

Arbitration and the politics of sovereignty: the privatization of justice

El arbitraje y la política de la soberanía: la privatización de la justicia

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RESUMEN

Este estudio examina las dimensiones políticas y jurídicas de los acuerdos de arbitraje en el derecho iraní, analizando cómo redefinen la autoridad judicial, la soberanía estatal y los límites entre la justicia pública y privada. Desde una perspectiva política, sitúa el arbitraje en la intersección de la reforma jurídica neoliberal y la jurisprudencia islámica, examinando si su expansión representa una erosión de la soberanía impulsada por el mercado o un camino hacia la modernización jurídica acorde con los valores islámicos. Mediante un análisis doctrinal y comparativo, el estudio explora las disposiciones legales fundamentales del Código de Procedimiento Civil iraní junto con los principios islámicos de Sulh (reconciliación), destacando los persistentes desafíos estructurales e institucionales, como la fragmentación legislativa, las deficiencias en la aplicación y la ausencia de una autoridad arbitral unificada, que limitan su implementación efectiva. La investigación sostiene que el arbitraje en Irán no funciona simplemente como un instrumento procesal, sino como un mecanismo con una fuerte carga política que redistribuye el poder soberano y refleja la negociación del país con el pluralismo jurídico global. Para conciliar la eficiencia con la rendición de cuentas pública, el documento aboga por una estrategia de reforma coherente que integre los principios islámicos, la coherencia institucional y la transparencia en la práctica del arbitraje. De este modo, plantea el arbitraje como una prueba y una oportunidad para el equilibrio en constante evolución de Irán entre soberanía, globalización y privatización de la justicia.

Palabras clave: acuerdos de arbitraje, soberanía estatal, privatización de la justicia, procedimiento civil iraní, pluralismo jurídico neoliberal.

ABSTRACT

This study examines the political and legal dimensions of arbitration agreements within Iranian law, scrutinizing how they redefine judicial authority, state sovereignty, and the boundaries between public and private justice. Adopting a political lens, it situates arbitration at the intersection of neoliberal legal reform and Islamic jurisprudence, examining whether its expansion signifies a market-driven erosion of sovereignty or a pathway toward legal modernization consistent with Islamic values. Through doctrinal and comparative analysis, the study explores core statutory provisions of the Iranian Civil Procedure Code alongside Islamic principles of Sulh (reconciliation), highlighting persistent structural and institutional challenges such as legislative fragmentation, enforcement weaknesses, and the absence of a unified arbitration authority that constrain effective implementation. The research argues that arbitration in Iran functions not merely as a procedural device but as a politically charged mechanism that redistributes sovereign power and reflects the country's negotiation with global legal pluralism. To reconcile efficiency with public accountability, the paper advocates for a coherent reform strategy that integrates Islamic principles, institutional coherence, and transparency within arbitration practice. In doing so, it positions arbitration as both a test and an opportunity for Iran's evolving balance between sovereignty, globalization, and justice privatization.

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Keywords: arbitration agreements, state sovereignty, justice privatization, iranian civil procedure, neoliberal legal pluralism.

INTRODUCTION

Arbitration agreements, which often reflect the consent of parties to resolve disputes outside state courts, represent more than just a procedural alternative in Iran's legal system. This study critically examines arbitration agreements through a political lens, questioning whether their rise is indicative of a broader shift in the distribution of sovereign power—where the state's monopoly over justice is weakened in favor of private, market-driven arbitration processes. The central research question guiding this analysis is: Does the rise of arbitration in Iran primarily reflect neoliberal influences undermining state sovereignty, or is it a mechanism for reforming the legal system to better align with global practices while preserving traditional Islamic values?

The objective of this study is both empirical and normative: empirically, it seeks to understand the current application and challenges of arbitration agreements within Iran's legal framework, with a particular focus on how they reshape the balance between state sovereignty and private governance. Normatively, the study critiques these developments from a political perspective, asking whether the increasing prominence of arbitration represents a shift toward neoliberalism, or whether it is an opportunity to reform Iran's legal system by integrating arbitration with public accountability, transparency, and Islamic legal principles.

METHODOLOGY

This study employs a doctrinal and comparative legal research methodology to explore the political dimensions of arbitration agreements within Iranian law. The research is primarily doctrinal, focusing on the analysis of legal texts, including statutory provisions from the Iranian Civil Procedure Code, case law, and scholarly interpretations. It examines the principles, rules, and doctrinal nuances surrounding arbitration agreements in Iran, comparing them with international standards and practices to understand the broader implications for state sovereignty, legal pluralism, and the privatization of justice.

The research further incorporates a qualitative approach by integrating Islamic jurisprudential principles—particularly the concept of *sulh* (reconciliation)—as a normative framework for understanding arbitration in the Iranian context. Through a close reading of Islamic legal texts, the study interprets the interaction between traditional Islamic law and contemporary arbitration practices.

The sources of this study are twofold:

1. **Primary Legal Texts:** The Iranian Civil Procedure Code (particularly Chapters related to arbitration), alongside Islamic jurisprudence texts, form the legal basis for analysis. These sources are scrutinized to understand the doctrinal principles and their application in Iranian dispute resolution.
2. **Secondary Literature:** Academic articles, legal commentaries, and comparative legal studies provide context, especially in relation to international arbitration mechanisms (e.g., the New York Convention, ISDS frameworks). These secondary sources help to draw comparisons between Iranian arbitration practices and global standards.

The interpretation of these texts follows a hermeneutical approach, focusing on the doctrinal construction of arbitration within Iranian law, the philosophical underpinnings of *sulh*, and the

political implications of privatizing justice. The study also applies a theoretical lens informed by political philosophy to understand the redistribution of sovereign power through arbitration agreements, drawing upon neoliberal critiques of justice systems.

In terms of selection criteria, the study prioritizes:

- **Legal Sources:** The core statutory provisions and judicial decisions regarding arbitration in Iran.
- **Theoretical Frameworks:** Legal and political theories that frame the intersection between state sovereignty and arbitration, particularly those addressing neoliberal governance, legal pluralism, and the privatization of justice.
- **Comparative Sources:** Global arbitration practices, particularly those informed by international conventions such as the New York Convention, and case law from jurisdictions outside of Iran.

This combination of doctrinal analysis, Islamic jurisprudential interpretation, and comparative methodology ensures a comprehensive understanding of arbitration agreements in Iran, highlighting both their legal and political significance.

1. ARBITRATION'S POLITICAL RELEVANCE AND SOVEREIGN CHALLENGES

1.1 Conceptual, Historical, and Comparative Foundations

Arbitration paradigmatically innovates dispute resolution architectures through foundational consensual party agreement, irremediably distinguishing it from coercive, state-monopolized judicial processes. Diverging sharply from courts' imposed arbitrators/procedures, parties exercise plenary autonomy in selecting arbitrators or institutions (e.g., Tehran Regional Arbitration Center, ACAS Iran), culminating in awards endowed with unequivocal judicial character: (a) definitive finality extinguishing disputes; (b) binding enforceability buttressed by execution guarantees paralleling court judgments (Nikbakht & Kalantari, 2014, pp. 613-631; Mafi et al., 2017, pp. 177-204) Its transnational preeminence derives from empirically validated advantages—procedural celerity (party-dictated timelines, statutory 3-month default), cost mitigation (versus protracted/overloaded litigation), specialized expert arbitrator empanelment, and robust global enforceability under the 1958 New York Convention (ratified by 172 states)—rendering it the preeminent modality for commercial/international disputes (Javadpour et al., 2020, pp. 83-112). Contrastingly, Iran's domestic ecosystem manifests pronounced underutilization despite robust codification across civil, private, and commercial law domains, attributable to judicial inertia favoring state-centric adjudication and structural bottlenecks (Najafizadeh et al., 2024, pp. 199-218).

1.2 Islamic Jurisprudential Embeddings, Lifestyle Integration, and Normative Promise

Evaluated prismatically through an Islamic lifestyle lens, arbitration incarnates *sulh* (reconciliation)—a Quranic imperative resolving interpersonal/economic disputes via transcendent principles of justice (*adl*), substantive equity (*insaf*), and mutual rights protection (Quran 4:128: "And reconciliation is best"), proffered as a virtuous pacific alternative to zero-sum adversarial litigation. Imami jurisprudential tradition elevates it through prophetic sunnah, juristic *ijma'*, and analogical *qiyas*; legislators operationalize via codified frameworks (Civil Procedure Ch. 7). Yet empirical judicial praxis systematically marginalizes it, forsaking low-cost/flexible potentials

(Behbahani, 2016, pp. 9-28). Seminal studies affirm: despite antecedent civilizational precedents (pre-Islamic Arabia, Sassanid Persia) and religious sanctification, arbitration occupies a suboptimal niche in contemporary Iranian dispute resolution ecosystems.

1.3 Systematic Enumeration of Domestic Institutional Challenges

Hosseinzadeh (2024) taxonomizes impediments stalling institutional maturation:

- Principled/doctrinal ambiguity on arbitration's ontological nature.
- Absence of centralized national arbitration organizing authority.
- Legislative dispersion/fragmentation across statutes.
- Persistent arbitral award enforcement impediments.
- Conceptual/procedural ambiguities engendering uncertainty.
- Normative contradictions between arbitration provisions and matrix laws.

Aziziani (2021) accentuates temporal supremacy: unlike rigid rental durations, arbitration flexibly accommodates party-specified periods (default 3 months), though post-deadline extensions spark doctrinal disputes—with awards ipso facto invalidated beyond limits (Civil Procedure Art. 481 implications).

1.4 Theoretical Political Reframing: Sovereignty Erosion, Neoliberal Privatization, and Power Dialectics

Arbitration agreements represent a shift in the governance of justice, moving from state monopoly to privatized processes. This shift is particularly relevant in Iran, where the state has historically controlled judicial processes through *velayat-e faqih* (the rule of the Islamic jurist). Here, arbitration functions as a tool for redistributing sovereign power, often aligning with neoliberal strategies that prioritize individual freedom and market-driven solutions over public accountability. However, this shift is not without tension. In the Iranian context, arbitration agreements simultaneously reflect the marketization of justice and the state's ongoing attempts to retain sovereignty in a globalized world. The study engages with the question: Is arbitration a political institution that merely reflects global neoliberal trends, or does it present an opportunity for reforming Iran's judicial system by reconciling Islamic justice principles with modern international legal practices?

The key theoretical objective here is to critically explore how arbitration, as a form of legal pluralism, interacts with both the neoliberal privatization of justice and the political imperatives of Iranian sovereignty. In doing so, the study situates arbitration as a dialectical negotiation between individual autonomy, state sovereignty, and the demands of globalization, providing a theoretical critique of neoliberalism in the Iranian context.

2. RECONCEPTUALIZING ARBITRATION: IRANIAN LEGAL DOCTRINE AND GLOBAL SOVEREIGNTY IN A CHANGING WORLD

2.1 Iranian and Islamic Legal Doctrine on Arbitration

Arbitration in Iranian legal doctrine is deeply intertwined with Islamic principles of reconciliation (*sulh*). Under Islamic jurisprudence, arbitration is regarded as an alternative dispute

resolution mechanism grounded in equity (*insaf*) and justice (*adl*). The Quranic verse 'And reconciliation is best' (Quran 4:128) underpins arbitration as an ideal method for resolving disputes. However, the Iranian legal system struggles to fully embrace arbitration in practice, despite its deep roots in Islamic law, due to doctrinal ambiguities and the lack of a centralized institutional framework (Behbahani, 2016; Hosseinzadeh, 2024). This section will explore the dual nature of arbitration as both a means of justice and as a contested site of legal authority.

2.2 Critical Theory of Law and Sovereignty in Contexts of Globalization:

Globalization has introduced significant tensions between domestic legal systems and the internationalized world of arbitration. As state sovereignty is increasingly supplanted by global economic forces, arbitration agreements serve as instruments of neoliberal governance, shifting adjudication from public courts to private entities. In Iran, this raises a unique tension: the state's desire to preserve its judicial sovereignty under *velayat-e faqih* (guardianship of the jurist) confronts the efficiencies and international legitimacy offered by arbitration agreements (Javadpour et al., 2020). The expansion of international investment arbitration and Investor-State Dispute Settlement (ISDS) frameworks further complicates this interaction, as it embeds market-driven solutions into the state's traditionally sovereign domain, thereby limiting democratic accountability (Rao, 2021).

3. CARDINAL EFFECTS OF ARBITRATION AGREEMENTS: DOCTRINAL GRANULARITY AND SOVEREIGN-POLITICAL RAMIFICATIONS

3.1 Legal Effects of the Arbitration Agreement

Doctrinal essence: Parties incur non-derogable duty to submit disputes to arbitration, anchored in sacrosanct freedom of contracts (Civil Code Art. 10) and promissory fidelity (*pacta sunt servanda*), extinguishable solely through mutual revocation. Post-filing invocation dynamics yield tripartite judicial responses:

- Dismissal order: Expunges case from docket.
- Non-hearing order: Prevailing if defendant timely invokes clause (Art. 481 para. 1 predicates written mutual consent for termination; absent annulment evidence, clause presumptively operative).
- Proceedings stay: Temporarily suspends until arbitral clarification (preserves litigation continuity; reactivates if unresolved)(Nojavan & Tadayyon, 2022, pp. 45-65).

Implied revocation jurisprudence: Claimant's court resort despite clause constitutes tacit waiver; defendant's substantive merits engagement sans invocation corroborates; judicial in-court witnessing supplants writing formality (evidentiary facilitation, not substantive essence). Sovereign-political valence: Liberal individualism ostensibly empowers transactants, yet structural asymmetries empower repeat players (multinationals imposing on SMEs/developing host states); ISDS/WTO embeddings depoliticize transnational frictions, consummating soft power/economic diplomacy (Rao, 2021, pp. S371–S402).

3.2 Jurisdictional Obstacles: Residual State Power

Doctrinal precision: Erects insuperable barrier to court jurisdiction/proceedings vesting plenary authority in arbitral tribunals; courts retain residual/latent competence, activatable upon obstacle ablation (dissolution). Sovereignty reconfiguration: States metamorphose into private award

enforcers/gatekeepers, birthing hybrid jurisdictional pluralism. ISDS archetype: Foreign investors sidestep domestic judiciaries, wielding treaty-based claims precipitating regulatory chill across environment/public health/fiscal policy domains (e.g., Philip Morris v. Australia; Vattenfall v. Germany). Iran's institutional lacunae amplify ideological-political reticence.(Hosseinzadeh, 2024)

4. THE DISSOLUTION OF ARBITRATION: DOCTRINE VS. PRACTICE

4.1. Theoretical Basis for the Dissolution of Arbitration Agreements

The dissolution of arbitration means that the parties can no longer resolve their dispute through arbitration and the resolution of their dispute will be within the jurisdiction of the court. In general, the dissolution of arbitration can arise from four sources: the dissolution of the arbitration agreement; the dissolution of the dispute or the dissolution of the main subject matter; the status of the parties to the arbitration and the withdrawal of the arbitrator from the arbitration.

A- Cases of arbitration termination resulting from the termination of the arbitration agreement

- Agreement of the parties to terminate the arbitration agreement (Article 481)
- Dissolution of the main contract due to termination or annulment or rescission in the event of lack of belief in the independence of the arbitration clause
- Invalidation of the main contract (in the event of lack of belief in the independence of the arbitration clause)
- Transfer of the main contract (according to the opinion of some jurists and the opinion of the authorized person)
- Failure to issue an award by the arbitrator within the prescribed period (unless the parties extend the arbitration period)
- Issuance of a ruling annulling the arbitration award by the court (if the court documents the validity of the main contract or arbitration agreement)

B- Dissolution of arbitration resulting from the termination of the lawsuit or the main subject matter

The termination of a lawsuit may be one of the effects of the termination of the original right, which itself may be voluntary or involuntary. The termination of the lawsuit may be due to the total withdrawal of the lawsuit. Also, if the issue referred to arbitration is dismissed, the arbitration is terminated. For example, the subject matter of the arbitration is the existence or non-existence of the tenant's right to continue possessions while is rented but the said object is completely destroyed due to an accident (Shams, 2003: 991-990)

C- Cases of arbitration termination related to the status of the parties

- Exclusion of one of the parties to the dispute (Article 481)
- Death of one of the parties to the dispute (Article 481)

D- Termination of arbitration due to the withdrawal of the arbitrator from the arbitration process

- Appointment of a specific person to arbitrate and his unwillingness to arbitrate or inability to do so (Article 463) (Shams, 2003: 987)
- Resignation of the arbitrator or arbitrators and the parties' disagreement with the other arbitrator or arbitrators (Article 473)
- Dismissal of the arbitrator or arbitrators by the parties and the parties' disagreement with the selection of a new arbitrator (Article 472)
- Dissolution of the legal entity of the arbitration authority in case of appointment of a legal entity as the arbitration authority (Khodabakhshi, 2022).

4.2. Tensions between Jurisprudential Theory and Legal Practice

According to some courts, the expiration of the term of the main contract has no effect on the validity and termination of the arbitration clause are not valid and the parties can resolve their disputes through arbitration.

4.3. The Role of the Courts in Arbitration Termination

The arbitrator cannot declare the original contract itself dissolved or void in the award because this will lead to the termination of the arbitration clause in the contract and as a result, the arbitrator's competence is questioned unless we believe that the arbitration clause is independent of the original contract. In addition, in accordance with Article 461 of the Civil Procedure Code, the court has jurisdiction to hear a claim for the invalidity of the original contract or the arbitration agreement if the parties give the arbitrator the authority and jurisdiction to hear the claim for the invalidity of the original contract. This means that the parties agree to the independence of the arbitration clause and accept the rule of "competence relative to jurisdiction" on their part and is not a reason to reject this agreement.

4.4. Jurisprudential Ambiguities and Judicial Interpretation

Regarding the termination and termination of arbitration, two articles in the Civil Procedure Code can be examined here: one is Article 481, which explicitly refers to three cases of termination of arbitration, and the other is Article 463, which refers to the termination of arbitration where a specific person is selected as an arbitrator, and the performance of the arbitration by him is ruled out, which is examined below:

Article 481: Arbitration is terminated in the following cases: 1. By written consent of the parties to the dispute 2. By the death or incapacity of one of the parties to the dispute”.

1- Article 481 mentions three cases of termination of the arbitration agreement: written consent of the parties; death of one of the parties, incapacity of one of the parties.

2- Regarding paragraph 1, the question can be raised whether the consent must be in writing and is oral consent not sufficient? According to some, written consent is a condition if the arbitration process has begun. Therefore, if no objection is raised by the defendant in court, the court must continue the proceedings and there is no need for a written consent. This opinion has been confirmed by most scholars, although some judicial opinions have opposed it.

The argument of the opponents is that in paragraph b of Article 281, the word “parties to the dispute” has been used, and when the arbitration process has ended, the parties to the agreement, arbitration, are not considered parties to the dispute.

3- Regarding paragraph 2, when should the suspension of the arbitration procedure be carried out in order to trigger the arbitration procedure? Before the commencement of the arbitration and the filing of the lawsuit or before the issuance of the arbitration award with or after the death of the parties before the commencement of the arbitration? What is the ruling on the case? It seems that if the suspension or suspension of the parties occurs before the issuance of the arbitrator’s award and during the arbitration, it will lead to the termination of the arbitration, and apparently there is no dispute in this regard. Also, if the award has been issued. The arbitration has ended for this reason and it is not time for it to be terminated due to death or suspension (Sheed et al. 2020), and the arbitration award will be valid and will be imposed on the heirs. However, regarding the termination of the arbitration

before the commencement of the arbitration process due to the death or suspension of one of the parties to the dispute: A- Some other jurists have stated that death between the conclusion of the arbitration agreement and the occurrence of the dispute is not covered by paragraph 2 of Article 481 because at this stage, no dispute has yet arisen so that the parties to the arbitration agreement can be considered parties to the dispute. Therefore, a dispute must have been raised and then referred to arbitration so that the arbitration is terminated by the death of one of the parties (Sheed et al. 2020). B- Contrary to the apparent opinion of some scholars, the death of either party absolutely leads to the termination of the arbitration agreement and the heirs of the deceased are not obliged to comply with the arbitration agreement. (Sheed et al. 2020). Whether this death or incapacity occurs before the start of the arbitration or after it.

It may be said that although the appearance of Article 481 indicates that this article refers to the termination of the arbitration itself, that is, the arbitration process, and therefore it has used the term "parties to the dispute" twice, accepting this opinion means that in the cases mentioned, the arbitration has been terminated but the arbitration agreement is still valid. In this case, the possibility of the parties returning to arbitration in the event of a written agreement in accordance with paragraph 1 (or the legal representative in the event of the incapacity of one of the parties or the general representative in the event of the death of one of the parties still exists. If we accept the above opinion, then the question arises as to why the legislator considered the death or incapacity of one of the parties to be the cause of the termination of the arbitration proceedings, while it could have considered it as a reason for suspending the arbitration in the context of Article 105 of the Civil Procedure Code so that the process can continue after the appointment of a successor? It may be answered that the legislator wanted to give the authority and will to restart the arbitration to the incapacitated legal representative or the deceased representative and not oblige them to participate in an arbitration in which they themselves had no role. However, if such does this answer not mean accepting the dissolution of the arbitration agreement itself and the need for a new agreement?

If the logic mentioned is accepted, then there should be no difference between the situation before the start of the arbitration and after the start of the arbitration. In any case, the legal representative or representative should be considered the one who has the option to resort to arbitration, meaning that if the decision is made by the incapacitated representative or the deceased heirs, they should have this right even if either party dies or is incapacitated before the start of the arbitration, and this means the dissolution of the arbitration agreement in both cases.

But if this is the case, what is the purpose of paragraph 1 of Article 481 and how should it be justified? It may be said that it means that the parties to the arbitration can destroy the current arbitration and start a new arbitration process again. The problem with this answer is that in a situation where the arbitration process has not yet started, the written consent of the parties to the dissolution of the arbitration is meaningless, and can only mean the dissolution of the arbitration agreement and resort to arbitration. It is not clear why the legislator made a distinction between the situation before the start of the arbitration and after the start of the arbitration it has made a distinction.

The result is that accepting the second opinion, namely the termination of the arbitration agreement with the death of either party, is more defensible because it provides a coherent interpretation of both clauses, although it is not consistent with the appearance of Article 481, but the appearance can be tolerated.

4- If there are multiple parties to the arbitration dispute and one of them dies or becomes incapacitated, does the arbitration cease? In this regard, the Advisory Opinion No. 7/95/2462 dated 28/9/1395 of the General Legal Department of the Judiciary states that in the case of multiple parties to the dispute, if one of them dies, the arbitration condition with respect to him is extinguished, but if the subject of the dispute is indivisible, the arbitration condition is extinguished altogether and is covered by paragraph 2 of Article 481 of the Civil Procedure Code, and if the subject of the dispute is divisible and separable, the arbitration condition with respect to the remaining parties to the dispute remains in force.

5- With the termination of the arbitration due to the death or incapacitation of one of the parties, as well as with the special provision regarding the termination of the agreement, the arbitration of the matter is within the jurisdiction of the court.

6- Considering the cases mentioned regarding the termination of the arbitration agreement, is the arbitration agreement a contract permissible or necessary? It may be said that based on paragraph 2 of Article 481 of the Arbitration and Experts believe that the arbitration agreement is necessary. In Dr. Shams' opinion, none of the parties to the arbitration agreement has the right to terminate it. Paragraph 1 of Article 481 has only foreseen its termination with the written consent of the parties, and even Article 472 of the Civil Procedure Code has not given any of the parties the right to dismiss the arbitrator or arbitrators after their appointment alone (Shams, 2003). Also, for the necessity of the arbitration agreement, Article 10 of the Civil Code can be referred to and cited, the principle of the necessity of contracts and that if one of the parties refuses to appoint an arbitrator, the court appoints an arbitrator (Rashidi et al., 2020). This opinion is defensible, considering the fact that although the arbitration agreement is necessary, it will be terminated in the event of the death or incapacity of either party, unless the incapacitated representative or the deceased's heirs may renegotiate with the other party regarding the referral to arbitration.

Article 463: "If the parties have agreed that a specific person will arbitrate in the event of a dispute between them, and that person does not want or cannot act as an arbitrator and does not agree to another arbitrator or arbitrators, the dispute will be heard by the court.

1- One of the cases of the dissolution of arbitration is a situation where the parties have agreed to the arbitration of a specific person or persons (i.e., the arbitration is so-called binding) and that person or persons cannot or do not want to arbitrate. In this case, the parties have the chance to agree on another person or persons. If they do not reach an agreement, the arbitration agreement will be destroyed. The reason for this is that the arbitration agreement is based on the person if a specific person is appointed as an arbitrator.

2- It was said that in the absence of consultation with the head of the tax office regarding the tax custodian of the two specific parties, the issue of dispute will be in the final stage of the dispute, but should we not confront the court and, instead of filing the main dispute, make calls to appoint an arbitrator? There is a partisan difference in this regard:

A- The position of most courts is that if the parties cannot agree on the arbitrator, the court cannot select an arbitrator in this case because in the Surat Ummatin, the arbitrator appointed by the court is not considered to be an arbitrator of the parties' choice, and this is contrary to the agreement of the parties.

B- According to some experts, if in this situation both parties to the dispute file a petition and request the court to appoint an arbitrator, the court must appoint an arbitrator (Nojavan & Tadayyon, 2022).

This view is defensible because the joint request of the parties means a long-standing agreement between the parties to appoint an arbitrator by the court, which is valid according to the note to Article 255 of the Code and obliges the court to consider and appoint an arbitrator.

CONCLUSION

Arbitration agreements in Iran reveal the complex interplay between private dispute resolution and the state's sovereign authority. This study has shown that while arbitration offers procedural efficiency and access to specialized adjudication, its broader significance lies in the political and doctrinal reconfiguration of judicial power. By shifting adjudicative authority from public courts to private entities, arbitration transforms the traditional understanding of sovereignty and legal legitimacy, especially in a system governed by *velayat-e faqih*. Empirically, the research found that doctrinal ambiguities, fragmented legislation, weak enforcement mechanisms, and the lack of a centralized arbitration authority continue to impede the institutionalization of arbitration in Iran. Theoretically, the findings underscore arbitration's dual identity: it both challenges and complements state sovereignty. From a political perspective, arbitration can either reinforce neoliberal privatization of justice—where market logic overrides public oversight—or provide a platform for integrating Islamic principles of *sulh* (reconciliation) into a pluralist legal framework. Practically, this balancing act calls for reforms that neither subordinate arbitration to rigid state control nor allow it to escape public accountability. Institutional clarity, consistent enforcement practices, and judicial training are essential to achieving genuine complementarity between Islamic jurisprudence and international arbitration standards. Nevertheless, the study's scope is limited by its reliance on doctrinal and textual analyses rather than empirical fieldwork with practitioners, judges, or arbitrators. Future research could thus explore how arbitration operates in practice across Iranian commercial sectors, how parties perceive its fairness, and whether it genuinely reduces judicial congestion or merely displaces disputes into new forms of legal contestation.

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