


Realization and Termination of Arbitration and the Extent of Judicial Oversight in the Enforcement and Annulment of Arbitral Awards in Iranian Law

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The present study examines the realization and termination of arbitration and the extent of judicial oversight in the enforcement and annulment of arbitral awards in Iranian law. The main objective of this research is to conduct a comparative analysis of Iran's legal system in the field of arbitration and to propose strategies for improving and enhancing existing mechanisms. The research adopts a theoretical approach, utilizing reasoning and rational analysis methods based on library studies. The prerequisites for the realization of arbitration include the mutual consent and agreement of the parties, the legal capacity to litigate, the arbitrability of the subject matter, the absence of legal prohibitions, and adherence to relative restrictions concerning the arbitrator. Failure to observe any of these prerequisites can lead to the termination of arbitration. Another segment of this study is dedicated to judicial oversight over arbitration. The scope and nature of court supervision regarding the arbitration process and the enforcement of arbitral awards in two jurisdictions are analyzed, identifying the strengths and weaknesses of each. The alignment of arbitral awards with public order principles, universally accepted as fundamental, necessitates a degree of judicial oversight. Despite the necessity of such oversight, considering the contractual nature of arbitration, judicial intervention must adhere to a specific framework and limitations to avoid conflicting with the parties' intention to refer disputes to a private forum and to exclude judicial authorities from the process. Judicial control is also exercised during the enforcement of arbitral awards. In practice, courts verify the arbitrator's jurisdiction, the definition of the subject matter, the examination of the arbitral award, its alignment with the arbitration subject, and whether it has been issued within the prescribed timeframe and the arbitrator's authority, before ordering its enforcement. Finally, the findings of this study indicate that Iran's legal system faces similar challenges in the field of arbitration and can benefit from the experiences of other jurisdictions to achieve efficiency and justice in the arbitration process.

Keywords: Arbitration, Judicial Oversight, Annulment of Arbitral Awards, Iranian Law, Realization of Arbitration, Termination of Arbitration.

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1. Introduction

Dispute resolution methods are not limited to judicial and litigation procedures; they encompass

a wide range of approaches, from dialogue and negotiation to mediation and arbitration. Among non-judicial methods, arbitration plays a prominent role due



to its historical significance, numerous legal provisions, and widespread acceptance among disputing parties. In private contracts, arbitration is often the preferred method for non-judicial dispute resolution, with other methods being less frequently utilized. Even when other methods are mentioned in contracts, they often serve as a prelude to arbitration, ultimately leading to this approach.

This study aims to explore the conditions required for the realization of arbitration, identifying which subjects are arbitrable and which, for specific reasons, are exceptions to this rule and cannot be arbitrated. Therefore, the first and most crucial condition for arbitration is the subject matter. The subject is sometimes explicitly and precisely determined and, at other times, stated in general terms. Importantly, this determination defines the jurisdiction and authority of the arbitrator. This raises the question of whether specifying the subject is necessary or whether the arbitration clause within the contract inherently implies the subject matter, making an independent determination unnecessary.

Conversely, what causes and conditions lead to the termination of arbitration? Some of these factors are voluntary and dependent on the agreement of the parties, while others are involuntary and beyond the control of the interested parties. Additionally, certain conditions related to the arbitrator's status may result in the termination of arbitration. A significant issue within the discussion of arbitration termination is the concept of finality and repetition. This concerns the duration for which the arbitration clause remains enforceable and the nature of the obligation associated with it within the contract. Is it result-oriented, like other contractual obligations, or is it merely a means of dispute resolution? After referring to an arbitrator, receiving an award, and having it annulled by a court, can arbitration be revisited? Furthermore, differences may exist between an arbitration clause naming a specific arbitrator and one without such a designation concerning finality and repetition. Arbitration with fixed time limits and unrestricted arbitration also raise unique issues. These matters require careful examination of legal principles, and in cases of legislative silence or ambiguity, a legal analysis rooted in the spirit of arbitration regulations is essential.

Another critical issue addressed in this study is the extent and role of judicial oversight in the enforcement and annulment of arbitral awards. Arbitration proceedings can sometimes take several months, with arbitrators being involved from the time of contract formation and even participating in pre-contractual negotiations. During this process, arbitrators may gain insights into implicit intentions, hidden agreements, and collusive conditions, enabling them to arbitrate disputes effectively. This leads to the question: if a party dissatisfied with the award challenges it in court, to what extent can the judge intervene? What factors can be reviewed, and where do the boundaries of judicial oversight lie? How does the court's approach to annulment proceedings differ from substantive litigation when a party seeks judicial enforcement of contractual obligations? Can the court act similarly to a judge handling a substantive claim for the performance of contractual obligations, applying the same approach in annulment proceedings?

Given these questions, judicial oversight during the enforcement and annulment stages and in various types of arbitration operates within specific frameworks. This research aspires to detail these frameworks comprehensively. Additionally, this study adopts a comparative perspective, examining the Iranian legal system alongside another jurisdiction to identify similarities and differences, offering insights into how domestic arbitration rules align with or diverge from international standards.

2. Conditions for the Termination of Arbitration

The previous section examined the conditions required for the realization of arbitration, emphasizing the central role of party agreement in establishing the arbitrator's jurisdiction to resolve disputes. This section outlines the general conditions that lead to the termination of arbitration. Termination refers to circumstances under which a properly constituted arbitration tribunal loses its jurisdiction and authority to resolve disputes. While some of these conditions are explicitly mentioned in the law, not all are explicitly detailed.

One of the most critical conditions for the termination of arbitration is the mutual agreement of the parties. Just as agreement and consent establish arbitration, they can also terminate it. Other factors include the death or legal incapacitation of the parties. Since legal capacity is a

prerequisite for arbitration, its loss during the process results in termination. The arbitrator's legal incapacity is another factor leading to termination (Moazi, 2016).

The dismissal or resignation of the arbitrator and the unwillingness of an appointed arbitrator to proceed with arbitration in cases where arbitration is specifically tied to that individual are additional grounds for termination. Expiration of the arbitration period and failure to render an award within the designated timeframe also terminate arbitration. The subject matter's cessation or the emergence of conditions that disqualify the arbitrator, such as appointment to a judicial position or a court ruling prohibiting arbitration, may also lead to termination. The issuance of an arbitral award itself marks the end of arbitration. However, this raises the significant issue of finality and repetition, which has been extensively debated among arbitration law scholars (Tavakoli, 2016).

These factors constitute the essential elements of this chapter and require detailed analysis. However, as some of these conditions directly oppose those discussed in the previous chapter on the realization of arbitration, this section aims to present new insights concisely, avoiding redundancy while ensuring readers focus on the primary topics of the research.

2.1. Mutual Consent and Agreement of the Parties

The acceptance of arbitration as a mechanism for dispute resolution is entirely dependent on the mutual consent of the contracting parties. Just as the parties can agree to arbitration, they can also, through mutual consent and agreement, withdraw their acceptance and return jurisdiction to the courts.

Clause 1 of Article 481 of the Civil Procedure Code explicitly emphasizes this point, stating that written mutual consent of the parties terminates the arbitration process. It makes no difference whether this consent occurs before or after a dispute arises. The court is expected to honor this contractual condition, continue with the litigation, and issue a ruling. Arbitration is not a mandatory principle or rule; it is established by agreement and can be dissolved by agreement. Filing a lawsuit by one party in court without objection from the other party can be regarded as an implicit withdrawal from the arbitration clause.

The Advisory Opinion No. 7/96/1644, dated 2017-10-11, from the Legal Department of the Judiciary, supports this interpretation:

"If the plaintiff, despite an arbitration agreement, files a lawsuit in a judicial forum, and the defendant does not object to the judicial forum's jurisdiction, this constitutes implicit agreement by the parties to abandon the arbitration clause, and the judicial forum can hear the case. Thus, in the scenario where an arbitration award is presented after adjudication and issuance of a decision by the Conciliation Council and during the appeal process, the mere presentation of this award does not negate the council's jurisdiction unless the appellant claims that the arbitration agreement's jurisdiction was raised in the initial proceedings but was ignored by the council. In such a case, if the appellate authority verifies this claim, it must annul the previous decision and dismiss the initial claim."

A review of the National Judicial Opinions System reveals that general judicial practice aligns with this view, considering court proceedings valid in the absence of an objection to the arbitration agreement. Verdict No. 9409982164000219, dated 2015-12-14, and Verdict No. 9209970221700841, dated 2013-09-07, from the Tehran Provincial Court of Appeals, affirm this position. However, there are dissenting opinions, though they are not strongly defensible. For instance, in a judgment by Branch 30 of the Mashhad General Civil Court, both parties filed lawsuits against each other, including the main claim and a counterclaim, in court. Both parties actively defended themselves and submitted numerous pleadings without ever raising the arbitration clause in their defense. Nonetheless, the court, citing the arbitration agreement, dismissed both the main claim and the counterclaim on grounds of non-hearing after a year of proceedings. The text of the cited judgment is as follows:

"Regarding the claim of Mr. 'R' against Mr. 'Q' for specific performance and the notarization of a power of attorney, and the counterclaim of Mr. 'Q' against Mr. 'R' for construction, boundary determination, and obtaining final approval along with litigation costs, the court, considering that the contract dated 2019-03-05 between the parties stipulated arbitration for dispute resolution, and given that deviation from arbitration without mutual consent is contrary to Article 481 of the Civil Procedure Code, and that the contract requires disputes to be resolved through arbitration, holds that unless such recourse to arbitration

occurs, the claims filed in judicial forums are inadmissible. Accordingly, the court, pursuant to Articles 2 and 481 of the Civil Procedure Code, issues a decision of non-hearing. The issued decision is appealable within 20 days of notification before the Khorasan Razavi Provincial Court of Appeals." (Bazgir, 2017, p. 96).

This position is not particularly defensible, especially when both parties filed lawsuits against each other and did not reference or object to the arbitration clause in their defenses. Judges should not adopt a rigid interpretation of statutory laws; instead, they should view the law as flexible and adaptable to the specific circumstances of each case. Ultimately, what matters here is the intent and consent of the parties to abandon the arbitration clause. Whether this abandonment is in written, verbal, or practical form is less significant, and judicial authorities should proceed to resolve the dispute.

2.2. *Death, Incapacitation, and Lack of Legal Capacity*

As previously discussed, only those who are legally competent and have the capacity to bring a lawsuit may refer disputes to arbitration. Clause 2 of Article 481 of the Civil Procedure Code states that the death or incapacitation of any party to the dispute results in the termination of arbitration. This stipulation is so explicit that, contrary to the opinions of some scholars, enforcing an arbitration clause or agreement after the death of one of the parties is inconsistent with the law's clear language (Sarvi, 2010, p. 36). Accordingly, the heirs, legal successors of the deceased, or legal representatives of the incapacitated cannot refer disputes arising from the contract to arbitration based on the arbitration clause. This applies unless the arbitrator has issued an award prior to the death or incapacitation, as arbitration is considered concluded upon the issuance of the award, rendering termination through these events irrelevant (Shams, 2018).

Bankruptcy, as indicated by Article 419 of the Commercial Code, also constitutes grounds for the termination of arbitration. This can be inferred, to some extent, from Clause 1 of Article 496 of the Civil Procedure Code, which addresses the arbitrability of disputes. These provisions pertain to the death or incapacitation of the disputing parties, impacting and nullifying the arbitration clause or agreement.

If one or both parties to a contract are legal entities, does the dissolution of a legal entity terminate arbitration? Here, corporate entities, specifically joint-stock companies, serve as the basis for analysis. To answer this question, the dissolution due to bankruptcy must be distinguished from other causes of dissolution. Legal entities may dissolve due to their term expiring, achieving their purpose, decisions by directors or general assemblies, court orders, or bankruptcy. Dissolution does not immediately nullify the legal personality of the entity. Following dissolution, the company enters a "liquidation" phase, during which its legal personality persists, enabling liquidators to fulfill obligations, collect receivables, and distribute assets. Therefore, dissolution, except in cases of bankruptcy, does not terminate arbitration, and the arbitrator retains jurisdiction within the scope of the arbitration clause or agreement. Liquidators act as legal representatives of the legal entity and carry out actions on its behalf.

It is also essential to examine how such events affect the arbitrator. What happens if the arbitrator dies or becomes incapacitated? Clearly, the parties to the dispute would not have intended for an incapacitated individual to serve as arbitrator. Even incapacitation due to incompetence in financial matters contradicts the parties' intent. Consequently, the arbitrator's position ends upon their incapacitation (Khoda Bakhshi, 2021). Clause 1 of Article 466 of the Civil Procedure Code explicitly prohibits the appointment of individuals lacking legal capacity as arbitrators.

A distinction should be made between cases where the parties themselves appoint the arbitrator and where the court or a third party appoints the arbitrator. When the parties explicitly agree on a specific individual as arbitrator or head arbitrator, the previously general arbitration agreement becomes specific to that individual. This secondary agreement can be viewed as a supplementary provision to the primary arbitration agreement, transforming a general arbitration clause into one tied to a specific individual.

However, if the arbitrator is appointed by the court or a third party, and the appointed arbitrator becomes incapacitated or dies after commencing their duties, the law provides no explicit guidance, leaving ambiguity. Articles 460, 471, and 474 of the Civil Procedure Code do not fully clarify this issue. The arbitration process may either be considered concluded, or the appointing

authority may select another arbitrator. Based on these articles, it seems reasonable to expect a repeated appointment of arbitrators, allowing the court to appoint another arbitrator. However, this process should not exceed two repetitions, as it would conflict with the principle of arbitration's expeditious nature.

2.3. *Nonexistence of the Arbitration Subject*

The nonexistence of the subject matter referred to arbitration is another ground for the termination of arbitration. For instance, if the subject of arbitration concerns the right to continue a leasehold on a specific property, but the property is completely destroyed in an accident, arbitration is terminated (Shams, 2018). Some scholars argue that if the subject matter ceases to exist, arbitration is consequently nullified as it follows the nonexistence of the subject. For example, if the parties choose arbitration to resolve a dispute over vehicle ownership, and the vehicle is destroyed in an accident or fire, arbitration is no longer applicable because there is no subject matter for adjudication (Mohammadzadeh Asl, 2010).

However, this argument is not universally defensible. Arbitration is not akin to agency, which terminates upon the completion or fulfillment of its subject matter. Arbitrators do not engage in legal acts similar to those performed under an agency agreement. Arbitration does not fall within the scope of transactions. If an arbitrator is appointed to resolve a dispute concerning a vehicle and the vehicle is destroyed, does the dispute over the vehicle disappear? Certainly not. The dispute persists. What matters is the intent of the parties. If the arbitrator was appointed solely to determine ownership of the property, then the existence of the property was essential, and issues such as compensation or damages fall outside the scope of arbitration (Khoda Bakhshi, 2021).

The notion that the arbitration clause becomes invalid if the contract underlying the dispute is rescinded is also questionable. Such an interpretation conflicts with the independence of the arbitration clause. Even if there is a dispute over the rescission of the original contract, the arbitrator retains the authority to adjudicate and issue an award (Khoda Bakhshi, 2021).

2.4. *Emergence of Conditions Preventing an Arbitrator from Performing Their Duties*

In the previous chapter, certain prerequisites were outlined for an arbitrator to be eligible to serve. These prerequisites, broadly speaking, include the arbitrator being a third party, not holding non-Iranian nationality and having a nationality distinct from the foreign party in the contract, not being legally barred by court order, and not holding judicial or administrative positions within the court system.

It follows that, for reasons including impartiality and fairness, these conditions must not only be met when an arbitrator accepts their role but must also persist throughout the arbitration process. The failure of any of these conditions invalidates the arbitrator's authority and renders their arbitration void (Nasiri & Shahabi, 2016).

Another cause of arbitration termination is the arbitrator's unwillingness to perform their duties. Article 463 of the Civil Procedure Code states that if an appointed arbitrator refuses to act and the parties do not agree on another arbitrator, arbitration is terminated, and jurisdiction is returned to legal or judicial authorities.

2.5. *Finality and Repetition*

The issue of finality and repetition can be analyzed from two perspectives: the "arbitration process" and the "appointment of the arbitrator." Since the latter has already been partially addressed in previous discussions and references to Articles 460, 471, and 474 of the Civil Procedure Code have been made, and because it is less frequently encountered—most appointed arbitrators fulfill their duties within the arbitration process—this section focuses solely on the concept of finality and repetition concerning the arbitration process.

In legal principles, it is established that an act, by itself, does not inherently suggest repetition unless there is evidence to support it. In cases of doubt, performing the act once suffices, as repetition requires justification (Mafi & Parsafar, 2012; Mafi & Taghipour, 2017).

In the arbitration process, two scenarios are conceivable. In the first scenario, a contractual dispute arises, and the parties refer the matter to arbitration. The arbitrator issues an award within the legal timeframe. If the party against whom the award was rendered seeks to annul it,

they can initiate annulment proceedings in court. The court examines the request and either annuls or enforces the award. Subsequently, new disputes may arise from other parts of the contract that were not addressed in the initial arbitration process (Nikbakht, 2012).

In such cases, arbitration remains valid and can address disputes arising from other sections of the contract, issuing awards on these matters. However, if the scope of disputes overlaps or conflicts with the parties' intent, the arbitration may not proceed (Khoda Bakhshi, 2021). This conclusion does not conflict with Article 491 of the Civil Procedure Code. The article and its note specifically address the court's jurisdiction in cases referred to arbitration or where the arbitral award has been annulled. It does not preclude the arbitration body's jurisdiction over disputes not previously referred to arbitration.

In the second scenario, the arbitration process is completed, and the arbitral award is annulled in court. The question arises whether the arbitration agreement persists until the dispute is resolved through an award or whether the process concludes after one attempt.

Some scholars, distinguishing between absolute and conditional arbitration, argue that in absolute arbitration, if the award is annulled, the arbitration agreement remains valid. The parties or the court may appoint another arbitrator to address the substance of the dispute. Regardless of how many times the dispute is referred to arbitration, unless the court confirms the award or conditions for arbitration termination (e.g., mutual consent, death, or incapacity) arise, the agreement persists (Vahedi, 1993, 2019).

However, this view is inconsistent with the purpose and philosophy of arbitration. Arbitration should not be interpreted in a way that makes it more complex and burdensome than litigation. Parties turn to arbitration to avoid the difficulties of court proceedings, expecting a swift resolution to their disputes to facilitate future planning.

Consider a situation where the arbitration process is completed, followed by annulment proceedings in court, and the arbitral award is invalidated. In such circumstances, it is unlikely that the parties would agree on arbitration again. Disputes are likely to have intensified, creating additional complexities. Respecting the parties' preference for judicial resolution at this stage

is essential, and arbitration should not be imposed beyond its reasonable capacity.

Furthermore, resorting to arbitration implies waiving court jurisdiction, while access to courts is a fundamental right. Exceptions should not be interpreted in a way that overrides this principle. It is more prudent to limit the interpretation to the extent explicitly agreed upon by the parties and avoid repeating the arbitration process unnecessarily (Khoda Bakhshi, 2021).

Where the arbitration agreement is absolute, but the parties later agree on a specific arbitrator, it can be said that absolute arbitration is transformed into conditional arbitration. Is there a meaningful difference between the parties appointing an arbitrator at the outset or after a dispute arises? It seems that converting absolute arbitration to conditional arbitration aligns better with the parties' intent and legal reasoning. This logic is even clearer when the parties, rather than the court or a third party, appoint the arbitrator or chief arbitrator themselves (Khoda Bakhshi, 2021).

3. Judicial Oversight in the Enforcement and Annulment of Arbitral Awards in Iranian Law

Arbitration, as one of the most significant tools for resolving legal disputes, has consistently garnered attention. This method offers advantages over traditional judicial processes, such as speed, lower costs, and the possibility of appointing a specialized arbitrator. However, like judicial rulings, arbitral awards require oversight and review to ensure justice and proper implementation. Judicial oversight of arbitration and its awards thus emerges as a legal necessity to safeguard the rights of the parties involved.

The Iranian legal system, recognizing the importance of arbitration in dispute resolution, has established a set of laws and regulations for supervising this process. Judicial oversight is exercised at two critical stages: during the enforcement of arbitral awards and the annulment of such awards. At the enforcement stage, courts are tasked with ensuring the fairness and validity of the awards. Additionally, if a party believes an award is invalid for specific reasons, courts serve as a supervisory body to review and decide on the matter appropriately.

3.1. *Judicial Approach to the Invalidity of Domestic Arbitral Awards*

Regarding how legal systems address arbitral awards—the primary outcome of the arbitration process—legal scholars propose four approaches: the "judicial," "contractual," "mixed," and "self-regulatory" theories. Each theory represents a distinct perspective on arbitration and its awards. According to the judicial theory, the arbitrator's authority is derived from the law, and arbitral awards should be treated as judicial rulings for enforcement purposes (Mafi & Taghipour, 2017).

Proponents of this theory prioritize court intervention in arbitration proceedings, leading to extensive oversight and involvement in the arbitration process. This perspective allows courts to conduct comprehensive reviews of arbitral awards, whether during annulment requests by the dissatisfied party or at the enforcement stage.

Today, given the growing reliance on arbitration, particularly in commercial disputes, a shift in the judicial approach to arbitration is inevitable. Courts must respect the will of parties who choose arbitration to resolve their disputes by adhering to the principle of "non-interference" and avoiding excessive judicial involvement. However, idealistic perspectives, such as the "self-regulatory" theory, which advocates for complete independence of arbitration from courts and denies any judicial intervention, are also untenable. Arbitration, at the very least, requires judicial support in cases where the losing party refuses to voluntarily comply with the award. Courts, as entities with coercive powers, play a vital role in enforcing arbitral awards (Moradi Govareski, 2013).

Legal systems also recognize "public policy" as a boundary not to be crossed. Courts reserve the right to review arbitral awards and prevent the enforcement of those that explicitly violate public policy or good morals. Beyond such instances, where judicial intervention is logically justified, other forms of interference are generally contrary to the parties' intent. Modern legislation in many countries has clarified and limited the scope of judicial intervention, replacing "interference" with "support" in numerous cases.

The Iranian Law on International Commercial Arbitration has largely delineated instances of absolute and relative nullity of arbitral awards, clarifying the scope of court intervention. However, in domestic

arbitration, Article 489 of the Civil Procedure Code has led to a perception that courts may nullify arbitral awards either sua sponte or at the parties' request on any of the seven grounds listed in the article. Courts have sometimes extended their intervention to how enforcement requests are handled. Some of these grounds, however, only harm the private rights of the parties, and decisions regarding such grounds should be left to the dissatisfied party in the arbitration process.

Previous articles have discussed court involvement in the appointment of arbitrators and judicial intervention in arbitration proceedings, which hold independent value. However, this article focuses primarily on domestic arbitration. While it considers certain arguments from international commercial arbitration, its primary aim is to propose appropriate solutions for domestic arbitration (Aloumi Yazdi & Derakhshan Nia, 2018).

This discussion examines two approaches—interventionist and supportive—toward domestic arbitral awards in legal doctrines and judicial practices. By analyzing the shortcomings of the interventionist approach, it provides practical and effective examples of perspectives on arbitral awards that foster the dynamism and growth of arbitration.

3.2. *The Extent of Judicial Oversight and Intervention in Annulment of Arbitral Awards*

When disputing parties choose arbitration over state courts to resolve their disputes, they are signaling their preference for minimal court intervention in their present or future disputes. Respect for party autonomy necessitates that the default principle be non-interference by courts in the arbitration process, with exceptions allowed only in specific and extraordinary circumstances. A key concern for all governments, often regarded as a "red line," is public policy. Most grounds for annulling arbitral awards are based on violations of public policy (Mafi & Parsafar, 2012). In such cases, the law requires that an arbitral award undergo judicial review to eliminate defects before enforcement or to be declared invalid altogether.

Some scholars, however, argue that judicial oversight of arbitral awards is a universally accepted principle across all legal systems, though the scope of such oversight varies (Khoda Bakhshi, 2021).

One legal scholar has stated that judicial intervention is necessary:

"In arbitrations conducted entirely outside the court system, without any oversight by state or judicial authorities, courts, as the entities responsible for confirming the arbitral award and issuing enforcement orders, must have a degree of confidence in the integrity of the arbitration process to facilitate enforcement. Courts must review the content of the arbitral award and the arbitration agreement and issue enforcement orders only if no fundamental grounds for nullity are observed" (Vahedi, 1993, 2019).

Other jurists argue that a lack of any judicial oversight could lead to abuse by arbitrators, potentially harming vulnerable parties. They believe judicial oversight ensures that arbitrators do not disregard public policy norms. Some scholars even argue that the enforceability of arbitral awards depends on court-issued enforcement orders:

"Although arbitral awards have the authority of res judicata, they are not inherently enforceable. Judicial review and issuance of enforcement orders by the court are necessary" (Katouzian, 2014).

These views reveal both skepticism and optimism toward arbitration, framing the discussion predominantly through a judicial lens. However, what is often overlooked is the respect for the parties' intent to resolve their disputes outside the court system. This intent and mutual agreement serve as the strongest justification for limiting judicial intervention in arbitration to exceptional cases, focusing instead on preserving public policy and supporting arbitration.

Historically, judicial oversight of arbitration was based on the assumption that all activities within a country's legal framework must adhere to its laws and be subject to its courts. There was also a pragmatic concern that arbitration might undermine the authority and respect for national court systems. Additionally, a degree of "judicial jealousy" toward arbitration—a more efficient dispute resolution mechanism—has always existed. Arbitration was traditionally seen as a permissible exception to the exclusive jurisdiction of state courts rather than an independent right or process (Katouzian, 2014).

In contrast, some legal systems have explored the complete removal of judicial oversight to promote arbitration. This approach was tested in Belgium, where

courts were prohibited from reviewing domestic arbitral awards for a certain period. However, this experiment failed, as businesses showed little interest in choosing a jurisdiction with no judicial oversight of arbitration. Consequently, on May 19, 1998, Belgium revised its law to reintroduce a degree of judicial oversight (Zandi, 2011; Zeynali, 2018).

Today, it is widely accepted that arbitration cannot function without some level of judicial intervention or support. The competitive tension between arbitration and courts has given way to mutual cooperation. Arbitration reduces the burden on courts, while courts provide enforcement mechanisms when necessary, creating a mutually beneficial relationship for society. Most legal systems agree on the necessity of judicial intervention, particularly concerning public policy, as it remains a key tool for courts to reject the enforcement of invalid arbitral awards. The scope of public policy, however, varies between countries. In jurisdictions where strict moral principles deeply influence societal norms, public policy is more sensitive and must be rigorously protected by legislators and judges (Nikbakht, 2012).

Moreover, judicial intervention is indispensable when the losing party refuses to voluntarily comply with the arbitral award. Arbitration has yet to address all existing gaps, and parties often require state courts at the enforcement stage. Thus, minimal judicial oversight of arbitral awards is almost universally accepted, with debates focusing on the extent and conditions of such oversight.

Before issuing enforcement orders, courts must conduct a preliminary review of the award to ensure there are no evident legal defects. If the award contains fundamental flaws—such as violating public policy, addressing non-arbitrable subjects, or lacking proper signatures—the court must deny the enforcement request without explicitly declaring the award null and void. Conversely, if no apparent legal issues exist, the court should proceed with registration, notification, and enforcement of the award.

In cases where defects are severe, the award is inherently void and unenforceable. For example, if an arbitration agreement in a contract appoints a foreign arbitrator with the same nationality as one of the disputing parties, and this arbitrator renders an award, the award is invalid (Zeynali, 2018).

In jurisdictions such as Iran, prominent arbitration scholars have noted that attaching a copy of the arbitral award and the arbitration agreement to the enforcement request is mandatory. This requirement enables courts to perform a review. If the arbitral award clearly violates public policy, involves a non-arbitrable subject, or disregards fundamental procedural principles such as the right to defense and procedural equality, the court will not issue an enforcement order. Typically, comprehensive reviews of arbitral awards occur during annulment proceedings.

If judicial oversight at the enforcement stage is entirely eliminated or reduced to a mere administrative task, the legislative provisions governing this matter become redundant, reducing the role of courts to mere notaries. Courts, in cases of inherent nullity, can independently reject enforcement requests, effectively treating such awards as void (Jonaidi, 2016).

3.3. Scope and Nature of Court Intervention

While judicial oversight of arbitral awards is deemed necessary across global legal systems, the extent and boundaries of this oversight remain contentious. Historically, courts reviewed arbitral awards during the enforcement stage, and if a court decided to reject enforcement, it marked the end of arbitration and its resulting award (Judiciary Research Institute, 2014, p. 50).

Over time, with the increasing reliance on arbitration and governments' gradual reduction of intervention in private affairs, including arbitration, the landscape shifted in favor of arbitration. Today, absolute judicial non-intervention is not accepted, nor is excessive court interference. Instead, courts are expected to support and assist the arbitration process.

Judicial practice in Iran has also reflected this evolution. In some cases, despite legal silence, courts have explicitly prioritized the autonomy of parties, placing a presumption against court intervention. For instance, Tehran's Court of Appeal, in judgment no. 9109970221500686 dated August 26, 2012, stated:

"When the parties to a contract agree to refer disputes arising from the interpretation or performance of the contract to arbitration, they effectively intend to exclude the courts from intervening in the matter. Respecting the autonomy of the contracting parties requires courts to act within the legal framework and recognize this choice, as

the parties expressly did not wish for judicial intervention. Court intervention is limited to cases authorized by mandatory legal provisions. Otherwise, any intrusion into the parties' agreement lacks legal justification. Even if the arbitrator issues a ruling that one party perceives as unjust, it does not necessarily indicate a violation of substantive rights, as the parties intended to resolve disputes through arbitration rather than litigation".

Some scholars limit court review to the grounds specified in Article 489 of the Civil Procedure Code. They argue:

"The court may not generally review the arbitrator's reasoning or invalidate an award merely because it allegedly violates one party's fundamental rights. The responsibility of the judge reviewing enforcement requests should be limited to ensuring that the award does not contravene public policy or the grounds listed in Article 489, and only if raised by the aggrieved party within the legal timeframe stipulated in Article 490" (Katouzian, 2014).

However, an alternative view grants courts broader discretion. This perspective contends that arbitral awards may violate contractual terms, lack justification, or contradict substantive laws, all of which warrant judicial attention. According to this view, courts can also consider non-public-policy issues raised by the parties (Katouzian, 2014).

In practice, judicial oversight during the enforcement stage typically involves only a superficial review. Courts often rely on Article 488 of the Civil Procedure Code, issuing enforcement orders based on a formal examination of the award, while more detailed reviews are reserved for annulment proceedings initiated by the aggrieved party.

For example, in judgment no. 417 dated November 19, 1991, Branch 24 of the Supreme Court ruled:

"The plaintiff's attorney raised various objections to the arbitral award, including the arbitrator's dismissal and lack of authority, as well as the award's lack of justification and contradiction with substantive laws. The trial court only addressed the arbitrator's dismissal, which the Supreme Court found unsubstantiated, and remanded the case. However, the trial court issued a ruling without adequately addressing the plaintiff's other objections. The case requires further examination of whether the award was validly issued in other respects. The appealed ruling is thus overturned" (Khoda Bakhshi, 2021).

Despite this ruling, it cannot be inferred that courts have unrestricted authority to review arbitral awards on all grounds. Judicial oversight should focus on fundamental flaws that could render the award absolutely void. Broader judicial intervention undermines the principles of arbitration, including speed, cost efficiency, and procedural simplicity.

In recent years, international trends have leaned toward limiting judicial oversight, particularly concerning international arbitral awards. Nonetheless, some level of court intervention remains necessary, especially for public policy violations or enforcement issues.

From the authors' perspective, the principle of non-intervention, coupled with clearly defined and limited grounds for court intervention, is defensible. Allowing courts to fully and comprehensively review arbitral awards undercuts arbitration's advantages and aligns arbitral awards with trial court decisions subject to appellate review. This defeats the purpose of arbitration as a private and efficient dispute resolution mechanism. Therefore, it is advisable to codify the principle of "non-intervention" in arbitration as a standalone provision, with court intervention strictly limited to exceptional, explicitly enumerated circumstances (Jonaidi, 2016).

On whether courts may conduct substantive reviews of arbitral awards during annulment proceedings, two views exist. The first asserts that courts may only review the annulment grounds specified by law. Judicial precedent has occasionally supported this view. For instance, in judgment no. 1434 by Tehran's Court of Appeal, it was held:

"Although the court's legal duty in annulment proceedings is to determine whether the grounds for nullity listed in Article 489 of the Civil Procedure Code are established, it may not examine the substance of the dispute decided by the arbitrator. Courts cannot prefer expert opinions over the decisions of mutually agreed arbitrators unless requested by the aggrieved party. Since the appellant has not objected to this aspect, the court is not obligated to address it. Additionally, the objections raised are unfounded. Therefore, the court upholds the lower court's decision."

The opposing view, rooted in judicial interventionism, advocates for comprehensive review authority, citing the opening clause of Article 489 of the Civil Procedure Code (Bazgir, 2017).

4. Conditions for Judicial Oversight and Intervention in Arbitral Awards

If judicial oversight of arbitral awards is deemed necessary, and there is consensus among global legal systems on its necessity, the scope and nature of this oversight remain points of contention. Historically, courts reviewed arbitral awards at the enforcement stage. If a court determined that enforcement should be denied, it marked the end of the arbitration and its award.

Over time, as arbitration gained popularity and governments reduced their involvement in private matters, including arbitration, the situation shifted in favor of arbitration. Today, neither absolute prohibition of judicial oversight nor excessive court interference is acceptable. Courts are expected to support and assist arbitration rather than hinder it.

Iranian judicial practice reflects this trend. In some cases, despite legislative silence, courts have explicitly upheld party autonomy, refraining from unwarranted interference. For example, Tehran's Court of Appeal, in judgment no. 9109970221500686 dated August 26, 2012, stated: "When the parties to a contract agree to refer disputes arising from the interpretation or performance of the contract to arbitration, they effectively intend to exclude the courts from intervening in the matter. Respecting the autonomy of the contracting parties requires courts to act within the legal framework and recognize this choice, as the parties expressly did not wish for judicial intervention. Court intervention is limited to cases authorized by mandatory legal provisions. Otherwise, any intrusion into the parties' agreement lacks legal justification. Even if the arbitrator issues a ruling that one party perceives as unjust, it does not necessarily indicate a violation of substantive rights, as the parties intended to resolve disputes through arbitration rather than litigation".

Some scholars argue that court oversight should be limited to the grounds specified in Article 489 of the Civil Procedure Code. They maintain that courts may not review an arbitrator's reasoning or invalidate an award solely because it allegedly violates one party's fundamental rights. Judicial responsibility during annulment proceedings should focus on ensuring compliance with public policy and the specified grounds in Article 489, and only upon a party's request within the timeframe stipulated in Article 490. An alternative view

allows courts broader discretion, asserting that arbitral awards may breach contractual terms, lack justification, or contradict substantive laws, all of which warrant judicial attention. This view permits courts to consider non-public-policy issues if raised by the parties (Katouzian, 2014).

In practice, judicial oversight during enforcement often involves a superficial review. Courts generally rely on Article 488 of the Civil Procedure Code to issue enforcement orders based on a formal examination of the award, reserving detailed reviews for annulment proceedings initiated by the aggrieved party. For example, in judgment no. 417 dated November 19, 1991, Branch 24 of the Supreme Court ruled: "The plaintiff's attorney raised various objections to the arbitral award, including the arbitrator's dismissal and lack of authority, as well as the award's lack of justification and contradiction with substantive laws. The trial court only addressed the arbitrator's dismissal, which the Supreme Court found unsubstantiated, and remanded the case. However, the trial court issued a ruling without adequately addressing the plaintiff's other objections. The case requires further examination of whether the award was validly issued in other respects. The appealed ruling is thus overturned" (Katouzian, 2014).

This ruling does not imply unrestricted judicial authority to review arbitral awards on all grounds. Oversight should focus on fundamental flaws that render the award absolutely void. Broader judicial intervention undermines arbitration's principles, including speed, cost-efficiency, and procedural simplicity. Recent international trends favor limiting judicial oversight, particularly for international arbitral awards, while recognizing the necessity of minimal oversight for public policy violations or enforcement issues.

From this perspective, the principle of non-intervention, combined with clearly defined and limited grounds for judicial involvement, is defensible. Comprehensive judicial review undermines arbitration's advantages, aligning it with trial court decisions subject to appellate review. This defeats the purpose of arbitration as a private and efficient dispute resolution mechanism. Legislators should codify the principle of non-intervention in arbitration as a standalone provision, with court intervention limited to exceptional, explicitly enumerated circumstances (Jonaidi, 2016).

On whether courts may conduct substantive reviews of arbitral awards during annulment proceedings, two views exist. The first asserts that courts may only review annulment grounds specified by law. Judicial precedent has occasionally supported this view. For instance, Tehran's Court of Appeal, in judgment no. 1434, held: "Although the court's legal duty in annulment proceedings is to determine whether the grounds for nullity listed in Article 489 of the Civil Procedure Code are established, it may not examine the substance of the dispute decided by the arbitrator. Courts cannot prefer expert opinions over the decisions of mutually agreed arbitrators unless requested by the aggrieved party. Since the appellant has not objected to this aspect, the court is not obligated to address it. Additionally, the objections raised are unfounded. Therefore, the court upholds the lower court's decision." The opposing view, rooted in judicial interventionism, advocates for comprehensive review authority, citing the opening clause of Article 489 of the Civil Procedure Code (Bazgir, 2017).

5. Conclusion

Arbitration is an independent institution empowered by the legislature and possesses a contractual nature. The requirement for arbitral awards to comply with the public policy of states, a fundamental principle of legal systems, inherently necessitates a degree of judicial oversight. This oversight is most extensive in cases involving public policy. Despite its necessity, judicial intervention must operate within a defined framework to ensure it does not conflict with the parties' intention to refer their dispute to arbitration—a private forum excluding judicial involvement. Unwarranted judicial interference without statutory or party consent could lead to injustice, infringement of rights, or at the very least, delays in the resolution and enforcement of arbitral awards.

The apex of judicial oversight is observed in challenges to arbitral awards. Here, courts play a crucial role, particularly when evaluating annulment requests under Article 489 of the Civil Procedure Code. Judges face the challenge of determining the scope of annulment grounds: should they be narrowly interpreted, akin to grounds for reopening cases, or broadly interpreted, allowing courts substantive powers similar to those in appellate proceedings? Arbitration is fundamentally

oriented toward specific objectives, which should guide its interpretation. Applying the same stringent standards to arbitration as to judicial proceedings would disregard many of arbitration's purposes, undermining its essence. Courts' authority to annul awards should therefore be confined to the explicit grounds enumerated in Article 489 of the Civil Procedure Code. Courts are not permitted to broadly assess the arbitrator's reasoning or invalidate an award simply because it does not align with their interpretation. If an arbitrator adjudicates within the boundaries of the arbitration agreement, relying on their reasoning and judgment, the court cannot classify any perceived shortcomings in the reasoning as grounds for annulment. However, much in arbitration depends on party intent. Parties may grant arbitrators broad discretion, request precise judgments, or agree on procedural matters such as the duration of arbitration, stipulating that awards issued beyond a certain timeframe are unenforceable. Similarly, if the parties' sole aim in arbitration is to exclude state court jurisdiction rather than promote other objectives like speed, cooperation, and mutual trust, courts may apply the strictest forms of oversight and substantive review, as seen in appellate proceedings.

In all arbitration matters, the parties' intent should guide the process. For instance, ambiguities regarding the scope of arbitration, duration, or notification procedures should not automatically invalidate the award or the arbitration agreement if the parties have agreed on arbitration as the primary resolution mechanism.

Regarding enforcement, arbitral awards, while carrying the authority of *res judicata*, lack inherent enforceability and must be enforced through court orders. Once issued, an arbitral award is deemed enforceable but differs significantly from judicial rulings. The enforceability of an arbitral award only arises upon the issuance of an enforcement order. Consequently, judicial review during enforcement provides an additional layer of oversight. However, this review must remain cursory, avoiding in-depth substantive analysis that resembles appellate review. After confirming the arbitrator's jurisdiction, defining the scope of arbitration, reviewing the award for consistency with the arbitration agreement, and ensuring it was issued within the specified timeframe and jurisdictional limits, the court may issue an enforcement order. As previously noted, the grounds for annulment are explicitly listed, and judicial oversight at

this stage is limited to differences between arbitral awards and court rulings.

The Iranian legal system recognizes arbitration as an alternative dispute resolution mechanism. While both domestic and international arbitration are acknowledged, differences exist regarding their realization, termination, and judicial oversight.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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