

Jurisprudence Study about the Influence of Gender in Arbitration

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Acceptance: 15/05/2022

Received: 16/07/2022

Abstract

Contrary to the popular view of the Imamiyyah Jurisprudence, that a judge or arbitrator should have the condition of "masculinity" in the feasibility of women's arbitration, some jurists criticize the verses and hadiths to which the famous have relied, even if it is necessary for the appointed judge, has not been considered a condition for arbitrator judge or consolidate judge (Taḥkim judge). In this article, we seek to answer the question of whether women can judge due to jurisprudential arguments or not? For this purpose, among the three theories: 1) the condition of masculinity in the absolute judge, whether appointed or consolidated, 2) the absence of the condition of masculinity in any type of judge, whether appointed or consolidated, and 3) the condition of masculinity only in the appointed judge and the non-conditionality. While criticizing the first theory, the second theory has been strengthened and the third theory has been considered in line with the current laws of the country and developments in the international arena. Acceptance of women's arbitration licenses, firstly, due to lack of publicity or application that implies the condition of all the conditions of a judge appointed in the judge; Secondly, the lack of character of "Rajul/ Man" in the related narrations and the lack of meaning of the title; Acceptance of women's guardianship in matters beyond arbitration such as guardianship (such as mandatory arbitration) or will (such as optional arbitration).

Key words: women; arbitration; Taḥkim judge; masculinity; woman arbitration

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