

This paper is part of the TDM / ArbitralWomen special on "Dealing with Diversity in International Arbitration" edited by:



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Female Legal Professionals in the Islamic Republic of Iran: An Emerging Generation of Female Arbitrators by N. Nasrollahi Shahri

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"Female Legal Professionals in the Islamic Republic of Iran: An Emerging Generation of Female Arbitrators"

Nima Nasrollahi Shahri¹

Abstract:

Arbitration is consensual in nature and the parties to a dispute enjoy the special privilege to choose the arbitrators themselves. This is an attractive upside especially when the disputed matter calls for particular expertise in a given field. This is also potentially advantageous to groups who are not well-represented in the judiciary. In some Muslim countries, women are less visible in judicial positions than men. In Iran, for example, despite far-reaching changes in the judicial policies in recent years, women are still not considered legally competent to issue an award as a judge and, in turn, only function in an advisory capacity in the judiciary. This, however, is not true about arbitration because the laws pertaining to appointment of arbitrators are generally gender neutral. While women are still underrepresented in arbitration cases at present, there is compelling reason to believe that the situation is improving for those women who take an interest in working in the field of alternative dispute settlement. The list of young arbitrators published by The Arbitration Center of Iran Chamber of Commerce bears testimony to this claim and heralds a better future for Iranian female arbitrators. This paper generally discusses the status of female lawyers in the Islamic Republic of Iran, but it focuses specifically on arbitration as an emerging field of legal work.

Keywords: Iran, Women, Female Judges, Arbitrators, Islamic Law

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Introduction:

Like most countries in the world, power and politics in Iran are quite masculine. In fact, women are underrepresented in the political scene. There is no surprise that in the past 36 years, there has never been a female presidential candidate², but it is odd that in the current Islamic Parliament of Iran, there are only nine women which is an insignificant 3.1 per cent of a total of 290 seats available. This is a far cry from regional and global standards³. Despite government's considerable effort to involve women in the new administration⁴, there are still no women among government ministers⁵. Women are not represented in the Guardian Council⁶, the second division of the legislature with 12 members. Neither do women have any presence in the Council of the Elite⁷. This, however, is not indicative of any legal barriers since women can potentially assume all these positions according to the Iranian constitution and Islamic law⁸. The situation is no more promising in the judiciary, where since 1979 women have been thwarted from becoming sitting judges with the authority to issue an award.

While women are underrepresented in formal law making(legislation), law enforcement(the government) and adjudication(the judiciary), many women study

² There are only ten states in the world that have a female head of state. See: http://ipu.org/pdf/publications/wmnmap14_en.pdf [Last viewed on 03/06/2015]

³ The world average is 22.4 per cent. The average for the region, the Middle East and north Africa, is 16.1 per cent.

⁴ Masoomeh Ebtekar was appointed as the president of the Organization for Protection of the Environment. Marzieh Afkham, an Iranian diplomat, was chosen as the first female spokesperson of the Ministry of Foreign affairs. Elham Amin Zade, a Law professor at University of Tehran, is President Rouhani's legal deputy.

⁵ On average, women constitute 17 per cent of ministers globally. See: <http://www.unwomen.org/en/what-we-do/leadership-and-political-participation/facts-and-figures> [Last viewed on 03/06/2015]

⁶ The Guardian Council is a non-elective council overseeing the conformity of parliamentary legislation with the constitution as well as Islamic law.

⁷ The Council of Elite is an elective assembly in charge of appointing the leader of the Islamic Republic. Members must, thus, be all *Mujtahid*.

⁸ According to Islamic scholars, women can become members of the Council of Elite, but they cannot qualify as leader. See:

<http://www.islamquest.net/fa/archive/question/fa7278> [Last viewed on 03/06/2015]

law and finally become successful lawyers. This paper aims to bring to light some idiosyncrasies pertaining to gender diversity in the Iranian legal community as a whole. It particularly addresses the issue of gender diversity among arbitrators in Iran and investigates the present status of women in this male dominated legal profession. There is a growing body of literature expressing great consternation about under-representation of women in arbitration tribunals globally⁹. Nevertheless, ironic as it may appear, the situation is not as stark in the Islamic Republic of Iran at least compared to the parallel mechanism of dispute settlement, the judiciary. This should not be taken to mean that women's participation as arbitrators equals that of men, which still sounds like a far-fetched goal even in western countries¹⁰, but that in comparison to judicial positions women are far better-off in arbitration. This has to do with the fact that the judiciary is formal and state-controlled while arbitration is more or less a private method of dispute resolution without much governmental supervision.

This paper starts with an overview on the status of female professionals within the Iranian society with a special focus on legal professions. It then investigates the view of Islam to appointing women for dispute settlement either as judges or arbitrators. A quick review of the relevant laws will also be presented. Finally, it will offer numbers and statistics to portray the standing and presence of women in arbitration today.

⁹ See for example: David Samuel, "Network effects" in Women of Arbitration". Global Arbitration Review, Volume 2 - Issue 4.

¹⁰ See for example: Lucy GreenWood, Mark Baker, "Getting a better Balance on International Arbitration Tribunals", Arbitration International vol 24 no4(2012)
Also Lucy GreenWood, Mark Baker, "Is the balance getting better? An update on the issue of gender diversity in international arbitration" Arbitration International Advanced Publication May 2015.

Women in Iran today

The Iranian society is changing very fast. Women are becoming more independent. Women's pursuit of their independence is apparent across multiple social facets¹¹. Ever since 2000, the number of women admitted to universities and higher education institutes has exceeded that of men in Iran¹². This means that there is already a higher number of educated young women than men. However, while the Iranian middle class female individuals are, on average, more educated than their male counterparts, as far as employment is concerned, there is still quite a huge disparity in numbers, with women having had an unemployment rate almost double that for men in the last ten years¹³. The situation is worst for young women residing in urban areas¹⁴. While according to official statistics, unemployment rates in the country now stand at around 10.5 per cent¹⁵, 43.6 per cent of women aged 15-24 are out of work.¹⁶ In the following, women's standing in legal education and professions will be put in perspective.

Women in Legal Education:

Law is among the most prestigious university majors in Iran and one that is equally appealing to men and women especially because of its relatively good employment

¹¹ About social change in Iranin society and the role of women see for example: Shahriar, Amin, Asia Times, 19/05/2014
Available online at: http://www.atimes.com/atimes/Middle_East/MID-01-190514.html [Last viewed on 03/06/2015]

¹² Now, 65 per cent of all admitted to universities annually are women. See: <http://fa.vii.at/meldungen/106> [Last viewed on 03/06/2015]
This is higher than most OECD countries. See: "Women increasingly outpacing men's higher education participation in many world markets" Available online at: <http://monitor.icef.com/2014/10/women-increasingly-outpacing-mens-higher-education-participation-many-world-markets/> [Last viewed on 03/06/2015]

¹³ <http://www.donya-e-eqtesad.com/news/843958/> [Last viewed on 03/06/2015]

¹⁴ <http://www.donya-e-eqtesad.com/news/843958> [Last viewed on 03/06/2015]

¹⁵ Iran Statistics Centre <http://www.amar.org.ir/> [Last viewed on 03/06/2015]

¹⁶ <http://www.donya-e-eqtesad.com/news/843958> [Last viewed on 03/06/2015]

prospects. Legal education starts as a first degree and students need to compete in a nation-wide examination for seats in good universities. Five exams in different categories are held for entrance to university. Students aiming for law should attend *Humanities and Literature* admission test. There are usually in the region of half a million participants in this exam and only the top 0.2 per cent can be admitted to public law schools. In the last few years, women have consistently scored higher or at least as high as men. For example, in 2012, of the top ten students in the entrance exam for *Humanities and Literature* six were girls¹⁷. In the following year, seven of the top ten were women¹⁸. And, finally, last year in 2014, half of the top ten were girl participants¹⁹.

There is no exact statistics as to the number of women admitted to law schools, but considering the statistics available, it appears fair to conclude that the majority of law students are female. This also conforms to statistics given out by individual universities. Completing a bachelor's degree is a prerequisite for starting a legal career. However, many students choose to go on to do a Masters in law, achievable after two years of full-time education, and some do a PhD, obtained upon defense of a PhD thesis.

Post-Graduation Working opportunities:

Graduates have several options for employment upon graduation in law. They could be recruited to the judiciary as judges, be admitted to the bar to practice or get a license to run a notary and, of course, for more educated people to become academics. Of course, there is always the option of working for a company or a governmental organization as a jurist, yet statistics as to this type of employment is hard to obtain.

¹⁷ Bartarinha News Agency, news code 29310, Published on 01/08/2012.

¹⁸ Mehr News Agency, news no 2107212, Published on 31/07/2013.

¹⁹ MehrNews Agency, news no 2341331, Published on 02/08/2014.

The bar examination is a gender neutral test. The notaries are also appointed through a selection procedure that does not factor in gender²⁰. This is also true about university teachers and academics. However, the situation for judges has not been as straightforward in the last 36 years since the 1979 Islamic revolution.

The acid test for gender neutrality of the mechanisms introduced above is statistics and hard numbers. As far as the bar exam is concerned, women are at no disadvantage. As a matter of fact, last year, in 2014, women participants outnumbered men. Of a total of more than 55 thousand participants, women constituted more than 51 per cent²¹.

The situation is different for notary public admission exam since there is less willingness on the part of women to participate. Therefore, a look at the statistics especially in smaller towns shows that there is still a chasm between the numbers²².

As far as judicial professions are concerned, after the revolution, it became legally impossible for women to work as judges in the judiciary. This had to do with a reading of Islamic Feqh which does not allow women to be placed in a position of judgement. As explained in more detail the next chapter, the situation has now been ameliorated. Figures and statistics about female judges will be offered in the next chapter.

While the number of women in academic institutes is on the rise due to women's higher literacy rates and their being successful in higher education, still the majority of law professors in top Iranian law schools are men. Some numbers are offered about the three biggest law schools in Tehran. In the University of Tehran, there are only

²⁰ In 2007, to encourage more women to take up this job, they were exempted from taking the written test and qualified women could proceed to the interview upon handing their documents. See: Tabnak News Agency, news no 662, 27/10/ 2007.

²¹ <http://dadafarin.com/reportbar93.aspx> [Last viewed on 03/06/2015].

²² For example, the small city of Torbat, located in Khorasan Razavi Province, has no female Public notaries. For a list of certified notaries in Iran, please refer to: http://www.notary.ir/registries_list.

four female law professors out of 50 academic members of the faculty of law and political sciences²³. Of the 59 professors listed on Shahid Beheshti University law faculty website, there are three female professors²⁴. Likewise, Of the 37 law professors in Allameh Tabatae'i University of Tehran, only two are female²⁵. Overall, of the 146 university professors teaching law in Iran's three biggest law schools only nine are women, which is the equivalent of merely 6 per cent.

Women and Judgement(Law and Islamic Jurisprudence)

Appointment of the first female judges in Iran goes back to the year 1961²⁶. This continued until 1979 and each year the number of female judges increased. However, after the Islamic revolution of Iran, female judges were relegated to administrative positions or were transferred to other ministries. This was done by an order issued by the board of ministers of the transitional government in 1979²⁷. The Iranian constitution lacks specificity as to the required qualifications for judges and refers the issue to Islamic Feqh in article 163²⁸. The majority of *Shi'a* clerics consider women incompetent to assume the position of judgement²⁹.

²³ List of law professors at Tehran University on line at http://lawpol.ut.ac.ir/law_pol_faculty [Last viewed on 03/06/2015]

²⁴ List of law professors at Shahid Beheshti University of Tehran on line at <http://sbu.ac.ir/Cols/LAW/Pages/%D8%A7%D8%B9%D8%B6%D8%A7%D8%A1-%D9%87%DB%8C%D8%A7%D8%AA-%D8%B9%D9%84%D9%85%DB%8C.aspx> [Last viewed on 03/06/2015]

²⁵ List of law professors at Allameh Tabatae'I University of Tehran on line at <http://lpd.atu.ac.ir/faculty/> [Last viewed on 03/06/2015]

²⁶ Madanian, Gholam Reza, Ale Kajbaf, Hossein " Women's Judgement in Islam, law and International Law", 2005. Available online at: <http://madanian.ir/index.php/2013-03-26-19-33-09/maghalat-hoghogh-bashar/89-2013-04-11-19-18-10>. [Last viewed on 03/06/2015]

²⁷ *Ibid.*

²⁸ Article 163 of the Iranian Constitution reads : " The conditions and qualifications to be fulfilled by a judge will be determined by law, in accordance with the criteria of fiqh."

²⁹ Madanian, Gholam Reza, Ale Kajbaf, " Women's Judgement in Islam, law and International Law", 2005.

For example, three prominent *Shi'a* clerics Grand Ayatollahs Makarem Shirazi, Mousavi Ardebili and Safi Golpayegani all take the view that women cannot qualify as judges.

Later in 1982, the Iranian Islamic Parliament enacted a law which enumerated the requirements for judgement according to the Islamic Feqh³⁰. This law formally made it impossible for women to serve as judges as male gender was a required qualification under this law³¹. Two years later, another law allowed recruitment of female personnel in the judiciary to serve as consultants and aides. These employees were mainly recruited for family courts. The women had to meet all the other requirements for judgement to be hired³². Now, there are Islamic scientists who take the contrary view. Some contend that there is no conclusive evidence to bar women from judgement. It has also been suggested that the first time male gender as a requirement appeared in Islamic scholarly writings was the 11th century, which is the fifth century after the rise of Islam. Ayatollah Mar'ashi, for example, suggests that even if male gender is considered to have been required in Islamic Feqh, it does not apply to the Iranian judiciary because the base of judgement is the law rather than Islamic sources. This is a plausible reading because another even more important requirement namely *Ijtihad*, has been waived by law and now the majority of male judges recruited do not meet this requirement. According to one scholar, the problem is more about the way women are viewed by the authorities rather than what Islamic Law requires.

At present, 30 women are studying in the University of the judiciary and 30 women are trained in the Education Center of the judiciary. There are 700 women with judicial positions³³. This is a small³⁴ but growing number and the government insists

³⁰ the Law of necessary qualifications for appointment of the judiciary judges, Islamic Parliament of Iran, 04/05/1982, Official Gazzete of the Islamic Republic, No 10855.

³¹ Article one of this single article law reads that " Qualified men who meet these requirements can be appointed as judges"

³² See Note 5, The law of the annexation of five notes to the Law of necessary qualifications for appointment of the judiciary judges. Islamic Parliament of Iran, 06/02/1985. Official Gazzete of the Islamic Republic, No 11655.

³³ Islamic Republic News Agency(IRNA) news code: 80986220, 8 January 2014.
More than 50 per cent of these women have been recruited in the last fifteen years.

on increasing the presence and visibility of women in law courts. However, despite a few women's holding positions even in the higher courts, women are still not allowed to issue(draft) judgments independently even at the courts of first instance³⁵. This has to do with the prevalent views of *Shi'a Feqh* and is, therefore, unlikely to change anytime soon.

Female Arbitration in Islam and law:

Appointing Women as Arbitrators:

Arbitration is recognized as a legitimate means of dispute settlement in Islam. This can be inferred from the holy Koran³⁶ as well as *Sunnah*³⁷. Among *Shi'a* Scholars and *Sunni* thinkers, especially *Hanafis*, the issue of appointing female Arbitrators is highly controversial and there remains a schism. Most scholars consider the requirements to serve as an arbitrator identical to those for judges³⁸. In this view point, in addition to maturity and wisdom, an arbitrator must be a Mujtahid, Muslim, just and male³⁹. On the other hand, there are those who consider arbitration a distinct legal institution and,

³⁴ This is a small number when compared to 9000 judges currently working in Iran. See: Iranian Students' News Agency, 04/01/2015, News Code: 93062112392. However, compared with other Muslim countries, it is a truly significant number. "There are about 70 female Iraqi judges, 10 female judges in UAE and 20 in Egypt" For more information see: Muhammad Raffa, "Women Arbitrators and Sharia", available online at: <http://www.rlawyers.eu/weblog/arbitrationwomen-arbitrators-and-sharia/> [Last viewed on 03/06/2015] In Iran, in Yazd province, for example, which is a religious province in central Iran, female judges outnumber their male counterparts. See Khabar Online News Agency: <http://www.khabaronline.ir/detail/382455/society/judiciary> [Last viewed on 03/06/2015]

³⁵ See the Interview with Iranian Judge of Supreme Court, Hujjat al-Islam Ghorbani at: <http://baharnews.ir/vdcb.8bsurhbw0iupr.html> [Last viewed on 03/06/2015]

³⁶ See for example: Holy Koran: Verse 128 Sura Nisa (Women), Verse 9 in Sura AlHujurat (The Chambers), Verse 10 in Sura AlHujurat (The Chambers), Verse 35 in Sura Nisa (Women).

³⁷ From Shi'a perspective, *Sunna* constitutes saying (*qawl*), action (*fi'l*) or approval (*taqrîr*) from the Muslims' Prophet Muhammad and *Ahl al-Bay*_ which refers to the Family of the prophet and particularly Twelve Emams after him. See: Osulolfiqh, MohamadReza Mozafar, Vol.3, p.64.

³⁸ Mahdi Haddadi, "The Representation of Women in Arbitration in Iranian Legal System" International J. Soc. Sci. & Education 2014 Vol.5 Issue 1.

³⁹ It is been famously and often sarcastically said that today's arbitrators are mostly "male, pale and stale". Apart from "pale", the two other adjectives are best reflected in requirements of judgement in Feqh namely that they must be male and *Mujtahid*.

therefore, believe that the mentioned qualities are not necessarily required for arbitrators. It has also been suggested that the understood implications of evidence given in support of the requirement of male gender in arbitration only proves that women are not obliged to accept the responsibility of becoming an arbitrator and there is no clear indication that appointing women as arbitrators is banned.

Considering all aspects, it appears that throughout Islamic sources, there is a dearth of adequate and authoritative evidence which could prevent women from being appointed as arbitrators and there is no consensus among scholars in this regard.⁴⁰

Many *Shi'a* and *Sunni* thinkers believe that there is no difference between men and women in settling commercial disputes, but not criminal disputes.

Women and Arbitration in Iranian law

There are no legal prohibitions for women to serve as arbitrators in any statutory provisions. First, there are two sets of rules for arbitration depending on whether it is domestic or international. The body of law governing domestic arbitration is the Civil Procedural law of Iran 2000⁴¹, which has only made few changes to the 1939 Civil Procedure law. On the other hand, the law applicable to international arbitration is the International Commercial Arbitration Act of 1997, which was inspired by and derived in part from the UNCITRAL model law⁴².

The Civil Procedure law is silent on requirements of arbitrators and only bar certain categories of people. According to Art. 466 of this law, people who lack legal competence and those who have been barred from arbitration by a judicial award

⁴⁰ Seyed Mohammad Hossein Mar'ashi, "Appointing Female Arbitrators in Islam", *Dadgostari Law Mag*, 1375, Nom 17,18.

⁴¹ Procedural law of General and Revolution Courts in civil matters, 08/04/2000, Official Gazzate No: 16070.

⁴² See Seifi, Seyed Jamal, "The New International Commercial Arbitration Act of Iran", *J.Int.Arb.*, vol 15 (2), NL 1998.

cannot serve as arbitrators. Article 470 also excludes formal judges and the staff of the judiciary.

Similarly, The International Commercial Act only refers to impartiality and independence as the two requirements for arbitrators. Therefore, appointing female arbitrators in the context of international arbitration is also legally permissible.

This also applies to situations when a court or another competent authority is in charge of appointing arbitrators because of the parties failure to agree on a single arbitrator or their refusal to choose an arbitrator. In such situations, the court will choose arbitrators using a draw of a list composed of at least twice the number required⁴³. Article 469 of the Civil Procedural law excludes the possibility of appointing certain categories of people absent the parties agreement. Fortunately, women are not excluded from the pool in this article. This means that both the parties and the courts acting in lieu of the parties could appoint women as arbitrators. There might be other requirements for arbitrators imposed by the rules of procedure of the arbitration institute to whose jurisdiction the parties have agreed.

Therefore, the Iranian laws on the necessary qualifications of arbitrators are at variance with the laws pinpointing required qualifications of judges. This puts women at a privileged position in arbitration compared to judgement in the judiciary.

Female Arbitrators in Iran(The Status Quo):

As a preliminary note, despite the existence of arbitration rules in Iran for more than 100 years, arbitration, as an institution, is still very much at its infancy and most people prefer to use the snowed-under rather inefficient and catatonic judiciary for the

⁴³ Art 467. Civil Procedural Law 2000.

settlement of their disputes. In the last fifteen years, significant effort has been put into expanding the legal framework for commercial arbitration especially as a means to attract a higher amount of foreign investment⁴⁴.

In the same vein, the first arbitration institute with statutory authorization in Iran came into existence in the year 2000 under the auspices of the Iranian International Chamber for Commerce, industries and mines. Before that date, ad hoc arbitration was administered by the judiciary. The arbitration Center of the chamber, hereinafter the Center, has its own rules of procedure and is authorized to accept both domestic and international arbitration cases.

The Center publishes a list of qualified arbitrators, who are approved by the board of directors⁴⁵. However, the parties are also allowed to select an arbitrator who is not included in the list. The Board of directors is at present composed of seven men. There is no exact statistics as to appointment of arbitrators, but the lists could be analysed.

The Center publishes three lists of arbitrators. The main list includes the most prominent senior professors and practitioners of commercial law in the country. Not surprisingly, female arbitrators are very few in the list which is justified also by their underrepresentation within academia. Out 162 listed arbitrators only 11, approximately 6.7 per cent, are women. The second list is for arbitrators of provincial centers other than Tehran. Women constitute 12.3 per cent of this list, which is composed of more or less younger lawyers. Finally, the center publishes a list of 45 young arbitrators who are all promising young professors and practitioners of the country. In this list, female arbitrators, constituting 51 per cent, outnumber their male

⁴⁴ . See Seifi, Seyed Jamal, "The New International Commercial Arbitration Act of Iran" , J.Int.Arb., vol 15 (2), NL 1998.

⁴⁵ . Art 8 of the Statute of the Center. According to this article the president proposes arbitrators, whose appointment is conditional on approval by the board of directors.

counterparts. What is clearly evident from this listing is that the balance is changing in favor of women and that the same list in a decade would comprise imminent senior arbitrators.

Conclusion:

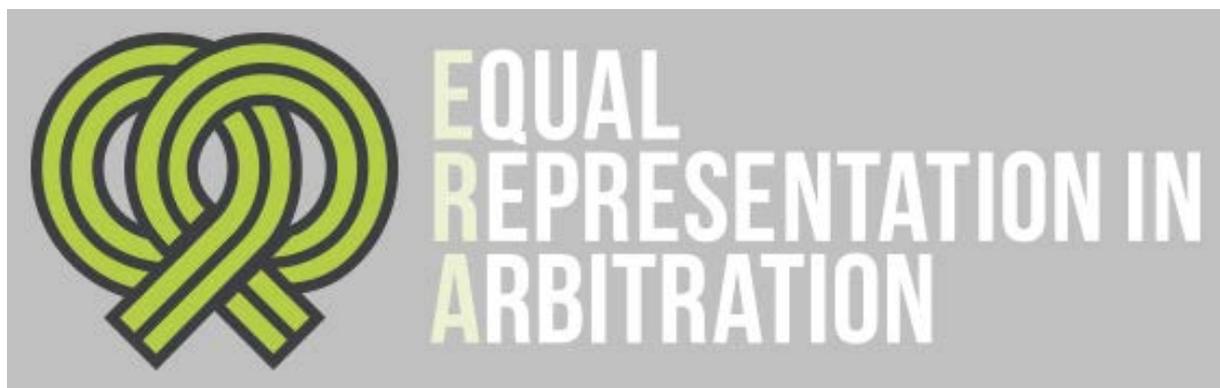
While at present, gender inequality is almost as obvious in arbitration as in all other sectors of law and politics, it appears that the balance is about to change in the future. Arbitration is an area which could potentially help balance the disparity between women and men in positions of power. This is mainly because being unofficial and independent from the judiciary, there is no resistance to women being appointed as arbitrators. This is in stark contrast to judging in the judiciary. This is Because derived from Islamic *Shari'a*, the Iranian laws do not allow women to qualify as judges, or at least sitting judges.

Kluwer Arbitration blog put up three possible reasons for under-representation of women in arbitration in a voluntary poll in February 2013 The reasons which were put to vote on that occasion were:

1. Generational issues: today's top female arbitrators and arbitration law firm partners graduated at a time when proportionally fewer women entered legal practice.
2. Party appointment system that enforces the *status quo* by favoring an elite handful of repeat players.
3. Time demands: the hours and travel can be incompatible with having a family⁴⁶.

⁴⁶ Annalise Nelson , The Kluwer Arbitration Blog's Inaugural Poll, 01/02/2013, Kluwer Arbitration Blog.

In addition to these three possible reasons which also appear to apply to the situation in Iran, it seems that there is a cultural element to it as well. Iran is a traditional society with a predominantly Muslim population. In such a society women are still not considered appropriate for judgment especially among the less educated people. The consensual nature of arbitration renders this cultural element even more relevant. This, however, may not be as much true about big commercial disputes where the arbitrators are selected not by the general public, but by corporate legal departments. Given women's presence in law schools today, it is not too far of a stretch to conclude that they will assume a more remarkable role at least in the less formal and more independent sectors of law such as arbitration and alternative dispute resolution.



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N. Nasrollahi Shahri; "Female Legal Professionals in the Islamic Republic of Iran: An Emerging Generation of Female Arbitrators"
TDM 4 (2015), www.transnational-dispute-management.com
URL: www.transnational-dispute-management.com/article.asp?key=2243