

# The Principle of Equal Treatment in Arbitration

Dr. Seyed Mohammad Asadinejad

Assistant Professor of University of Guilan

---

## ABSTRACT

The advantages of arbitration lead to the increasing reference of businessmen to it as a way for resolving the business problems. Among the advantages of arbitration are swiftness in investigation and non-compliance to due processes and private hearings. The issue is that whether or not the principle of equal treatment for administering justice has been considered in this method.

By referring to jurisprudence texts and the international commercial arbitration law, it will be cleared that the lawmakers have stipulated particular regulations with regards to this matter. The arbitrators are obliged to observe equality throughout the whole process of arbitration by giving sufficient and appropriate time for the proposition of reasons and claims. Although the lawmaker has not explicitly specified the implementation guarantee, considering the international regulations and given Iran's joining to some of the conventions, the implementation guarantee of such a principle in all stages could be a case of nullification of arbitration award.

**Keywords:** International Commercial Arbitration, Equal Treatment, Nullification of Award

---

## 1. INTRODUCTION

Adherence to the principle of equality in interpersonal relationships and the relationships between the people and government and adopting non-discriminatory measures especially in times of arbitration have been one of the principal aspirations and oldest demands of humankind in different societies. In all fields, justice is impossible to be realized without a will for administration of the principle of equality. Social justice includes creating equal opportunities for everybody and removing the obstacles for all in an equitable manner (Motahhari: 1994, 127). Therefore, justice is a result of equality and equity. If the principle of equality and equity is not observed in different stages of arbitration and judgment, the administration of justice in the society will fail. Albeit there were some people who were opposed to the principle of equality and argue that in the theory of equality, there's no room for elites, heroes and the intelligent and there's no difference between the members of a society. They hold that the notion of equality is the notion of sacrificing the elites. However, the scholars of 17<sup>th</sup> century have proposed the theory of equality against such notions through devising philosophical arguments. But the teachings of Islam school were based on equality and equity long before them. Contrary to the other schools, Islam believes in equality and equity between the people in all economic, social, political and cultural fields, and especially in terms of legal and judicial issues.

In the present paper, we have analyzed the concept of the principle of equality in Islamic law and stated the importance of this principle and the necessity of its presence in all fields including legal and judicial fields for administering social justice. Consequently, the existence of this principle in Iran's national arbitration and international commercial arbitration regulations and also the rules of the World Intellectual Property Organization have been investigated. It's assumed that the aforementioned principle has been observed in many stages of arbitration in the aforesaid regulations and it's assumed that if the principle of equal treatment is not observed between the parties of litigation and the jury at the time of arbitration, the issued award may be exposed to the threat of nullification, while such an implementation guarantee has not been clearly stated in the aforesaid regulation. Written in four chapters, the present article reviews the concept of the principle of equality and equity and investigates this principle within an Islamic context and also in the context of national and international arbitration.

## 2. The concept of the principle of equality

Literally, equality means parity and equity (Moeen; 2004, 870). Therefore, equality is sometimes used with equity interchangeably. Actually, by equality, we mean a lack of unjustifiable discrimination, which is that all the potential and actual facilities are provided to people equally. Evidently, in some cases, the differences are considered as becoming and reflecting equality (Ashouri, 2004; 53). That's why it should be said that the concept of equality is different from "sameness." Equality is equity and sameness is monotonousness. For example, a father may distribute his wealth (in terms of value)

among his children evenly, but not similarly; rather, give them their portion based on their appropriate monetary readiness (Motahhari, 1990: 112). Such a person has observed equality while having not observed sameness and similarity in treating his children. As it was said, equality leads to the administration of justice and fairness in the society. Without taking this principle into consideration in all terms including in arbitration and judgment, justice will be discarded and the rights of people will be overlooked.

### 3. The concept of equality and equity in Islam

The idea of equality and equity emerged in Europe during the renaissance period in the 17<sup>th</sup> century since Christianity had obliterated the idea of equality by dividing the people into two groups of church-oriented and mundane (Copleston: 1996, 35). Moreover, there were people opposed to equality who argued that in the theory of equality, there's no room for elites, heroes and the intelligent and the concept of equality is in fact tantamount to sacrificing the elites. However, the scholars of 17<sup>th</sup> century proposed the theory of equality against such thoughts by putting forward philosophical arguments. After that, the principle of equality was reflected in the French revolution of 1789 as a basis for human rights and also in the article 7 of the Universal Declaration of Human Rights and the clause 1 of the article 14 of the International Covenant on Civil and Political Rights of the December 16, 1996. In the article 16 of the Islamic Republic of Iran Constitution, the principle of equality and equity in the fields of human rights, political rights, economic rights, social rights and cultural rights has been emphasized too. It's instructed in the article 20 of the constitution that "all citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria."

Since the very beginning, the principle of equality has been one of the fundamental principles of Islam and was manifested in all areas. Actually, one of the reasons of people's turning to Islam is this school of thought's adherence to the principle of equality and equity. Equality in Islam is an incarnation of the principle of unity. Unity means that the God is one and unparalleled. His essence is pure, extensive and unique and plurality does not find a way in Him. From the other hand, the Almighty God has sent the prophets to set up fairness and justice in the human societies and since all the human beings were born to unique parents, they are equal and similar in terms of human values. Actually, equality has been foreseen in the structure of evolution and creation. Race, color, language and appearance don't have any impact on this equality: "O mankind, we have created you from a male and a female; and we have made you into tribes and sub-tribes that you may recognize one another. Verily, the most honorable among you, in the sight of Allah, is he who is the most righteous among you." (Al-Hujurat/14) Moreover, the divine spirit has been breathed in all the people from men and women: "Then He fashioned him and breathed into him of His spirit" (Al-Sajdah/10). Therefore, equality is one of the incarnations of unity like the pillars, ancillaries, rules and law. How is it possible to consider all the human beings as the offspring of a unique father and mother, a united family, the brothers of each other and creatures of God and prepare them for a universal government while not believing in their sameness and equality? The issue of equality is a multilateral matter. Equality in humanity and equality in social rights in proper, similar conditions has been emphasized a number of times. As an instance, Prophet Muhammad (PBUH) in his famous sermon of Hajjatul Wida (The Farewell Pilgrimage) has equated Asadinejad Quraishi with the slave Bilal Habashi and said: "O, the people! Be aware that your Creator is unique and your father is one. Therefore, no Arab is superior to a Persian nor is a Persian superior to an Arab, and no black is superior to a white nor is a white superior to a black unless in piety (Majlesi, vol. 350; p. 76 and Allameh Amini, p. 188). The Prophet also said that the people should be equal in a row and not differing from each other (Koleini, 2004; vol. 2, p. 199). According to this worldview, all the people are equal regardless of their religion and that's why Prophet Muhammad said "the people are equal to each other like the jags of a comb." (Yaqubi: undated, v. 2, p. 10 and Thaqafi Kufi: 1972, v. 1, p. 823 and Majlesi: 1983, v. 22, p. 347). Imam Ali (PBUH) has also stressed in his letter to Malik al-Ashtar: "the people are two groups. They're either your religious brothers or are similar to you in creation." (Shahidi, 1995: 325). Equality in judicial affairs and before the courts has also been emphasized. For example, in the age of Prophet Muhammad (PBUH), a group of people tried to revive class and tribal privileges and damage equality before the law and judicial issues. Prophet would warn them against discrimination. Osamah ibn Zayd who was the son of a martyr and a dear companion to prophet was sent to him to intermeditate in order to prevent the fingers of a Makhzumi woman who had been charged with thievery from being cut. Prophet was infuriated and said "verily, were perished those before you who would release a noble man if he was arrested for thievery and performed divine punishment if a fragile, defenseless man was charged with robbery. I would cut the hands of Fatima, daughter of Muhammad if she would have committed robbery" (Al-Qazzali: 2004, p. 41). Therefore, from this viewpoint, all people are equal and no factor can be a cause for

discrimination. Prophet Muhammad has expressively stated that "the people are equal before the law" (Majlisi, vol. 78, p. 247). Even before being selected for prophethood, Muhammad (PBUH) would follow the case of the equality of rights and perform it. The covenant of Halaf al-Fozoul (the covenant of the magnanimous) was actually concluded for giving equal rights to everybody from every gender and race and even the foreigners. This covenant provided all people with sufficient security to lodge a complaint with the observation of the principle of equality.

#### **4. Adherence to the principle of equality and equity in judgment and arbitration**

In Islamic law, observing the principle of equality between the parties of litigation in the time of judgment and arbitration has been emphasized. The spring of this issue, like the previous matters, is the principle of unity, and the objective of this principle is to liberate the people from slavery and domination of other people and making him subservient to the Almighty, unique God. That's why it should be said that like the rest of principles of procedural law, the aforementioned principle is related to the principle of the liberty of man (Mohaqqeq Damad: 1998). In Islamic law, observing the aforesaid principle is one of the most important indices of Islamic arbitration. In Islamic law, the judge of arbitration that is the elected arbitrator of the parties of litigation plays the role of the appointed judge; therefore, the behavior of the arbitrators should be in line with the judge of a court and no discrimination should be directed to the parties. Although the natural justice demands impartiality and observing equal treatment and the right of self-defense are evident facts, the aforesaid principle has been investigated and emphasized by the jurists of Islam in the discussions related to the conventions of judgment.

It can be inferred from some accounts that the arbitrators and judges should not have a heartfelt inclination toward one of the litigant parties, meaning that they should observe equality in heartfelt inclination toward both parties (Sheikh Hurr Ameli: vol. 18, 54). Although the heartfelt inclination has been reprimanded, this is for realizing cognition and reaching to excellent spiritual levels (Najafi, undated: vol. 4, 142). Actually, emphasis on liquidation in the heartfelt inclination by the Imams is due to the acceptability of this action (Tabrizi, undated: p. 199). However, what's important is observing equality in behavior. In looking and greeting, the judge should observe equality (Sheikh Tousi: 88, 1967) and even treat equally with the litigant parties in sitting between them and other conventions of judgment and arbitration (Allameh Helli: 183).

Having the terms used in the Hadith and jurisprudence text in mind, observing some of the relevant conventions is considered to be among the mandatory affairs (Sarakhsi: 76, 1985). In the letter 46 of Nahjul Balagha, Imam Ali (PBUH) necessitates the adherence to equality, saying: "while meeting them, talking to them and wishing everyone of them, whether rich or poor, big or small you should behave as if they are your equals so that important persons of your State may not presume to derive undue advantage out of your uncalled for servile behavior and poor people may not lose hope in your justice and sympathy (Shahidi: 1995, 320). And with regards to arbitration and judgment, he has said "the one who judges, should behave equally with the parties in terms of pointing to them, looking at them and sitting between them (Hurr Ameli: 1980, 157). In the eye of Imam Ali (PBUH), the principle of equality is so important that he doesn't tolerate the least amount of discrimination. For example, when Umar, the second caliph wanted to rule between Imam Ali (PBUH) and a plaintiff, he told Imam Ali: O, the son of Hassan; please come over and sit shoulder by shoulder with the complainant. Imam Ali (PBUH) told Umar dejectedly: you called me by my soubriquet in the presence of the plaintiff while it was right that you would have called me by my name, and there would be no superiority for me over him in this regard (Balaqi: 1979, p. 249). The requirement of observing complete impartiality in arbitration will be observing the principle of equality in all circumstances and stages of investigation. Even in terms of increasing his voice tone on one of the parties, the judge should pay due attention. In the viewpoint of Imam Ali (PBUH), raising the tone of voice would cause the judge's dismissal. He said in explaining the reason for dismissing Abul-Aswad Douli who was one of the loyal comrades and prominent scholars that "I dismissed you because I found that you raised your voice over the voice of the customer" (Nouri Tabarsi: 1988, 17/359 and Koleini: 417/7). As a result, observing the principle of equality is one of the fundamental obligations of the arbitrator and its implementation guarantee can be effective even in dismissing and firing the judge. Moreover, in such cases, it can lead to the nullification of the award, because at any rate this has been introduced as religiously binding. For the same reason, many scholars use the word "must" in explicating this notion. For instance, many scholars have used this word to show the importance of the issue: "the judge is obliged (must) to behave equally between the parties of litigation" (Shahid Thani: vol. 2, p. 72, and Mohqqeq Helli, vol. 4, p. 80 and Moqaddas Ardabili, vol. 2, p. 53). However, some scholars don't consider as compulsory and mandatory equality between the Muslims and the pagans and have downgraded it to the level of Mustahabb (recommended) (Sallar: 1983, 230; Helli: 1992, 420; Moqaddas Ardabili: 1982, 154;

Najafi: undated, vol. 40, p. 141, Tabrizi: undated, 120). However, the necessity of observing equal treatment between the parties of litigation including the Muslims and the pagans has been identified as mandatory and binding (Sheikh Tousi, 49 and Helli: 1987, vol. 4, 870; Imam Khomeini, 368, 2; Tabatabaei, 1997: vol. 2, p. 297)

### **5. Equal treatment in national and international arbitration**

In the majority of national regulations and international documents and international arbitration rules, adherence to this principle has expressively been stressed. After the formation of jury and the commencement of arbitration, one should pay close attention that whether the aforesaid principle is observed or not. The aforesaid principle should be observed in both formative and natural matters. The way of presenting the procedural papers and the issuance of warnings and giving sufficient and equal opportunity to the parties for submitting the documents and reasons are all essential conditions of arbitration. In other words, both parties should be given equal and sufficient time for their hearings and statements.

The article 9 of 1961 European Convention (Yearbook of UNCITRAL: 1988, 450), the article 5 of UNCITRAL Arbitration Rules [UNCITRAL 7] and the article 18 of model law on UNCITRAL arbitration rules (Khomeini, 1997) point to this principle. In the national arbitration laws of some countries, the provision of observing equal treatment has been stated, like in the Swiss Arbitration Law [The Swiss Private International Law Act 182] and the Netherlands Arbitration Law. This has been expressively stated as an imperative rule that the arbitrators should observe equality in treating the parties.

Hearing the statements of one party without the presence of the other party and presenting the judicial documents to one party without informing the other party and also lack of proper notification to either of the parties are cases of unequal treatment of the arbitrators. Moreover, the arbitrators should not make exceptions with regards to the parties and show partiality.

The principle of equal treatment of the parties of litigation has been imposed upon the arbitrators by different arbitration rules and regulations to the extent that it has become the core of procedural law and is considered to be the basis of other issues in procedural law and arbitration and is necessary for a just and fair investigation (Holtzman and Jasephe: 1994, 550).

If the aforementioned principle is not abided by, it can be considered as one of the cases of the nullity of award as the article 5 (1) b of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards has considered the lack of equal treatment a cause for the nullity of award: "the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case." (Al-Tabatabaei, 1997)

The most fundamental issue in equitable investigation is the principle of hearing the other party's reasoning (*audi alteram partem*) which has a special position in all collections of laws and regulations of arbitration and by the end of the day, acts as a general legal principle (Nikbakht: 2011, 152). This principle implicates that not only should the statements of the parties be heard, but they have the right to propose each and every argument and reasoning which they wish.

The principle of equal treatment has been emphasized in the article 38 of the arbitration laws of the World Intellectual Property Organization as a guaranteed principle with the clause of guarantee on behalf of the arbitrators: "the court of arbitration should guarantee under every circumstances that the parties of litigation are treated equally and fairly and they're given appropriate opportunities to state their reasoning and claims."

This principle, along with observing the right of self-defense has been foreseen in the article 18 of Iran's International Commercial Arbitration Law Amid Zanjani & et al, 1998) in line with the article 18 of the model law of UNCITRAL as an imperative rule: "treatment with the parties should be equal and each of them should be given sufficient opportunities to propose their claim, defense or reasoning."

As it can be seen, equal treatment is one of the obligations and responsibilities of the arbitrators; however, it can be said that the concept included in the article 18 is a comprehensive idea since it is about both the procedure and performance and behavior shown by the court of arbitration and the method of arbitration which is adjusted by the parties, as well. Moreover, observing the principle of equality and giving sufficient opportunities to the parties of the litigation for self-defense is not only a responsibility by the arbitrators elected by the parties but the responsibility of the head arbitrator (third arbitrator) as well. Moreover, the head arbitrator should behave with the other arbitrators in an equal manner. For example, hearing the statements of an arbitrator in the absence of another arbitrator is in contrast to the aforesaid principle. For example, in a conflict between the owner of a home and the railway company in England back in 1848 when each of the parties had elected their own arbitrator, the arbitrators would elect a third arbitrator to estimate the value of the property and the damages it has

sustained. One session was held and the witnesses were interrogated and ruling was postponed to the following day, but the arbitrator of the aforesaid company couldn't attend. The arbitrator of the other party and the head arbitrator issued a verdict without the presence of the arbitrator of the other party. The award was nullified with the protest by the aforesaid company (Walton and Vitoria: 1982, 239). One of the clear instances of non-compliance to equality is that the statements of one of the parties be heard in the absence of the other party or its representative. This action is considered to be an instance of misconduct in the British law and violates natural justice so if a verdict is issued, not only is the award nullified but the arbitrator should be excluded from continuing the investigation. For example, in the case of *Bristol v. Miskin & Son* in 1981, one of the parties which was the main contractor claimed damage of the other party because of delay in doing the job and the inadequacies in the work but the contractor denied any delay or deficiency based on the confirmation of the architect and expert and for this reason, the case was referred to a unique arbitrator. During the proceedings, the arbitrator attempted to issue verdict without hearing the statements of one of the parties. The court of appeals considered the performance of the arbitrator a case of misconduct and a violation of the natural justice. Lord Denning stated in this regard that: "the courts should verify that judgment has taken place accurately so that the confidence of the individuals might be gained. The behavior of this arbitrator negated the trust of the parties or at least one party of the litigation and should be excluded for this reason (ibid, 158).

Observing the principle of equal treatment with the parties should carry on from the beginning of proceedings until its end. It seems that if the arbitrators behave with the parties unequally, their behavior might be considered an instance of partiality and maybe that's why in the article 15 (2) of the arbitration rules of ICC which is about giving sufficient opportunities to the parties of litigation and equal behavior, it has been emphasized that the arbitrator should behave impartially and fairly [ICC Art 15/2].

In the majority of the rules and regulations of arbitration, the principle of equal treatment and the principle of independence and impartiality are stated in two separate clauses; however, they are not unrelated to each other. In the article 9 of the arbitration rules of UNCITRAL and the article 12 of the model law on UNCITRAL and also in the article 12 of Iran's International Commercial Arbitration Law, the principles of independence and impartiality are separately stressed and underlined. Impartiality actually means disinclination, non-consultation and equitability. Impartiality is equivalent to the opposite of bias and prejudice (Alam: 2004, 3). The violation of impartiality can be related to the inclination of an arbitrator in favor of one of the parties or his inclination toward the case of litigation (Redfern and Hunter, 1991: 220). However, independence means having freedom and its opposite is dependence (Amid, 2000; 147). An independent arbitrator is somebody who does not have any financial or non-financial relations such as familial relations with the parties of litigation (Calvo, 1998: 64). Tough in the viewpoint of some authors, the term impartiality can contain the term independence, as well (Topman, 1990: 172). However, these two terms are different from each other and in some cases, completely separated. For example, it's possible that the individual is independent, not having any financial or familial relations with the parties of litigation, but he may have an inclination toward one of them and take sides. It seems that each of these issues including lack of independence and partiality of the arbitrators will lead to an unequal behavior at the time of arbitration. For instance, the arbitrators may give insufficient time for self-defense to one of the parties due to lack of independence or partiality. Therefore, in any case and for every reason, if the arbitrators don't behave equally with the parties of litigation and don't give them sufficient time to self-defense, this can nullify the award. However, if the dismissal of the arbitrator is due to the lack of independence and impartiality after the issuance of the verdict, the nullification of award should be requested instead of dismissal or protest because enforcing the award is contrary to the public discipline of the place of the issuance of the verdict (Nikbakht: 2011, 384). It's evident that if the causes of dismissal due to failure in observing equality for every reason is obvious to the parties, but they have refused, they cannot consequently protest against the award with reference to the same reasons (Redfern and Martin: 1999, 71).

The principle of equal treatment and complete fulfillment of law in time of appointing the arbitrator and head arbitrator and also appointing arbitrator for the abstainer, replacing arbitrator, specifying the law ruling the arbitration, whether natural or formative, the selection of language and place of arbitration and the right of selection and introduction of lawyer by the parties should be observed.

It's obvious that the regulations should be established in such a way that they may serve as a model for the arbitrators to perform equal actions. This issue has been practically observed in the arbitration laws of the World Intellectual Property Organization. The arbitration laws of the World Intellectual Property Organization not only call on the arbitrators to take into consideration the

principle of equal treatment, but have also tried to administer justice and equality between the two parties by identifying appropriate and suitable mechanisms.

For example, in cases that the plaintiffs and defendants are several people and the plaintiffs jointly appoint an arbitrator while the defendants fail to introduce their desired arbitrator within 30 days of the time they receive the request of joint arbitration, then the arbitrator appointed by the plaintiff will be discredited and two arbitrators will be appointed by the center and these two arbitrators will select a head arbitrator.

Albeit, before all, according to the article 18 (a) of the arbitration rules of the World Intellectual Property Organization, if the parties can elect an arbitrator jointly, then there will be no need to go through the process just explained (<http://arbiter.WIPO.int>, 2005).

However, generally, the solution selected by the arbitration rules of the World Intellectual Property Organization demanding that in case of a conflict between the litigant parties in electing an arbitrator or the way of electing the arbitrator, they should elect a joint arbitrator together, is aimed at observing equality between the parties. If the plaintiffs attempt to elect an arbitrator while the defendants fail to introduce their own arbitrator, then the appointed arbitrator by the plaintiffs will be discredited and the arbitration center will introduce two arbitrators.

Evidently, this mechanism will cause both parties to have an arbitrator (appointed) and especially the party which has introduced its own arbitrator while the aforementioned arbitrator has become discredited since the other party hasn't elected him will be on equal footing with the other party so that the arbitration center may appoint an arbitrator for the both parties.

The ICC arbitration laws have also stipulated a verdict similar to the article 18 of the arbitration rules of the World Intellectual Property Organization. In Iran's International Commercial Arbitration Law, what has been stated in the article 18 of the arbitration rules of the World Intellectual Property Organization was not taken into consideration and it's only specified in the article 11 (6) that in cases when the defendants and the plaintiffs fail to reach an agreement over the election of an arbitrator, their arbitrator will be selected by the reference subject to article 6 that is the judicial court, while if the arbitration is organizational, the reference of appointment of the arbitrator will be that very organization. In any case, what seems important in this discussion is that in cases that the defendants and plaintiffs are numerous, if they fail to elect an arbitrator jointly, the Iranian lawmaker has only stipulated that the arbitrator of one of the parties (defendants or plaintiffs) will be appointed by the reference subject to article 6 without stating that the arbitrator elected by the other party will be discredited.

It's evident that in such cases, one party will have an elected judge and the other party will have an appointed judge by the court and this causes the two parties to stand on unequal footings. Hence, overlooking the ambiguity which exists in the clause 6 (a) of article 11 of Iran's International Commercial Arbitration Law, the same meaning which can be deduced from the article 18 of WIPO arbitration rules will be inferred; however, it's better that the aforesaid ambiguity be resolved in the further reforms. Finally, it should be noted that the content of article 18 of Iran's International Commercial Arbitration Law should be manifested in the all articles of law and every kind of interpretation to resolve the ambiguity should be based on the principle of equality. Furthermore, reference to the article 18 or the principle of equality should not be abused. So, if irrational demands by the parties for the collection of reasons are made or if the parties want to delay the investigation using interruptive methods, the arbitrators should hold them back and prevent this from happening.

## 6. Conclusion

The necessity of observing equal treatment has been stipulated in the majority of arbitration regulations. According to Islamic law, this principle should be observed in all themes of judgment and arbitration from the beginning of investigation and arbitration until the issuance of the final verdict and even in the most insignificant matters such as looking and calling the parties. The necessity of observing the aforementioned principle has been stressed in the article 18 of Iran's International Commercial Arbitration law which is based on the article 18 of the model law on UNCITRAL International Commercial Arbitration and the article 38 of the regulations of the World Intellectual Property Organization. By paying attention to the aforesaid regulations, it will be cleared that this principle is one of the imperative rules and the jury in all fields of arbitration and since the beginning of judgment until its end and the issuance of verdict should observe such issues as providing sufficient and proper opportunity for the statement of reasons and claims, the way of notifying and inviting the parties of litigation and also inviting the members of jury and hearing the testimony of the introduced witnesses. This principle has been stipulated in all legal materials of Iran's International Commercial Arbitration law and the arbitration regulations of the World Intellectual Property Organization.

Although the implementation guarantee of failing to implement the aforesaid principle has not been mentioned in all arbitration regulations including Iran's International Commercial Arbitration regulations, the inclusion of the word "must" in the article 18 of the aforesaid law means that it's imperative.

On the other hand, since Iran is a signatory to the New York Convention ratified in 1985, there's no doubt regarding the necessity of observing this principle and its imperativeness.

Moreover, according to the regulations of this convention, failing to observe the principle is one of the cases of the nullity of the award of arbitration.

## REFERENCES

- 1- The Holy Quran
- 2- Ashouri, Mohammad, (2004). Human rights and the concept of equality, fairness and equity, The University of Tehran Press.
- 3- Allameh Amini, (1976). Al-Qadir, Dar-al-kutub Al-Arabi, Beirut, fourth edition.
- 4- Tabrizi, Javad ibn Ali, Essas-al-Qadha wal Shahadah, Qom, first edition, undated
- 5- Allameh Helli, Hassan ibn Yusuf, Tahrir-al-Ahkam, Mashhad, Tous Institute, undated
- 6- Allameh Helli, Hassan ibn Yusuf, Mokhtalif-al-Shia, (1992).The Bureau of Islamic Publications of the Society of Scholars of the Seminary, Qom, second edition.
- 7- Helli, Najmeddin, (1987).Sharaye' al-Islam, Ismaelian Institute, Qom, second edition.
- 8- Khomeini, Ruhollah Mousavi, (1997). Tahrir al-Wasilah, Dar-al-Ilm institute, Qom, first edition.
- 9- Sarakhsi, Mohammad ibn Ahmad ibn Abi Sahl, (1985). Al-Mabsut, Beirut, Dar-al-Marifah.
- 10- Sallar, Hamzah, (1983). Al-Marasem Al-Alawiyyah wal Ahkam Al-Nabawiyyahm, Mashourat al-Haramein, Qom, first edition.
- 11- Sheikh Tousi, Abu Ja'far Mohammad ibn Hassan, (1967).Al-Mabsout, vol. 8, second edition, Tehran, Al-Maktab Al-Mortazawiyah.
- 12- Al-Tabatabaei, Seyyed Ali, (1997). Riadh Al-Masayel, Al ul-Bayt Institute, first edition, Qom.
- 13- Amid Zanjani, Abbasali, (1998). Political Jurisprudence, Amirkabir, Tehran, fourth edition.
- 14- Model law on International Commercial Arbitration, (1985).The Journal of the Bureau of International Legal Services, vol. 14.
- 15- Copleston, Fredrick, (1996).Philosophy of History, translated by Seyyed Jalaleddin Mojtawabi, Elmi Farhangi Publications.
- 16- Koleini, Mohammad ibn Yaqub, (1999). Al-Kafi, Dar-al-Kutub Al-Islamiyyah, Tehran, first edition.
- 17- 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, (1991). The Journal of the Bureau of International Legal Services, vol. 14 and 15, spring and summer 1991
- 18- Thaqafi Kufi, (1974). Al-Qarat, The research of Jalaleddin Hosseini, The association of national works, Tehran.
- 20- The collection of laws, (1997). The Ministry of Justice, first edition.
- 21- Mohaqeq Damad, Ayatollah Dr. Seyed Mostafa, (1998).The rules of jurisprudence (3): Judicial section, first edition, Tehran, The Center of Dissemination of Islamic Sciences.
- 22- Majlisi, Muhammad Baqir, (1982).Bihar al-Anwar, Dar-al-Ihya al-Tarath al-Arabi, Beirut, third edition.
- 23- Moeen, Mohammad, (2004). Dictionary, Sahel Publications, Tehran, third edition.
- 24- Moqaddas Ardabili, Ahmad bin Muhammad, (1982).Majma' ul Faidah wal-Burhan fi Sharhe Ershad al-Adhan, The Bureau of Islamic Publications, Qom, first edition.

- 25- Motahhari, Martyr Morteza,(1990). The legal system of women in Islam, Sadra, Qom, fourteenth edition.
- 26- Motahhari, Martyr Morteza,(1994). Inspiration and prophethood, Sadra, Tehran, seventh edition.
- 27- Nouri Tabarsi, Mirza Hossein, (1988). Mustadrak al-Wasail wa Mustabit al-Masail, second edition, Al ul-Bayt institute for le-Ihya al-Tarath, Beirut.
- 28- Najafi, Sheikh Mohammad Hassan, Jawahir al-Kalam, vol. 40, Dar-al-Ihya al-Tarath al-Arabi, Beirut, undated
- 29- Nahjul Balagha,(1995). translated by Shahidi, Dr. Seyed Ja'far, second edition, Tehran, Elmi Farhangi Publications, p. 320
- 30- Nikbakht, Hamidreza,(2011). International commercial arbitration, The institute of commercial studies and researches, second edition, Tehran.
- 31- European Convention 1961 -Yearbook of the UNCITRAL, United. Nations, vol. XXX, New York, 1988
- 32- UNCITRAL Arbitration Rules
- 33- The Swiss Private International Law Act. Art 182/3
- 34- The Netherlands Arbitration Act 1986.art1039/1-
- 35- Holtzmann, Howard M. and Neuhaus, Joseph E., (1994).A Guide to the UNCITRAL Model Law on International Commercial Arbitration, first edition, Boston, Kluwer law and taxation, 1994, p. 550
- 36- Icc Art.15/2: In all Cases the Arbitral Tribunal shall act fairly and impartially
- 37- Redfern, Alan and Martin Hunter, (1999).Law and Practice of International Commercial Arbitration, Sweet & Maxwell, third edition.
- 38 - Walton, Anthony & Vitoria Mary, (1982). Russell on the Law of Arbitration, first edition, London , Stevens & Sons, p239.
- 39- WIPO Rules, art18/b, WIPO Arbitration and Mediation
- 40 - WIPO Arbitration and Mediation: Dispute Avoidance and Resolution, Best Practices for the Application Service Provider Industry: <http://arbitrator.wipo.int/asp/report.htm>, 2005.