

## **Foundations and Effects of mandatory arbitration in Islamic Jurisprudence, Iran's Law and England's Legal System of Common law**

Arbitration is today one of the most common methods of resolving disputes in various lawsuits. In defining arbitration, we can say: Arbitration is the resolution of disputes between parties outside the court by a person or persons chosen by the parties. Various characteristics can be listed for arbitration; such as being private, non-judicial, etc.; but one of the most important characteristics of arbitration is that it is consensual; because until the parties agree to arbitration, arbitration will not take place. When the parties, by mutual consent, refer the dispute to one or more arbitrators, this arbitration is called voluntary or optional arbitration; but another type of arbitration is compulsory arbitration. In this arbitration, the parties do not have the choice or will to refer the dispute to the arbitrators or not and are forced to obey the arbitrator's decisions. In Iran, arbitration is recognized in the Civil Procedure Code and the formal and substantive conditions of arbitration are mentioned. In some other legal sources, compulsory arbitration is emphasized. The ambiguity of the courts and other relevant authorities regarding the possible conflict between the right to appeal to judicial authorities and compulsory arbitration, the existence of numerous laws despite the compulsory arbitration clause, and the differences in the courts' interpretation of the laws regarding compulsory arbitration are among the reasons that necessitated the necessity of conducting this research. Also, considering the advantages that arbitration has in terms of speed in processing and cost savings, and usually, the arbitrators' mastery of the subject of the dispute, it is necessary to refer claims to compulsory arbitration; therefore, the compulsory arbitration mechanism is necessary in some institutions, including the stock exchange, etc., and in this regard, it should be addressed more than before; Therefore, the researcher decided to analyze the legal status of compulsory arbitration in English law. The advantage of arbitration over judicial methods is quite obvious. In cases where compulsory arbitration is determined to resolve a dispute on a specific issue, it is hoped that disputes in this area can be resolved in the simplest possible way. Currently, there is a lot of criticism about the lack of a culture of arbitration in the country. According to lawyers, there is a need to introduce arbitration to the public, even through compulsory means. England, which has been a pioneer in judicial issues and has been a legal model for other countries in many cases, can also be a model for the country regarding compulsory arbitration, so that its strengths can be used to popularize the culture of arbitration. So far, compulsory arbitration has not been considered in English law, and given the many weaknesses of compulsory arbitration in Iran, it is necessary to examine this issue from the perspective of comparative law in countries that have successfully implemented this legal policy, so that it can be a model for reforming the legal system of Iran. It seems that in a situation where the competent court in England deems it appropriate to refer to arbitration for the right to dispute, the referral to arbitration is mandatory and this decision is only formally appealed to the same court. Taheri (2017) stated in a book entitled: *Implementation of Foreign Arbitration Awards in Iranian Law* that the specific methods of dispute resolution that are a prerequisite for arbitration are not specified in Iranian law and therefore there is disagreement among jurists in identifying these awards. Rafie (2018) states in a book entitled: *Effects of International Arbitration Agreements in Legal Disputes: An international arbitration agreement that is consistent with legal principles is considered fully enforceable and has legal validity.* In an article titled: *Compulsory Arbitration Laws in Oil Contracts*, Maliki et al. (2018) raised the issue of nationality and religion, and an arbitrator selected by the court, provided that he is not dependent on the government, can resolve the disputes arising from the incident. Molana (2018) in his article titled: *Dispute Resolution Methods in Terms of Time*, among the 100 samples studied, four dispute resolution methods, namely arbitration, conciliation, special proceedings, and negotiation, had the shortest times in terms of dispute resolution. Haraj et al. (2014) examined the obstacles to the enforcement of arbitration awards.

In view of the above, the following conclusions have been reached: In England, compulsory arbitration is divided into four types: contractual, absolute, relative and rare cases, and in rare cases, until a specific legal custom is formed, disputes will be referred to arbitration. An important characteristic of compulsory arbitration in England is the existence of a supervising court. The supervising court has the authority to supervise the process of resolving the dispute until the

execution of the judgments. The formal procedure for compulsory dispute resolution in England is arbitration. In this method, the arbitrator first tries to reach a compromise. If there is no compromise based on the information obtained, he will issue the appropriate decision. The main goal of the English judiciary in compulsory arbitration is to resolve the dispute with the best quality; therefore, the specialization of the subject of the dispute is one of the characteristics of referral to compulsory arbitration. The supervising court has the authority to hear the appeal of the arbitrator's decision and only reviews the decision in terms of form. A substantive objection to the arbitrator's award is possible, but it can be the basis for civil liability for damages, and at the same time, a negative score is included in the arbitrator's record, which, if repeated, can even lead to a ban on the arbitrator's activities. Non-judicial institutions, including unions, can establish compulsory arbitration regulations for their subordinates. An objection to the jurisdiction of the supervising court is only possible for voluntary arbitration. In England, a compulsory arbitration award is constitutive and an optional arbitration award is declaratory. If an error occurs in the arbitrator's award and the arbitrator does not accept the error, the issue can be pursued during the appeal process. Given the common law nature of the English legal system, examining the legal basis for compulsory arbitration in this country is highly controversial, but the two conditions of specialization and weakness of the procedure in this regard can be the main conditions for making arbitration compulsory for the purpose of resolving the dispute. The arbitrator must proceed with the proceedings in accordance with the existing formal and substantive rules and issue the appropriate ruling. In terms of form, the referral of the case to the arbitrator and the right of the parties to claim redress, appeal and address the arbitrator's mistake are evident in the course of the right of dispute, and in terms of substance, the appropriate ruling in this regard should be issued by analyzing the existing custom and with skill in procedural development. In a situation where a competent court in England considers it appropriate to refer to arbitration for the right of dispute, referral to arbitration is mandatory and this decision is only formally appealed to the same court. The effects of compulsory arbitration include the legality of the award, the lack of objection to the jurisdiction of the supervising court, the authority of non-judicial institutions to make certain instances of arbitration mandatory, and the establishment of the award.