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主 論 文 の 要 旨

論文題目 **ENSURING GENDER DIVERSITY IN THE MARKET FOR ARBITRATORS:
ANALYSIS OF THE MALE MONOPOLY IN ARBITRATIONS IN THE EAST ASIAN MILIEU**

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論 文 内 容 の 要 旨

The number of female arbitral appointments in East Asian arbitral institutions is significantly low. Between 2018 and 2021 (March) the Japanese Commercial Arbitration Association had a total of 40 appointments of arbitrators. Among them, only three were women. The female arbitral appointments in Hong Kong International Arbitration Centre from 2016 to 2020 ranged from 13.1% to 22.8%. International female arbitrators' appointments in Korean Commercial Arbitration Board fell from 15.3% to 12.9% from 2019 to 2020. Many scholars have analyzed the reasons for the lack of gender diversity in arbitration from Western perspectives. But still, there is almost no comprehensive research focused on East Asia.

This dissertation explores the reasons for female underrepresentation in East Asian arbitration through different conceptual frameworks. It studies various potential contributing factors behind the fact that parties and counsels, as well as co-arbitrators, choose fewer women arbitrators. The dissertation analyzes the lack of female arbitral appointments in East Asian arbitral institutions from legal, social psychological, and behavioral economic viewpoints.

Moreover, it examines arbitration practices historically from their inception in the East Asian region, including developments that encouraged male decision-making, as well as global movements and soft law initiatives for empowering women in arbitration that may have had success in Europe or the US, but lack effectiveness when applied to East Asian arbitration practice. The thesis also investigates what women arbitrators go through to advance and secure their careers in arbitration, and the difficulties they experience in seeking to become successful arbitrators from the viewpoint of women's studies (motherhood and sexism). Furthermore, it gives a social-psychological explanation of why it is hard for women to advance their careers in arbitration. Based on these interdisciplinary studies, this thesis argues that reasons for female underrepresentation in arbitral tribunals in East Asia are not limited by merely interpreting as implicit and explicit gender bias and sexism. When parties, counsels, and co-arbitrators select their arbitrators, they often tend to choose experienced ones due to the Expected Utility Theory and "Market for Lemons" Theory and risk aversion. However, on account of the lack of experienced female arbitrators with prior appointment histories, the appointers often end up choosing male arbitrators.

Furthermore, the dissertation also suggests that there are three primary reasons for the insufficient number of female arbitrators listed on the panels of East Asian arbitral institutions: sexism, implicit and cognitive biases in performance evaluations at law firms; motherhood-related difficulties; impression management (IM) related difficulties for young female arbitration lawyers in creating an efficient, professional IM style and entering into the male-dominated arbitration club as a member from a minority group.

The everyday struggles women commonly face in their career path in arbitration could be divided into two: the obstacles encountered before entering the market for arbitrators, and the difficulties faced after entering the market. The first group of challenges women experience are often related to women's career advancement at their law firms and finding their feet in the law firms or institutions as successful lawyers. Meanwhile, the second group of struggles women confront are more related to their being recognized in the market for arbitrators as female arbitrators.

Concerning the first group of obstacles, the common challenges before entering the market are sexism and implicit and explicit gender bias and

cognitive bias in performance evaluation at law firms, and motherhood-related challenges related to suiting the “anywhere anytime” models at law firms. As for the second group, the everyday struggles a woman faces after entering the market as a recognized arbitration lawyer or an arbitrator are difficulties related to getting along with the arbitration club members consisting primarily of men, making connections, and effective self-presentation in the masculine arbitration communities.

Based on these transdisciplinary studies and results of total of twenty-two in-depth interviews with arbitrators and arbitration practitioners, this dissertation suggests three conceivably effective remedies for female underrepresentation in arbitral tribunals in East Asia. First, to ensure gender diversity, East Asian arbitral institutions need to develop their own soft laws, not relying solely on globally recognized initiatives such as Arbitral Women. Second, to ensure gender diversity in arbitral appointments, East Asian arbitral institutions need to increase the number of small and low-value cases. Third, the arbitration communities in East Asia need to focus more on increasing the number of female arbitrators and arbitration practitioners rather than concentrating on the appointers and asking them to appoint more women.

The ERA Pledge, Arbitral Women, Arbitrator Intelligence, and other globally renowned soft law mechanisms are not suitable for application in East Asia. These soft law initiators and advocates often lack members from East Asia and tend to overlook the significance of male engagement in ensuring gender diversity. They tend to empower the radical feminist approach, which excludes men from the mission of empowering women in arbitration. Thus, this thesis suggests initiating similar projects to ensure gender diversity in arbitration in East Asia, focusing only on empowering women in arbitration practice in the region but also encouraging male engagement in the mission.

The dissertation suggests another effective way to empower female participation in arbitration is to increase the number of small and low-value disputes settled by arbitration. There is a conceivable inverse correlation between the average amount of disputes and the party-made female arbitral appointments. Based on the statistical data on the amount of claims and party-made female arbitral appointments at the arbitral institutions in East Asia, as well as the risk aversion concept from behavioral economics, the dissertation argues that the party-made female arbitral appointments and the average amount of the claim at arbitral institutions are likely to have inverse correlations

with each other. Thus, the institutions' designing policies for increasing the number of small disputes may play a significant role in increasing party-made female arbitral appointments.

The thesis also recommends that the arbitration communities in East Asia change their approach to resolving the problem from focusing on the appointers to giving more attention to increasing the number of regional female arbitrators and arbitration practitioners. Asking parties and counsels, and co-arbitrators to appoint more women is not a sufficiently compelling way to deal with the problem; instead, working on increasing the number of women who enter the market for arbitrators and promoting female arbitrators and arbitration practitioners to be more visible and recognizable among arbitration communities is perhaps a more effective approach.