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Legal and Jurisprudential Foundations of Arbitration Institution in Iran Law

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Abstract: Given the importance of arbitration in the Shiite and public jurisprudence and its rights and necessity for the resolution of disputes and conflicts of human societies today which is necessary and inevitable and given that human beings have recognized the importance of arbitration and despite the friction between the interests and rights of people and abusing each other, the arbitration institution may be one of the quickest and most peaceful way to resolve these types of disputes and conflicts. Arbitration institution and dispute resolution by arbitration has a jurisprudential and legal history as well and it is emphasized in the Holy Quran and the traditions of the infallible Imams to settle disputes through arbitration. The permits and influences of arbitration in Islamic jurisprudence is addressed as consolidation judgment: "indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever hearing and seeing." There are other verses and similar items which show that God granted judgment and jurisprudence to his servants: the prophets and the executors and the public. In this article we tried to study arbitration institution from the perspective of Islamic jurisprudence and Iranian law.

Key words: Arbitration, arbitration institution, arbitration in jurisprudence, arbitration, Iranian law

INTRODUCTION

Arbitration is one of ways with a long and abundant history of resolving conflicts among human beings. Disputes have been one of the first phenomena and the consequences of human social life in various societies. Differences in opinions, point of views and greed, hegemony and injustice on the other hand, lead to disputes in social life.

In case of a dispute, any party accuse each other as the violator of rights but these differences should be solved and one should seek for solutions; that is why the people of thought and knowledge had tried to search and investigate these issues and the outcome of these intellectual efforts aimed to find a remedy to resolve any conflict. Courts and judicial bodies at different levels are the basic strategies of humans with the aim of resolving human conflicts and their differences.

Arbitration, from the perspective of jurisprudence is considered in the position of judgment and the governing approach and has been examined in terms of this particular approach. Islam as a religion that perpetuate human prosperity, pointed out in Quran the necessity and importance of arbitration. Here we mention one verse.

And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever knowing and Acquainted (with all things). This study aims to explore legal and jurisprudential concepts with the subject of arbitration institution. First section: the history of arbitration in Iran law and jurisprudence

History of arbitration in iranian law: In Iran, "arbitration" was initially predicted in the 757 to 779 Legal Procedure Act, passed in 1910. "Arbitration law" passed in 1927 which predicted arbitration replaced previous items but this legislation was amended as "arbitration law amending the Law" enacted on 30 March 1929 and was expressly repealed according to Article 38 of "arbitration law" passed in 1934 and mentioned items abolished.

"Arbitration" in the old code of civil procedure act approved in 1939 was predicted in article 632 onwards. In the new law of code of civil procedure act approved in 2000, from article 454 onwards, it is devoted to arbitration. In addition, the International Commercial Arbitration Act approved in 1997.

History of arbitration in jurisprudence: Arbitration is a tradition since pre-Islamic era and a common style in addressing and resolving conflicts. This tradition was confirmed and was recommended by Islam in some cases

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and therefore, it is considered as provisions of Islam. At the same time the intrinsically was changed dramatically and this issue led to some influences on its form and condition. The necessity of the divine nature and content of arbitration that was manifested in the form of a decree issued on the basis of the divine laws was the main emphasis of Islam on arbitration. This emphasis was greatly influential on the selection of a judge and performing the verdict and beside the formation of a central government, it provided the grounds for the emergence and spread of "justice". However, in this period, the jurisdictional scope of arbitration was encountered with no obstacle but over time and with the institutionalization of the status of the central government, arbitration got much lower position than the last place as even at the end of this period, it was neglected or ignored in some cases. But in any case, this pre-Islamic customs and traditions was confirmed with the content of God's covenant and kept its survival.

Second section: reviewing the concept of arbitration: Given that all the rules and regulations of Islamic Republic of Iran are based on Article IV of the Islamic Constitution. One of the important issues raised in domestic regulations is arbitration institution. Thus we decided to perform deeper analysis on arbitration in Iranian law with an approach of Shiite and public jurisprudence. Therefore, we need to understand the concepts of arbitration.

In the Holy Quran words like have been used in connection with the subject of arbitration. "But the term and its derivations have been used 210 times" and its derivations have been used 63 times and its derivations have been used 43 times and its derivations have been used for 38 times.

The literal meaning: (Pronounced as Hokm) means judge, rule, case, resolve the debate of two parties and commanding to obey rule. In some dictionaries, including Ghamus and Sahah, justice and judgment is the first meaning stated for this term; this word in origin means "prohibition" for reform. Thus, the first meaning of this term is prohibition of corruption for reform and this is true in all cases.

(Pronounced as Ghaza) means judgment and judgment. And ironically means: judge, condemn and vote 0.5 (pronounced as Fat'h): command between the two adversaries, to judge between people. It also means opening, judgment and adherence and help. People of Oman call the judge as because he solves the problems. (pronounced as Fasl): a rule which distinct and separates truth from falsehood.

In fact this term means cutting and separation; to separate two things from each other so that a distance between them arises. Using this word in the judgment means the former sense, because by judgment, right and wrong are separated.

Terminology concepts: General definition (pronounced as Hokm) is to comment and judge about something. Say it is right or not so; in the Hadith we can read that: One day two children written a line. To choose the best line, they arrived at the presence of Imam Hasan (AS). Imam Ali (AS) who was observing the scene, immediately said to his son: My son! Be careful how you judge, because this is a kind of judgment itself and on the Day of Resurrection Allah asks you about it. As the content of the hadith implies, Imam Ali (AS) regarded his son's judgment as a general or public judgment.

Specific definition: the specific meaning of the term is the same as its literal meaning. Most jurists regarded the term in its popular sense that is the same as in the general sense of referring to an individual. Means: judgment between the people and resolving the hostility and differences during dispute in property and other rights (Alireza, 1987).

THE THIRD SECTION: THE CONCEPT OF ARBITRATION IN IRAN

Arbitration is to resolve a dispute between parties by referring them to the judgment of those who are chosen by mutual consent of the parties or those that are selected randomly by the court. Among the country's law the issues of arbitration and the arbitrators has always existed since the past, including in the Code of Civil Procedure Act approved in 1939 and the Landlord and Tenant Act in 1960 and several other laws that are specifically referred to arbitration. The current law on arbitration: Article 6 of the law on establishing Public and Revolutionary Courts states that: the parties can refer to "judge of arbitration" if they are both agreed (Naqi, 1997).

The meaning of the judge of arbitration is the person who is eager to judge for the person or persons involved in fights or cases. Chapter VII of the Public and Revolutionary Courts Procedure Act (approved in 2000) contains 48 articles and 6 notes that has been allocated to arbitration. Under this law, all persons have ability to suerefer arbitration to court through mutual consent to solve their conflict and dispute (Akbar, 1994)

THE FOURTH SECTION: THE ADVANTAGES AND DISADVANTAGES OF ARBITRATION

Arbitration is believed to have many advantages bureaucracy is removed. Speed, savings and especially

the trust that the parties have toward the judge are the advantages. On the other hand arbitration has some disadvantages that should not be ignored. Rejecting guarantees and prior withdrawing of complaints are the including disadvantages of arbitration.

Benefits and advantages

Justice and better efficiency: Some disputes and lawsuits, in some fields of law such as contract law are so complicated that only a techie can be attributed to comment about it. Judicial proceedings in this case cannot provide correct justice. In arbitration, it is possible that the parties assign a person or persons who are experts to resolve their dispute as a judge. At least in judgment where both parties are consent, the parties try to inform him about more details. In this case, it is clear that a decree issued by him is consistent with the facts. And of course, it is closer to justice and fairness in judicial proceedings (Ayatollah, 2004). In contrast, this choice does not exist in judicial proceedings and it is clear that the first case closer to justice. In fact, the judge does not know and parties know who is right but the judge does not have any knowledge about the case and adjudicates only on the basis of evidence provided by the parties and perhaps in many cases, due to non-compliance of the client about the governing regulations on contentious issue, the case is doomed to be rejected.

Peaceful settlement of disputes: Since in public proceedings no party has the right to choose the judge any of the parties, the sentence may mean the end of the dispute but it does not mean the end of hostilities and the condemned is usually unhappy with the sentence and actually more hatred and ill will be created than before. However, in case the two parties are traders, the sentence itself is not important since both sides want to continue to maintain good relations of cooperation. With reference to arbitration, since the selection of the arbitrator and regulations, are with the agreement of the parties, the parties abide with further consent to the votes of arbitrators of their choice and it does not lead to hostility and hatred that can be seen in courts.

Confidentiality: Legal and public procedures are often public and this public trial and investigation authorities in many cases are followed by material and spiritual damages for parties. For example in commercial claims, trade transaction secrets which is very important will be revealed; for example, the product price or delivery date, that can be harmful for the parties and even domestic economy of the country. Public trial and its judgment, could lead to abuse from the sentence against the sentenced person. However, for many people attending the court to hear and answer questions is unpleasant since they must sometimes mention their secrets. While in the presence of the arbitrator or arbitrators that are reliable and trustworthy, they can easily tell all the unspeakable and explanations necessary in order to clarify the arbitrator's expression will be provided, especially as this content and speaks, contrary to the trial is not recorded. Due to the confidentiality and integrity of arbitrators, presented materials in arbitration proceedings will be reserved and hidden (Hussein, 1991). Among the issues that may limit the confidentiality of the arbitration is the right of a third-party to enter arbitration. Article 26 provides (if a third party is subjected to any right independently, he can enter arbitration until the end of proceedings provided that he is agreed on agreements and regulations to accept the arbitrator's judgment and his arrival is not disagreed by either party).

Although, this study puts the confidentiality of the arbitration under question, it should be said that since, the arrival of a third party to the arbitration requires the consent of the parties such approval requires the consent to share all documents and information for the third party in the dispute. Therefore, any condition of confidentiality or any agreement or in the case of the presence of third party in should be considered by prior acceptance of a third party so that the arrival of a third party to arbitration may be fulfilled.

Speed in resolving: Court proceedings are usually multi-step and each step requires frequent and long processes. Acceleration of the proceedings and the arbitration by the arbitrator or arbitrators is undoubtedly one of the positive features and benefits of the establishment of the arbitration. In addition, according to Article 484 of the Civil Procedure Act, arbitration will be for three months. It is obvious that it is not comparable with the duration of hearing cases at the Court of Justice which sometimes leads >20 year. The parties themselves determine the long-term duration of the arbitration. Unlike the long-term court proceedings, parties themselves are satisfied with the result. The speed in arbitration, even in the reign of Cyrus the great was of interest as in the reign of Cyrus, there was a reference under the title (Supreme Court) which was composed of seven judges and local courts were created across the country. Trials were followed by a special arrangement. A given time determined by arbitration so that, it was not long and proposals were given to the parties. It should be noted that in most cases of domestic arbitration, sentence was not executed immediately and it was the job of another unit (executive part of judiciary). It should be said that many opinions issued by the courts had been reconsidered and even it refers to the Supreme Court and

resulted in referral to the court issuing the verdict and the retrial. Nevertheless this process cannot be considered as a weakness and question the speed in resolving disputes. In other words (losing an hour is better than two hours. Of course, in international arbitration over ninety percent of arbitral verdicts will be executed immediately (Mohammad, 1986).

In judicial proceedings, despite efforts at reducing formalities, again due to the limited nature of judicial facilities, the desired speed cannot be educated and sometimes a definite opinion on the dispute lasts several year while in arbitration, the final result can be provided in a short time. This speed even has financial benefits for parties and prevents large losses. Thus, resolving disputes through the courts takes a long time. However, through arbitration, the issue is in a very quick procedure. Therefore, one of the great importance and value of arbitration is that the parties can deal with their claims without long procedures and the complex legal issues (Rouhani, 1993).

BETTER EXECUTION AND FASTER ARBITRAL VERDICT

For reasons that were mentioned above. First, there will be more cooperation contrary to opinions issued by the courts by the condemned for better and faster execution of the verdict, since the arbitrator was selected by his own will. In international arbitration, since the arbitral verdict is not belonging to a particular country or government authorities, it will be executed easier and faster.

Impartiality in Arbitration: In arbitration, impartiality of arbitrator or arbitrators is essential. And if one or all the arbitrators lose this condition, even during proceeding, their arbitration can be dismissed. Therefore, arbitration involves a more neutral proceedings in disputes than the proceedings in the courts. However, this is not expressly stated in the Code of Civil Procedure but expressed impartiality and independence in Iran's international commercial arbitration law in Paragraphs 1 and 2 of Article 612 the right to challenge battering by the person who chose the arbitrator. In the definition of neutrality, it can be said that the arbitrator is not affected by various considerations and puts laws and justice on priority.

Although, the legislation does not stipulate independence, in Article 91 of the Civil Procedure Act, the principle of the independence of judges was pointed out. As we have mentioned above in Paragraphs 1 and 2 of Article 12, the principle of neutrality and independence is mentioned. The impartiality and independence of the arbitrator or arbitrators at the international level is more important. Because judicial proceedings or public proceedings are usually based on conflict rules but in private international law, a competent national court is considered and usually in such proceedings the nationality and language is not going to be completely neglected.

DISADVANTAGES OF ARBITRATION

Inaccuracies and responsibility of arbitrators. As choosing arbitrators among the public is useful and interesting due to its simplicity and non-formalities, on the other side of this simple and easy selection, sometimes it is along with uncertainty. And in particular, the arbitrator or arbitrators do not feel the responsibility as judges that may get permanent dismissal from government service and compensation in proceedings if they do not obey the principle and criteria established by law and as a result making a false judgment (Pursuant to Article 171 of the Constitution, if the fault or error in judgment or in the implementation of the law occurs). Since arbitrator or arbitrators do not have such responsibility and comment or resolve a dispute between the parties based on what the parties have said and have informed, thus, they do not have the responsibility of this issue and this leads to an inaccuracy and insufficient maturity and judgment.

The complexity of the complaints against arbitral verdicts: Ways of complaining against arbitral verdicts is very complex and ordinary people cannot complain against intentionally or inadvertently judging, experts are needed like lawyers. However, ordinary people are able to speak against the verdicts of the courts with competent legal authorities. It is obvious that lawyers are a better help in their lawsuit, they are also able to speak directly. While arbitral verdicts require high knowledge to be complaint.

Lack of reasoning in the arbitral verdicts: Although, under Article 482 of the Civil Procedure Act (arbitral verdict must be justified and be not contrary to the laws), in practical since arbitrators are not lawyers and are selected among the public. Thus, they do not have much familiarity with the content of logic and reasoning in the courts. They prefer to express their opinion to terminate the case and settle the dispute. In this regard, they are not interested and they fear that it their reasoning might be inadequate. As a result they prefer not to involve in reasons. So, naturally they will not show how they reached a decision and thus they keep their verdict safe from the risk of being rejected.

Relative high cost of arbitration: The relatively high cost of arbitration is one of the disadvantages of arbitration. Although, arbitration is not like judgment and arbitrator are not like lawyers who selected this task as a job. But in any case, since arbitrator accept the arbitration fee. Since, peripheral costs such as travel expenses for meetings therefore, the responsibility of the parties is to pay costs, sometimes due to lack of financial ability, the other party must pay all the costs inevitably and sometimes this leads to deviation in judgment. In any case as arbitration is like trial, it is costly. But there is no doubt that the costs of arbitration are not more than trial.

THE FIFTH SECTION: REVIEWING THE DOCUMENTS ARBITRAL JURISPRUDENCE IN IRAN

Arbitration documentation in jurisprudence: Judgment and arbitration is absolutely for the Lord is in this world and hereafter. But the God Almighty to end the conflict and resolve the differences that occur in worldly life of people chose his Prophets and his caliphs in the earth and assigned this responsibility to them. "O David, indeed we have made you a successor upon the earth so judge between the people in truth" and informed the Holy Prophet: "surely we have revealed the book to thee with truth that thou mayest judge between people by means of what Allah has taught thee".

And then in an address, to the public, stated" and when you judge between people, judge with justice". These verses and similar ones show that God bestowed judgment to his servants, the prophets, successors and the public.

Islam as a religion of eternal salvation to guide and Human worldly. In his book, the Quran, the necessary points for the individuals cited in this regard and it is not possible to subject matter with no implementation outlined in detail. Therefore, in this context one must refer to the Quran. Be familiar with the guidelines and then apply them.

ARBITRATION DOCUMENTATION IN IRAN LAWS

Context of civil procedure: According to the article 633 in Code of Civil Procedure, "parties can be committed by transaction or contract that in the event of a dispute between them, dispute settlement be conducted done through arbitration and can also determine the arbitrator or arbitrators before the emergence of disputes".

Article 454 "all persons who are able to sue can address their conflict and dispute with mutual consent, whether mentioned in court or not or at any stage of the proceedings to arbitration of one or more persons".

Article 455 "parties may be required in addition to the transaction, or pursuant to a separate agreement that in the event of a dispute between them, refer to the procedure and can determine the arbitrator or arbitrators before or after the conflict".

Article 6 of General and Revolutionary Court approved in 1994 by Islamic Consultative Assembly states: "if the parties agree, they can refer to the judge of arbitration in case of disputes." The judge of arbitration is the person or persons, of which the parties are asked for judgments and claiming verdicts.

Arbitration agreement by mutual consent, the contract that the parties agree that. Whereby the contract between their differences to the people that is mutually acceptable, raised. And settle. And sometimes a condition in the contract are agreed. Who bring their dispute to the arbitrator or arbitrators consenting?

Article 454: "All persons who are able to sue can address their conflict and dispute with mutual consent...". Thus, as the term agreement brings to mind and according to Article 454, parties should have the basic conditions for the validity of the contract and respect that condition. One of the basic elements of the contract is in Article 190 of the Parties Civil Code. And in Article 211 of the same law states that "to make people become parties, they should be mature and wise and brave". And in accordance with Article 213 of the Civil Code transaction is not applicable and in accordance with Article 1207 minors and incapacitated persons and insane people are banned from disposing property and financial rights. But it should be noted that incompetent person can sign arbitration agreement. Minor's situation is the same as incompetent. The only difference is that arbitration agreement should be made with the parent's signature. But insane cannot the contract. And if the conclude a contract. Arbitration agreement through pursuant in Article 1242 of the Civil Code cannot be authenticated against claims regarding peace and except with the approval of prosecutor. Thus, prosecutor's agreement is necessary.

Pursuant to Article 1210 of the Civil Code the maturity age for boys is 15 year and for girls is 9 year. At the conclusion of the arbitration agreement by a lawyer, it should be said that the lawyer must be authorized by the original party. And if his measures are against the original act, it will have no legal effects. Paragraph 5 of Article 35 also stipulates the powers of lawyer. Lawyer may refer the dispute to arbitration once this power is mentioned in the contract. What mentioned above are conditions that the dispute is referred to arbitration. The

conditions of those persons who are elected as arbitrator is listed below. The first and most obvious is that the arbitrator must be qualified. The arbitration competency is considered but not the qualification referred in Article 190 of the Civil Code, pursuant to paragraph 1 of Article 469, qualification of being arbitrator is to be over 25 year old. However, with mutual consent of the parties, persons under 25 year can also be elected for arbitration. Of course, Article 466 states that a person who lacks legal capacity cannot be selected as an arbitrator though mutual consent. In the two principles it must be said that the rule referred to Article 469 is complementary and mutual consent opposed to the rule is effective and legal. But the rule referred to Article 466 cannot be legally eligible which even with mutual consent.

THE SIXTH SECTION: ARBITRATOR'S CONDITIONS AND CHARACTERISTICS AND ARBITRATION IN PERSPECTIVE OF JURISPRUDENCE AND IRAN LAWS

Arbitrator's conditions and characteristics in perspective of jurisprudence: In Islam, the conditions of being a judge are very difficult. This indicates the importance that Islam considers for judgment. Imam Ali (AS) in his Treaty states toward Malik al-Ashtar the characteristics of a good judge.

Judge should be superior in science, morality, piety and faith. Being superior and better than others is unthinkable without these traits. If one person is found that have a higher degree in such traits, surely he is superior and should be preferred compared to the one who does not have that degree.

The judge should not face hardship or dilemma in matters related to judgment. This means the judge must watch out for emotions, feelings and have the capacity to see and hear any words because people go to the judges to talk about their property, lives, dignity and honor and it is natural that a man try any attempt to obtain best position. A judge should not be a person whom the parties impose their opinion on. Gestures and words of people in a dispute should not influence him. The fact that "the people of dispute should not bring him to trial" is a very important condition. That perhaps if the judge does not pay attention to, facts will be reversed for him.

If a mistake by him occurred, he should not persist on the mistake because returning to a right is better than to continue in error. When a judge knows that he has issued a decree that went wrong, he should admit the error and slip immediately and without a delay and make up for it in every possible way. However, how to make up the error and where it should be compensated is studied in detail in the books of jurisprudence. This is not an adjective or a pure moral condition but like the previous three items, it is a necessary condition or trait for a judge. Resistance against falsehood and justifying it, not only does not correct the wrong but increases the error.

While recognizing the right he should maintain his dignity and he should not act out of fear of evil. And it should not be difficult for him. The judge may recognize his error but may not understand the right. In this case to stop the command is obligatory for him so that the truth will be revealed. And if the judge recognized the truth. Immediately and without feeling the least hardship, he should state his own judgment.

Control his desire and eliminate greed. Because greedy people have created a need to deviate from the right way. A judge should never put himself in the abyss of greed. This mental illness does not comply with righteousness and justice which is vital for his job. The need to avoid greed, in this respect is emphasized because the human soul follows the greed, wealth and life and animal desires and orders him to do so.

Should not stick to the slightest understanding of the issues. This leads to wrongdoing itself. Both in terms of subject matter and in terms of the order and in terms of implementation, the judge in the judicial investigation, must try harder to understand deeply. Although, all the guilds and groups, scientists and thinkers have to collect the utmost facts to accept it, for judges, in addition to wisdom and conscience that is needed to discover the facts, divine decree for the judge is actual diagnosis and sentence. The judge must avoid judgments along with any specific mental activities that actually does not include a way to find truth.

The need to stop in case of doubt. This is one of the important tasks and rulings by judges. And that is where there is doubt about the case or the verdict. It must be stopped immediately with no sense of shame and more precise research must be conducted. Especially in matters relating to property, life, dignity and honor of the people. Because in such problems there is a probability of committing sin. Seek for reasons more than anyone else. The judge must rely above all the right reasons. Pleasant taste and baseless, irrational possibilities, intellectual records should not influence him.

Be more patient than anyone else. The judge must have a reasonable capacity so that repeated visits of the parties must not upset him, because that may occur often. He must understand this and achieve greater brightness. Sometimes there is confusion for the judge himself that can be gradually eliminated.

He must be the most assured in finding the truth because the delay in implementation of the righteousness

is pest. After the sentencing, the judge must act decisively. Hostility nature demands that the judge issue the sentence in a firm manner and does not hesitate in any way and show no softness. Softness and hesitation after sentence may be used for abuse, i.e., by one who is guilty. He or she may exercise the opportunity to escape from the punishment by fraud or learning ways to find one.

Do not be a person whom pushed into selfishness by the praise from others. The judge should be not be deceived by admirers. If a judge lose consciousness. He should perform his own consciousness trial court because he is accused of losing his own personality. How can he accuse another person on trial? Eulogy and admiring, make people really weak as a poor animal. Because when the brain and the human psyche is obsessed, understanding and thought and intellect and will and perfection escapes from man's existence and the ability to recognize the facts and realities will be diminished.

The arbitration conditions in iran laws: Arbitration means to resolve the disagreement between the parties by addressing them to an arbitrator whom both sides are consent with. In Articles 454-501 Code of Civil Procedure Chapter seven discusses arbitration. Sometimes arbitrator is a real character. A person will be appointed as arbitrator by the parties in the contract and sometimes a legal personality, i.e., a company or institution is considered as the arbitrator.

The important point in the selection process is that the selection of the arbitrator at any stage, whether during the time of conclusion of the contract or implementing its provisions, even after the lawsuit is possible. Including merits of referring to the arbitrator is that the selection procedure of arbitration to settle financial disputes, partnership and contract is inexpensive and formalities is not necessary and also the relationship between the parties and their interaction with the arbitrator or arbitrators is better. In addition, it is easier and the results are better and also the prolongation of proceedings is prevented. In the rules of the country, arbitration was a very important issue. And in Article 6 of the Act of Establishing Public and Revolutionary Courts in 1994 the term judge of arbitration was used. The meaning of the judge of arbitration is the person who is eager to judge for the person or persons involved in fights or cases.

Some lawsuits cannot be referred to arbitration. These exceptions are provided in Article 478 of the Civil Procedure Law n. For example, claims related to the marriage and its dissolution, divorce, parentage and claims related to the bankruptcy. The handling of criminal cases is out of the arbitration control and must be addressed in court.

The important thing in referring the case to arbitration is that the selected arbitrator have complete information about arbitration. Otherwise, the arbitration will be far longer and more costly than court proceedings. Therefore, it is recommended that people avoid referring to arbitration of ignorant people such as trading firms and individuals without legal knowledge and refer their disputes to arbitration lawyers with experience or institutional arbitration centers as far as possible.

Arbitration conditions: In case of dispute and conflict, individuals can refer the dispute to arbitration under the following conditions:

- The parties have the ability to sue
- The parties should reach mutual consent on arbitration these two issues are both listed in Article 454 Code of Civil Procedure

The arbitrator shall have judge traits so in accordance with Article 469 of the Civil Procedure Law, the following persons cannot be appointed as an arbitrator unless the parties mutual consent:

- Those who are younger than 25 year
- Those who are interested in the claim or dispute
- Those relative with one of the parties or degree of kinship by marriage
- Those whom themselves or their wives are heirs as one of the parties
- Those who are the guardian or trustee or lawyer or manager of one of the parties or one of the parties is the steward of them
- Those who are relative with one of the parties or degree of kinship by marriage and have a criminal past or present
- Those whom themselves or their wives or their relatives are kind of close with one of the parties
- Civil servants in the mission field

The above people can be selected if the parties have mutual consent but the following persons in accordance with Article 466 of the Civil Procedure Act, cannot be selected as arbitrator though there is a mutual consent:

- Persons who lack legal ability (minors, insane, incompetents and bankrupts)
- Those who are denied to make the decision of the arbitration by court
- People who are not allowed to do proceedings

Furthermore, Article 470 of the Civil Procedure Act states that all judges and staff working at courts are prohibited of arbitration this includes judges and employees suspended from service and staff and judges in other jurisdictions as well. But employees of other units

or retired employees and contract and daily wage workers are excluded of the above mentioned rule. It is noteworthy in this context that the administrative staff is the only employees of jurisdiction.

CONCLUSION

The purpose of this study is to examine the legal and jurisprudential aspects of arbitration institution in Iran. We wanted to find the legal and jurisprudential status of arbitration institution in the Islamic Republic of Iran. The findings show that the arbitration institution in terms of historical antiquity of its use as a tool to resolve social issues has a longer history than the judgment. So that, the arbitration has been used in traditional societies before the development of law and legal theories and principles as infrastructure of judgment. With the advent of Islam in terms of jurisprudence, arbitration institution is considered in Islam and was of great importance in views of the Holy Quran and the Holy Prophet (PBUH) and the Infallible Imams and Islamic jurists and scholars at different ages, verses and traditions.

It seems that the merits of the arbitration is far outweigh the disadvantages as far as the arbitration could be an appropriate alternative for the judgment in court. Although, judgment is wrongly defined as arbitration in some places, the arbitration institution is an independent body with different propositions of the judgment that the conditions of its deployment and use and its results can be different in terms of form and content.

Arbitral institution in Iran has always been of interest to legislators of various covenants. And in different time, legislators allocated different material to the judgment in Iran. The arbitration institution today is as an acceptable form in the legal system of the country and can be widely used in many cases.

It should be noted that arbitration in history due to strengthening of the rule of law as an instrument for strengthening central government and their powers and failure to pay special attention to its role has lower position than the judgment in society. But it seems that by the progress of science and the increasing maturity of human societies and the acceptance of individual freedom by the ruling authorities and emerging democracies, arbitration is required by the legislators of legal systems and where, people with knowledge of the arbitration and its requirements and conditions and methods of selection of arbitrators resolve their disputes and reduce it.

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