration Rules of the International Chamber of Commerce (ICC)**, which apply to the ICC Court of Arbitration.
- The **Arbitration Rules of the London Court of International Arbitration (LCIA)**, which govern arbitration at the LCIA.
- The **Arbitration Rules of the European Court of Arbitration**.
- The **Arbitration Rules of the American Arbitration Association (AAA)**.

6. Characteristics of Institutional Arbitration Rules

A. Agreements Between the Parties

The agreement and intent of the parties constitute the most significant source of international arbitration law, whether they reach such an agreement at the time of concluding the main contract or after a dispute arises. Parties can agree to refer their disputes to arbitration either before or after the occurrence of a dispute. Such an agreement can be included as an arbitration clause within the main contract or the company's articles of association, or it can be executed as a separate arbitration agreement.

In all these cases, the parties incorporate the recommended arbitration clause of the Tehran Chamber of Commerce Arbitration Center into their contract or articles of association. Once an arbitration agreement is included, judicial courts no longer have jurisdiction over the disputes, and either party may submit a request to the Tehran Chamber of Commerce Arbitration Center for dispute resolution. This arbitration center then notifies the opposing party of the arbitration request and provides them the opportunity to submit their defense.

After completing the case file and receiving pleadings and evidence from both parties, the arbitration center—either through mutual agreement between the parties or, in the absence of such an agreement, through its own discretion—appoints one or more arbitrators with expertise in the relevant subject matter. The appointed arbitrator, upon accepting the appointment, summons the parties and conducts hearings. If necessary, expert opinions from the judiciary's official experts may also be sought. The arbitrator then issues a final award within three months, which is communicated to the parties by the Tehran Chamber of Commerce Arbitration Center.

The party in whose favor the award is issued (the award creditor) submits the arbitral award to the judicial courts for enforcement, where the courts execute the award in the same manner as a final judicial ruling. If the award debtor fails to comply with the award within twenty days after notification, the court, upon the request of the award creditor, is obligated to issue an enforcement order. If the subject matter of the award is a specific tangible item, it is seized and delivered to the award creditor. If the return of the item is not possible, or if the award does not pertain to a specific tangible item, the court identifies the award debtor's assets (through the Central Bank, the Land Registry Office, municipalities, the Stock Exchange Organization, the Traffic Police, and other relevant authorities), seizes assets equivalent to the value of the award, and proceeds with their sale.

If enforcement through asset seizure is not feasible, the award debtor, upon the request of the award creditor, may be imprisoned until the award is satisfied, unless they successfully claim insolvency or reach a settlement with the award creditor (Amini & Mansouri, 2017).

According to Article 454 of the Iranian Civil Procedure Code, "All persons who have the legal capacity to sue may, by mutual consent, refer their dispute to arbitration, whether or not the dispute has been filed in

court, and at any stage of the proceedings." (Katouzian, 2005)

Furthermore, Article 455 of the Iranian Civil Procedure Code states, "Contracting parties may stipulate within their contract, or agree in a separate agreement, that in the event of a dispute, they will refer the matter to arbitration, and they may appoint arbitrators either before or after the dispute arises." (Seifi, 2013)

The note to this article adds: "In all cases of arbitration referral, the parties may delegate the selection of the arbitrator(s) to a third party or the court." (Moshkelgosh, 2013)

B. Selection and Role of Arbitrators

If the arbitration agreement or subsequent agreements do not specify procedural rules, and the parties have not referred to any arbitration rules, arbitrators must select the applicable procedural rules. These may be existing arbitration rules, statutory provisions, or newly established rules crafted by the arbitrators themselves, provided that the parties have explicitly or implicitly granted them such authority.

Arbitrators generally prefer to apply a national procedural law or an established set of arbitration rules rather than formulating entirely new rules.

C. Rules of Domestic Legal Systems

International arbitration proceedings may also be governed by a national procedural law, which then becomes a source of law for the arbitration. Some countries have enacted specific laws for international arbitration, distinguishing them from domestic arbitration laws.

7. The Civil Procedure Code

The arbitration provisions of the Iranian Civil Procedure Code primarily apply to domestic arbitration. As a result, this code does not address the governing law in arbitration, since disputes under this code are inherently subject to Iranian law.

According to Article 483 of the Iranian Civil Procedure Code, an arbitral award must be reasoned and substantiated and must not contradict mandatory legal provisions; otherwise, it may be annulled under Article 498 of the same code.

Only Article 439 of the Civil Procedure Code provides that if arbitrators have the power to settle disputes amicably, they may resolve the dispute through conciliation. In such cases, the settlement document, signed by the arbitrators, is valid and enforceable. Some legal scholars argue that, under this provision, arbitrators are not necessarily bound to apply legal rules and can resolve disputes based on equity rather than strict legal reasoning.

If an arbitral award is issued based on transnational arbitration rules and contradicts Iranian mandatory laws, it may be annulled under Article 498 of the Civil Procedure Code. Consequently, applying transnational arbitration rules may not always be viable under this code (Seifi, 2013).

The Civil Procedure Code of 2000 (1379 SH) recognizes the referral of disputes to arbitration both through an arbitration clause in a contract and an independent arbitration agreement but does not explicitly specify the nature of arbitration agreements. In contrast, the Iranian Civil Code generally presumes contracts to be consensual (informal) unless specified otherwise. However, the International Commercial Arbitration Act of Iran explicitly requires arbitration agreements to be in writing (Moshkelgosh, 2013).

Under the International Commercial Arbitration Act, arbitration agreements governed by this law must be concluded in writing. Given the current legal framework in Iran, domestic arbitration agreements are generally considered consensual contracts. However, considering the advantages of formalizing agreements, the requirement for a written arbitration agreement, as stipulated in the International Commercial Arbitration Act, aligns more closely with arbitration objectives. Amending the Civil Procedure Code to require written arbitration agreements would be beneficial, as it would prevent courts from spending time determining the existence of oral arbitration agreements and allow them to directly adjudicate disputes, which would be advantageous for both litigants and the judicial system. Comparative legal studies also support this approach.

The Civil Procedure Code does not prescribe a specific format for domestic arbitral awards, but Article 482 emphasizes the requirement that an award must be reasoned and substantiated. From the wording of this article, it can be inferred that providing reasons and justifications is a fundamental requirement for arbitral awards, similar to the obligation imposed on judges. However, no law explicitly defines what constitutes a reasoned and substantiated award or specifies an enforcement mechanism for non-compliance.

Consequently, legal doctrine and judicial practice remain divided on this issue. Some legal scholars consider an unreasoned arbitral award to be null and void, while others argue that annulment grounds are strictly limited under Article 431 of the Civil Procedure Code, and an unreasoned award does not constitute a valid ground for annulment.

It appears that failing to provide reasoning and justifications in an arbitral award results in its invalidity, making it subject to annulment under arbitration laws.

8. The International Commercial Arbitration Law

In recent decades, arbitration has gained a significant position in international trade, and business professionals engaged in international commerce have recognized it as a favorable and relatively reliable method for resolving commercial disputes. Consequently, the dispute resolution clause has become an essential and standard provision in most commercial contracts (Moshkelgosh, 2013).

In Iran, this arbitration method has been increasingly adopted, based on the UNCITRAL Model Law on International Commercial Arbitration. Iran's International Commercial Arbitration Law defines international arbitration as follows: "International arbitration refers to arbitration where at least one of the parties, at the time of concluding the arbitration agreement, is not an Iranian national under Iranian law." It is important to note that this law only applies to arbitrations in which at least one of the parties is not an Iranian national. However, in cases where two Iranian nationals enter into an international contract, this law does not apply, which has been subject to criticism.

Article 27 of the International Commercial Arbitration Law concerns the determination of the substantive law governing the dispute and is derived from Article 28 of the UNCITRAL Model Law.

Under Iranian law, Article 8 of the International Commercial Arbitration Law states that if an arbitration agreement exists, the court must refer the dispute to arbitration upon the request of either party before the end of the first court session, unless the court determines that the arbitration agreement is void, ineffective, or unenforceable.

From this article, the following conclusions can be drawn:

First, parties may simultaneously initiate court proceedings and arbitration.

Second, if a lawsuit is filed seeking the nullification of the arbitration agreement before the supervisory authority referred to in Article 6 of this law, and if neither party requests arbitration by the end of the first court session, the court will continue its proceedings without considering the arbitration agreement.

Third, if such a request for arbitration is made during the first court session, and the court finds the arbitration agreement to be void or ineffective, arbitration cannot proceed.

Fourth, if arbitration has already commenced, filing a lawsuit in court does not halt the arbitration process or prevent the issuance of an arbitral award.

9. The Concept of Arbitration in Imami Jurisprudence

In Islamic jurisprudence (fiqh), arbitration is referred to as Qadi al-Tahkim or hukmiyat. This occurs when two or more individuals have a financial or non-financial dispute and mutually agree to select a third party as an arbitrator, accepting their decision as final. The process of resolving disputes through the selection of a third party is known as tahkim, and the arbitrator is called Qadi al-Tahkim.

Some jurists define Qadi al-Tahkim as follows: "A Qadi al-Tahkim is an individual or individuals whom the disputing parties mutually agree to submit their dispute to, accepting their ruling as binding and implementing their decision." Another definition states: "A Qadi al-Tahkim is a judge whom the litigants voluntarily agree upon to arbitrate and settle their dispute."

Jurist Khalkhali describes Qadi al-Tahkim as: "The ruling of a Qadi al-Tahkim is the decision made by an individual selected by the disputing parties for arbitration." Therefore, in Islamic jurisprudence, hukmiyat (arbitration) refers to the mutual consent of litigants to select an individual for arbitration and dispute resolution. Thus, there is no apparent difference between the concept of arbitration in Islamic law and in modern legal systems.

A Qadi al-Tahkim is a person chosen by mutual agreement between disputing parties without being specifically or generally appointed as a judge by an infallible Imam. Accordingly, there may be more than one arbitrator, meaning that the disputing parties can select

two or more individuals to arbitrate their dispute (Haeri, 2001).

In fiqh, arbitration is referred to as tahkim, and it occurs when two or more individuals in a financial or non-financial matter agree to submit their dispute to an arbitrator and accept their ruling. If the selected individual is not a judge officially appointed by Imam Ali (peace be upon him), the process is considered tahkim, and the arbitrator is called a Qadi al-Tahkim.

Although the concept of Qadi al-Tahkim is relatively new in Iranian law, it has existed in Islamic jurisprudence for centuries. Given its historical foundation, it is essential to examine tahkim both from an Islamic perspective and in relation to modern legal principles.

From a policy perspective, an efficient judicial system should aim to prevent case overload, ensuring that disputes are resolved efficiently, accurately, and at minimal cost. However, with increasing population growth, the complexity of modern legal disputes, and accelerated economic and social activity, judicial systems face rising case backlogs. This burden results in delays, inefficiencies, and increased legal costs for courts.

If policies can be implemented to reduce the number of cases referred to courts, it would be advantageous and desirable. Recognizing these challenges, modern criminal justice policies—particularly those within the Social Defense Movement—advocate for alternative dispute resolution (ADR) methods, including arbitration, conciliation, and mediation, as part of a dejudicialization strategy (Seifi, 2013).

Dejudicialization is a policy aimed at reducing judicial intervention in civil and commercial disputes by promoting alternative dispute resolution. While Qadi al-Tahkim does not strictly fall within the scope of dejudicialization, it complements its objectives by offering an alternative method of dispute resolution.

One of the clear benefits of recognizing Qadi al-Tahkim is that it fosters cooperation between disputing parties and reduces tensions, unlike adversarial litigation, where one party sues the other in court. Litigation often results in hostility and prolonged proceedings, sometimes causing one party to delay appearances in court, leading to lengthy and exhausting legal battles (Yazidi Fard & Fallah, 2008).

By contrast, in tahkim, the disputing parties must agree on the arbitrator before submitting their case, which significantly aids in the psychological resolution of disputes. This approach can be considered a form of privatization of the judiciary, providing a faster and more cost-effective dispute resolution system while reducing the burden on judicial resources.

Ayatollah Jawadi Amoli holds the view that a judge (qadi) must be either an infallible Imam or a jurist appointed by an infallible Imam. He states that the authority to adjudicate belongs exclusively to prophets, Imams, and jurists. However, he acknowledges that in certain situations, parties may appoint a non-jurist arbitrator, as long as this does not undermine the fundamental principles of Islamic justice.

In his definition, Ayatollah Jawadi Amoli emphasizes the requirement that a judge must be formally appointed, but he also recognizes an exception, allowing for Qadi al-Tahkim when both parties consent to arbitration. Some scholars argue that a Qadi al-Tahkim should not be formally appointed by an Imam, as this would classify them as an official judge (Qadi Mansub) rather than an arbitrator.

Similarly, Sangalaji defines Qadi al-Tahkim as: "An individual whom disputing parties, despite the presence of officially appointed judges, may request to act as an arbitrator to resolve their conflict."

10. The Legal Nature of Arbitration in Imami Jurisprudence

Most Imami jurists regard arbitration as a form of adjudication, classifying it as a judicial function rather than a private contractual agreement. However, some scholars argue that an arbitrator (hakim) functions as a representative (wakil) of the disputing parties, thereby categorizing arbitration as a form of agency (wakala).

If the role of Qadi al-Tahkim is analyzed under agency law, the state's role in appointing arbitrators and the conditions for private adjudication would become more restricted. This is because contracts are considered valid as long as they do not violate Islamic law.

11. Conclusion

While the progress of the global community in international trade and transactions necessitates arbitration to have an independent or pluralistic nature, the need for the recognition and enforcement of arbitral awards within national jurisdictions, as well as their

alignment with domestic laws, public policy, and mandatory regulations, suggests that among the various theories concerning the nature of arbitration, the mixed or hybrid theory is more compatible with the practical implementation and enforcement of arbitral awards within national legal systems. International commercial arbitration possesses both contractual and judicial characteristics, and while many countries have harmonized their legal frameworks with global needs by adopting and acceding to international conventions, they continue to emphasize the primacy of public policy and the alignment of arbitral awards with their domestic legal systems.

In Imami jurisprudence, the prevailing view among jurists classifies arbitration as a judicial function, equating it with tahkim-based adjudication (quasi-judicial arbitration). The theory that defines arbitration as agency (wakala) or a purely contractual mechanism is generally rejected due to its various legal inconsistencies. One of the main flaws in the agency-based theory is that it would require the arbitrator (who would be considered the agent of the disputing parties) to act in their best interest, which contradicts the principle of arbitrator neutrality and independence. Additionally, since agency contracts are generally revocable, each party would have the right to dismiss the arbitrator at any stage of the proceedings whenever they anticipate an unfavorable decision, thereby undermining the arbitration process.

Given the weakness of the agency-based theory and considering the differences between domestic arbitration and international arbitration, the dominant opinion among Imami jurists, which defines arbitration as quasi-judicial adjudication, aligns more closely with the hybrid theory in domestic legal systems. Thus, the mixed nature of arbitration should be recognized as the most suitable jurisprudential-legal framework in Iranian law.

The appointment of an arbitrator by the parties and the referral of their dispute to arbitration reflect the contractual nature of arbitration, while the binding nature of the arbitral award demonstrates its judicial dimension, as recognized by leading Imami jurists. The emphasis of Islamic jurists on classifying arbitration as quasi-judicial adjudication was primarily intended to counter the views of certain Sunni scholars, who regarded arbitrators merely as agents of the parties. However, this classification does not conflict with the contractual origins of arbitration or the hybrid theory of arbitration.

It is evident that the judicial nature attributed to arbitration by Islamic jurists was primarily concerned with dispute resolution within a national jurisdiction and did not extend to international commercial arbitration. Many of the criticisms of this theory stem from the modern expansion of international arbitration, where parties often have different nationalities or conduct business in a country other than their home country, submitting disputes to international arbitration. In such cases, international legal frameworks sometimes allow the application of foreign laws to both the substantive issues and the procedural aspects of arbitration.

Although the concept and nature of arbitration in modern legal systems, particularly in Iranian law, differ from the institution of Qadi al-Tahkim (arbitrator judge) in Islamic jurisprudence, the similarities between the two outweigh their differences. The mutual consent of the parties to arbitration, which is the cornerstone of arbitration's legitimacy in modern legal systems, is also recognized in Islamic jurisprudence, where it has been extensively discussed and affirmed in Islamic legal texts. Regarding the extent of state oversight over arbitration and Qadi al-Tahkim, historical sources indicate that the boundaries of state supervision over Qadi al-Tahkim were not clearly defined in early Islamic jurisprudence. However, from the writings of Islamic jurists, it can be inferred that state oversight over Qadi al-Tahkim was fundamentally different from the judicial intervention in modern arbitration.

For example, in Islamic jurisprudence, some scholars have emphasized that the decisions of Qadi al-Tahkim are final and enforceable, arguing that once an arbitrator is appointed, the parties cannot withdraw from arbitration. Others have held that party consent remains necessary even after the arbitrator has issued a ruling, indicating a lack of a formalized legal framework comparable to modern arbitration laws. Given the absence of modern legislative systems, a structured judiciary, and a codified legal framework, the jurisdictional boundaries of Islamic jurists were not clearly defined.

Additionally, legal matters such as court intervention in arbitrator appointments, judicial annulment of arbitral awards, the issuance of interim measures by arbitrators,

and their enforcement by courts—as well as positive and negative judicial interventions in arbitration—did not exist in their modern form within classical Islamic jurisprudence.

Authors' Contributions

Authors contributed equally to this article.

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In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

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