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INVESTIGATION ON THE ARBITRATION AND ITS SCOPE IN LAW

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Ahmad Abbaszadeh
MA in Theology, Razavi University and Postgraduate in Qom Seminary level4

Reza Rahimi Dehsouri
Phd student in Jurisprudence and principles of law, Qom university

Seyed Mahdi Entezari
MA in Theology, Tehran University and Postgraduate in Qom Seminary level4

Mousa Rahimi Dehsouri
Postgraduate in Qom Seminary level4

Abstract: Arbitration is a consensual adjudication process. This implies that parties have agreed to accept the award given by the arbitrator even if it is wrong, as long as proper procedures are followed by him. Therefore, Courts can not interfere with the enforcement of award on the ground of error of law or error of fact. Dispute is the first phenomena and the consequences of man's collective life. The difference talents and abilities of humans on the one hand and instincts superiority and domination of some people on the other hand provide disputes in social life. So, determining the nature, history and scope of the judgment is important because of being strength of the parties in order to have exact conclusion of the contract and the arbitration agreement. In this paper, it has been discussed the scope and breadth of this Dispute Settlement Body by determining the meaning of the referee and also the judging process and expressed its history that is legislated in the first legislature and it has been expressed exception items that one of them is the lack of judgment in criminal matters.

Keywords: arbitration, contract, peace &Bs

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1. INTRODUCTION

The emergence of conflict and discord, although initially unintended, and sometimes normal ,it is desirable dispute resolution and urged the public conscience of human beings .In dispute, what is making struggles is the fate and each of the sides of the conflict know it own right and privilege it another usurper knowledge and truth, but there is not dispute should be resolved in this stage. Individuals, groups, countries, and those around conflicts are, in the end the conflict and agree to be formed out of a dispute. Disputes like all human problems can be regulated and carried out by the system .Explore and evaluate rational process of dispute resolution is the first step for resolving conflicts. Whatever should be considered in the dispute resolution is the practices to quickly end the dispute, because it causes destruction, insecurity and anxiety that and by continuing it becomes more and more conflict. If anxiety and insecurity continue have devastating effects on the human psyche, peace and security, intellectual mentalof community .These adverse and wide consequences force thinkers and scholars in search of ever more efficient methods of dispute settlement.

1.1. History of Arbitration:

Arbitration has a hundred-year history that the first term in the Legislature in 1289 enacted the Law on legal proceedings. The rules were enacted comprehensive arbitration. After that in 29th of March enacted one special law named as authority law that canceled ruled in 1289 and somehow forced arbitration.Two years later, on eleventh April 1308 with the law amending the law on arbitration, arbitration was canceled and replaced by an optional arbitration. Twenty-five years later on 20 February 1313 new arbitration law passed by the National Assembly and eventually in 1318 with the adoption of the Civil procedure Code, the provisions of this law and arbitration entered into this law in 1379 and was expressed with the adoption of the current Civil procedure Code provisions with a slight change again. Finally, in 1376 the international commercial arbitration Act was adopted in the field of international disputes. The first Indian Arbitration Act of 1899 was based on the English Arbitration Act of 1889. Then came the Indian Arbitration Act, 1940, and finally the Arbitration and Conciliation Act, 1996 (the "Act") was enacted by Parliament based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 (Kerameus, D 1993).

1.2. The Civil Procedure Code (Article 478):

If the address relevant issues that are related to crime and on the judgment of the referee is effective and civil aspects of the criminal separation is not possible and if the dispute related to marriage or divorce, or relative and the elimination of referring to the judgment of which stop the proceedings is the principle of marriage or divorce or parentage, arbitration proceedings stop until the final verdict of the competent court against the criminal or marriage or divorce or parentage.

1.3. Article 2 of the Law on International Commercial Arbitration:

Run territory: (1) mediate disputes in international trade relations, including the buying and selling of goods and services, transport, insurance, finance, services, investment, agencies, commissions something, contracting and similar activities will bedone in accordance with the provisions of this law.

1.4. Territory Arbitration

Some claims will not be referred to arbitration or under specific criteria must be referred to arbitration. Legislator put these exceptions in Article478Code of Civil Procedure and Article 2 of the Law on International Commercial Arbitration and the principle of one hundred and thirty nine constitution .For example, claims related to the principle of marriage and its dissolution, divorce, parentage and claims related to the bankruptcy are such of these claims. Also handle criminal cases, the courts of the jurisdiction of a foreign arbitration and should be addressed .All persons who have capacity to sue can judge their commercial disputesinternationalwhether or not express in judicialplaces and at each stage it is mutual consent in accordance with the provisions of the law on arbitration.

1.5. Article one hundred and thirty-ninth of constitution:

Settlement of disputes concerning public and state property or the referral to arbitration judge in each case, subject to approval by the Council of Ministers and must inform parliament. In cases

where there are external parties and in important internal matters should agree with parliament. The important issues determine by law.

The outcome of rational efforts aimed at resolving conflicts and resolving disputes in state law is manifested. Tribunal, judicial and arbitration committees at various levels work from the most basic human mechanisms aimed at resolving the dispute and disagreement .In this study first examines the meaning of the judgment and its differences with similar mechanisms and has been paid to the scope and range of cases referred to it.

2. THE CONCEPT AND NATURE OF ARBITRATION

The referee who knows good and bad and solve hostility (Langroodi, MJ 1988). In Persian dictionary , arbitration equivalent to the judgment and means arbitration between two or more people, investigation and termination of the case outside of court under certain conditions.

Lawyers believe that arbitration is that the parties are agree that instead of their claims in the literature of Justice in court, resolve their dispute by persons who trusted them.

Arbitration has two equations in fiqh: one strengthening and the other tightly. Strengthening means that a party person or persons to investigate and adopt a decision on a specific claim or claims. In this case, each party is tightly, and the tighten called the referee (Jamal M 1998).

Arbitration process must be achieved to realize four features: (1) third party intervene by a mutually agreed. 2. The third intervention to determine the intention of the parties is"binding solution" from him. 3. The solution should be binding in order to "resolve" the dispute .4- Third party takes a decision is described as "vote".

2.1. Arbitration distinction with other similar institutions

2.1.1. Judge and lawyer

Being common of arbitration with law in the contract. , the validity of the contract in accordance with the theory of contract in arbitration is required. Context has created the impression union between them, while the share of services in some parts, doesn't cause nature of the Union and only share association in some components .The arbitration in both sides of the conflict and the theme of the party and alienated from both sides of the conflict to solve their problem. The judges other than accepting the judgment and the law at all stages hear the side view of difference, counseling and advice, but the responsibility of lawyer is limited that the client has entrusted to a lawyer. The lawyer perform its tasks with regard to the scope of devolution, freedom and doesn't have more arbitrary. Judge is independent in voting and isn't humble against the domination and power.

2.1.2. Arbitration and Peace

Due to the nature of the judgment on the one hand to resolve the dispute with certain responsibilities and functions, and on the other hand reconcile the two sides will make conflict resolution, while there are some similarities such as: the existence of the contract in arbitration and peace, harmony in resolving hostilities, and reconciliation between the parties, there are differences such as the conclusion of the arbitration, commitment to the absence of conflict in the form of judgment, but about peace, directly towards the peaceful reconciliation of conflict, and its content is regardless of the rights of people in and around the disputed claim .

Upon the finality of the arbitration agreement on consolidation, dispute does not end, but the end of the conflict depends on the parties to take practical steps to reform based on the juries' comments, to resolve the dispute, the arbitral award is to be enforced through regulations, butas soon pass up either side of the law or part of the rights, dispute leads to reconciliation in peaceand conflict will end. Though, the claim without hope or sentencing for natural and inevitable effect of the agreement until that may not be realized in the form of a formal contract, could not enforceable because the parties conclude a peace consolidation and enforcement of the contract,can be imposed any conditions or any contract as far as arbitration go away from the main goals (Jamal M 1998).

2.2. Arbitration &Bs

Expert and judgment are differentwithin the law, expert has been done only in the form of comments and advice from the experts, the request is done and expert opinion is not binding, but the arbitration is the end the conflict between individuals, while people who given dispute resolution to arbitration,

are required to complete and opinions of arbitrators. Theory of experts is the reason of proof that on request by the conflict, the judge or the judge's ruling against it, of course,it is natural that make similar partner experts to arbitrate.

The criterion isn't from similarity or difference between the contract or subject, format or language, but the truth is one object. The nature of expertise, opinion and advisory opinion is not binding, while the referee has justice nature in order to root lose conflict. It may be in dispute, some people imagine referee from the perspective of expert and expect them to vote professionally , while in fact they are referee.

2.3. Judgment and justice

Justice is disputing claims by judges and state courts. Justice is public office and the branches of government and governance. While the side judge granted it to someone working parties.

2.4. Beneficialpoints of arbitration

The general feeling towards the judge and jury is more favorable than their feelings about the judgment. The role of power and government in the system and the judicial system of the legislation, determine the judge, judgment action, time and place to rituals and ceremonies judgment, appeal, appeal procedures, all has caused the judge to lose its utility suit. But these fields are other than the discontent that will emerge verdict from the type and content of order. Accepting arbitration, generally is not associated with satisfaction and disadvantages, disadvantages created such as direct entry of individuals to determine their homework, and feel the will and optional built-up problems .

Basic approach to arbitration is an issue separate from the domination and power of judgment, because although the power to enter into arbitration in the discussion from the realm of acceptance of one's judgment, because it is possible turning to it in case of a person in order to special issue, on the strength criterion is expedient to arbitration is distinguished by the way, in whole or with specific reference to arbitration .In surface approach, arbitration is another asset, such as speed part to resolve conflicts and hostilities season, and the secrecy surrounding the name dispute arbitration in the absence of emission permits.

2.5. Disadvantages of arbitration

The concessions mentioned for arbitration, the arbitration has defects and faults, including the following:

1.The arbitration based on an arbitration agreement and therefore the relativity principle of works contract like any other contract. Only the parties are required to resolve through arbitration. It is therefore not possible to draw a third party unless their consent.

2. The judges can consider only those topics that is expressed in the arbitration agreement, otherwise the vote is void.

3. The judgment on the judicial system and enforcement of votes by the courts of justice, which is a limitation.

4. The judges' lack of adherence to procedures that will cause conflicting rulings in similar cases judges issue.

5. Another disadvantage that is expressed as costly arbitration judgment.

3. CONCLUSION

By examining the concept and scope of the arbitration in the Islamic Republic of Iran constitution and laws, including the Civil Procedure Code and Law on International Commercial Arbitration, it can be comprehended the concept of arbitration and its differences with a similar institutions, including undergraduate and powers of attorney, peace and then the privileges and disadvantages of arbitration proceedings over other dispute resolution mechanisms. The Supreme Court itself has held in Rajasthan State Mines and Minerals Limited v. Eastern Engineering Enterprise that the Court cannot interfere with the decision of an arbitrator on the ground that his decision is based on error of law or fact. The author differs from the view of the Apex Court. The Act clearly does not provide for the appeal to a court on the merits of an arbitral award. If the wording of the Act is seen, a court hearing an application. More importantly, in this study the scope of the arbitration law in the cases mentioned in Article 139 of the constitution and law of Article 478 of Civil procedure and Article 2 law on international commercial arbitration at the time of conclusion of the arbitration agreement or contract should carefully consider the enforcement action because contrary to the above provisions, the arbitration award is invalid.

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