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Doctoral Dissertation:

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

Student ID Number: 432004080

Name of the Student: MUNKHTUVSHIN Munkhnaran

Name of the Program: LL.D (Comparative Law) Program in Law and Political Science

Academic Supervisor: COLOMBO Giorgio Fabio

Sub-academic Supervisors: MURAKAMI Masako, YOKOMIZO Dai

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Abstract

The number of female 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 the Hong Kong International Arbitration Centre from 2016 to 2020 ranged from 13.1% to 22.8%. International female arbitrators' appointments in the 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, this paper 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. This thesis also investigates what women arbitrators go through to advance and secure their careers, and the difficulties they experience in seeking to become successful arbitrators from the viewpoint of women's studies (motherhood and sexism). Furthermore, the author 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 the reasons for female underrepresentation in arbitral tribunals in East Asia are not limited by merely 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, this 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: 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 paths in arbitration can 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 becoming successful lawyers. Meanwhile, the second group of struggles women confront are more related to finding their feet in the market for arbitrators as female arbitrators.

Concerning the first group of obstacles, the common challenges before entering the market are sexism, 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 related to getting along with the arbitration members, which consist primarily of men, making connections, and effective self-presentation in these masculine arbitration communities.

Based on these transdisciplinary studies and results of a 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 and projects, 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 and activities 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 not only on empowering women in arbitration practice in the region, but also encouraging male engagement in the mission.

This 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, this 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.

This thesis also recommends that the arbitration communities in East Asia change their approach to resolving this 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.

List of Abbreviations

AI	Arbitrator Intelligence
AW	Arbitral Women
ERA Pledge	Equal Representation in Arbitration Pledge
EUT	Expected Utility Theory
HKIAC	Hong Kong International Arbitration Centre
IAT	The Harvard Implicit Association Test
ICC	International Chamber of Commerce
ICCA	International Council for Commercial Arbitration
IM Style	Impression Management Style
JCAA	Japanese Commercial Arbitration Association
KCAB	Korean Commercial Arbitration Board
LCIA	London Court of International Arbitration
MIAC	Mongolian International Arbitration Center
UNCITRAL	United Nations Commission on International Trade Law

Table of Contents

Chapter I: Introduction to the Lack of Gender Diversity in East Asian Arbitral Institutions

Since the 1990s, commercial arbitration has increasingly become a popular dispute resolution method in East Asia. Most of the arbitral institutions in the region receive hundreds of disputes each year.[1] Nonetheless, in East Asia the female representation rate in the arbitral tribunals is meager, as female arbitrators are rarely selected. Meanwhile, gender diversity is not merely a gender equality and equal participation issue in arbitration, but also a commercial issue. Arbitral institutions receive disputes involving various parties from different backgrounds, ethnicities and genders. To ensure effective commercial promotion of arbitration and meet the diverse parties' needs, the arbitration community should ensure gender diversity in arbitral appointments.

However, apart from institutional appointments, other appointers such as parties, counsels, and co-arbitrators, do not often select female arbitrators in their disputes. This chapter discusses the gender diversity situation in four arbitral institutions from four jurisdictions in East Asia: the Hong Kong International Arbitration Centre, or HKIAC; the Japanese Commercial Arbitration Association, or JCAA; the Korean Commercial Arbitration Board, or KCAB; and the Mongolian International Arbitration Center, or MIAC. First, this chapter examines the lack of gender diversity in arbitral appointments in these four institutions. Then the chapter discusses how the low number of female arbitration practitioners and the difficulties of selecting arbitrators relate to the problem.

[1] See HKIAC, Annual Reports of 2009 to 2019, HKIAC official website (July 18, 2021) https://www.hkiac.org/about-us/annual-report; see KCAB, Annual Report, 2018, KCAB official website (July 20, 2021) http://www.kcabinternational.or.kr/main.do

1.1 Lack of women's representation in arbitral appointments in East Asia

Since the growth of arbitration in East Asia, commercial arbitration has been a male-dominated area where not only the arbitrators, but also most of the participants are males.[2] When arbitration first grew in the region, almost all of the frequently appointed famous arbitrators were males. As an illustration, in Japan, when arbitration was first actively promoted in the late 1990s and the early 2000s, the number of cases was low, so most eligible arbitrators could not get appointed. Yet arbitrator Masato Dogauchi was appointed five times between 1999 and 2001, and arbitrator Kazuo Ihara was similarly appointed five times between 1998 and 2001. In that same period, Sumio Iijima was appointed four times and Toshiaki Hasegawa was appointed three times. These repeatedly appointed Japanese arbitrators were all men.

At the present time, arbitral appointments are still dominated by men.[3] In East Asia, the lack of gender diversity in arbitral appointments persists. Between 2018 and 2021 (March), the Japanese Commercial Arbitration Association, or JCAA, had a total of 40 appointments of arbitrators. Among them, only three were women.[4] In 2020, only 22.8% of the overall appointments in the Hong Kong International Arbitration Center, or HKIAC, were female arbitrators.[5] However, perhaps because of its late entry into international commercial arbitration, the East Asian arbitration community has only recently begun to pay attention to the problem.

There is now extensive literature regarding the lack of gender diversity in arbitration in Western countries, but in East Asia there has been very little research on the problem. Furthermore, the few scholarly discussions of the issue in the East Asian context mostly remain focused on the surface, merely identifying the problem; hardly any research focuses on the reasons and roots of the issue. With regard to remedying the situation, activism in arbitration mainly consists of young female lawyers and feminists urging parties and counsels to choose more women arbitrators, which has so far been ineffective.

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[2] As an illustration, in Japan, when arbitration was first promoted actively in the late 1990s and the early 2000s, all the arbitrators selected in cases were male; see the JCAA, "Arbitrator and Mediator Appointment Record", June 2021, see the full record at JCAA official website (July 19, 2021) https://www.jcaa.or.jp/en/common/pdf/arbitration/Arbitrator_and_Mediator_appointment_record.pdf?210603

[3] During an interview with an administrative secretary at the JCAA, Mr. Shinji Ogawa stated that "none of the parties at JCAA chose women arbitrators between 2016 and 2020." Interviewee: Administrative officer of JCAA, Shinji Ogawa, "Personal Interview on the phone with administrative officer of JCAA," Interviewer: Munkhtuvshin Munkhnaran, July 16, 2021.

[4] The statistics are provided by the Administrative office of JCAA to the author (July 16, 2021)

[5] HKIAC, Annual Report, 2020, (July 15, 2021) https://www.hkiac.org/about-us/statistics

This dissertation chose four particular jurisdictions in East Asia: Hong Kong, Japan, Korea, and Mongolia. There are three main reasons for focusing on these specific jurisdictions. First, regardless of being at different levels of promotion of arbitration and development of arbitration legislations, these four jurisdictions lack gender diversity in arbitral appointments and in the total number of female arbitrators listed on the panels. Second, these jurisdictions have similar arbitration cultures dating back to the 17th and 19th centuries. The informal form of arbitration in almost all of the jurisdictions was incepted similarly during a comparable period. In Hong Kong, the first informal arbitrators were British officers during the British colonial period in the 19th century.[6] In Mongolia, the first informal arbitrators were Qing magistrates during the Qing Rule between 1635 and 1911.[7] In Korea, the first arbitrators were the Confucian elite intellectuals during the Joseon Dynasty between 1392 and 1910.[8]

Third, the dissertation included Mongolia because, despite the country's uncompetitive economic growth and low number of international business transactions compared to Hong Kong, Japan, and Korea, the overall index of women's economic participation and opportunity in Mongolia is way higher than the other developed nations of this study. In the *Global Gender Gap Report* of 2022 issued by the World Economic Forum (WEF), regarding the subindex of women's economic participation and opportunity gap, among 146 countries, Mongolia listed 26; while Korea and Japan listed 115 and 121.[9] Therefore the country may provide an interesting term of comparison juxtaposing economic development and gender equality as not necessarily correlated factors.

Moreover, the dissertation excluded China from the study for three reasons. First, China has a different political system. Unlike Japan, Korea, and Mongolia, China is under a single-party authoritarian political system[10] which may have created a different arbitration culture and impacted the legislation. Second, Hong Kong, Japan, Korea, and Mongolia adopted the UNCITRAL Model Law on International Commercial

[6] See Chapter II, Sub-Section 2.2.1, History of Arbitration in Hong Kong
[7] See Chapter II, Sub-Section 2.2.4, History of Arbitration in Mongolia
[8] See Chapter II, Sub-Section 2.2.3, History of Arbitration in Korea
[9] World Economic Forum, *Global Gender Gap Report*, 2022, see (April 27, 2022) https://www3.weforum.org/docs/WEF_GGGR_2022.pdf, 15.
[10] Barbara Geddes, Joseph Wright, and Erica Frantz, *How Dictatorships Work*, (Cambridge University Press, 2018), 141.

Arbitration. However, China is not a UNCITRAL Model Law Country;[11] therefore, due to China's different political and legal situation, this research excluded China from its investigation. Finally, Hong Kong, which is a special administrative region of China, is an international avenue for the promotion of arbitration in China, and most of the international arbitration cases in China have Hong Kong as the place of arbitration.

Hence, this chapter examines the lack of female representation in arbitral appointments in the four targeted East Asian jurisdictions: Hong Kong, Japan, Korea, and Mongolia. Each area has its unique conditions concerning gender diversity among its arbitration population. To understand the exact situation in the region, this chapter focuses on the four institutions' arbitral appointments and the genders of arbitrators between 2016 and 2020. This part of Chapter I stresses the problem and investigates the issue in each arbitral institution from four jurisdictions.

[11] see UNCITRAL, "Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006" (May 1, 2023) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status

1.1.1 Hong Kong International Arbitration Centre

Hong Kong is one of the most prominent arbitral seats in East Asia. "the HKIAC was established in 1985 by a group of leading business people and professionals to meet the growing need for dispute resolution services in Asia."[12] Now the institution receives and resolves hundreds of disputes each year, remaining the most well-known arbitration center in Hong Kong. However, regardless of its success in dispute resolution, the HKIAC fails to ensure gender diversity among arbitrator appointments.

Table 1. HKIAC, Number of female and male arbitrator appointments (institutional) 2016 to 2020

2016		2017		2018		2019		2020	
Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
119	18	81	16	103	22	97	25	115	34

Sources: HKIAC, "Annual reports between 2016 to 2020"; see HKIAC official website, (July 15, 2021) https://www.hkiac.org/about-us/annual-report (for 2016-2019)

https://www.hkiac.org/about-us/statistics (for 2020)

The above table indicates the overall number of male and female institutional appointments at the HKIAC between 2016 and 2020, showing a slight increase in women arbitrator appointments. The female arbitral appointments in the institution from 2016 to 2020 ranged from 13.1% to 22.8% in percentage terms. Nevertheless, the female representation in the arbitral tribunals at the HKIAC is still low.

In the HKIAC, most of the appointments are made by the parties engaging in arbitration, as that is common in international arbitration proceedings.[13] However, both institutional and party arbitral

[12] See HKIAC, "At a glance", History, see HKIAC official website (July 18, 2021) https://www.hkiac.org/about-us

[13] See HKIAC, Annual Reports of 2009 to 2019, see HKIAC official website (July 18, 2021) https://www.hkiac.org/about-us/annual-report

appointments in the HKIAC lack gender diversity, though the institution's co-arbitrator appointments were more gender diverse than individual institutional and party arbitral appointments. In 2020, 11.1% (11 arbitrators) of the 99 party appointments were female, and 22.8% (34 arbitrators) of the 149 institutional appointments, including emergency arbitrators, were women. Meanwhile, 33.3% (12 arbitrators) of 36 co-arbitrator appointments in the same year were female arbitrators.[14]

However, the institution seems focused on the diversity of newcomers and appoints arbitrators who have had no previous appointment records more than they appoint women arbitrators. Among 149 HKIAC institutional appointments, 49.7% (74 arbitrators) were arbitrators who had not been previously appointed by the HKIAC over the last three years.[15] Nonetheless, these appointments of newcomers and young arbitrators still lacked gender diversity. As a Korean arbitrator who has experience working as an arbitrator in several international cases in Hong Kong pointed out during an in-depth interview conducted for this study, the institutions may prefer to appoint young male arbitrators without experience rather than young female arbitrators without experience.[16]

[14] HKIAC, 2020 Statistics, see the HKIAC official website (July 19, 2021) https://www.hkiac.org/about-us/statistics
[15] Ibid
[16] Interviewee: Korean female arbitrator X, "Interview with Arbitrator X," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, November 30, 2021, For the confidentiality of the interviewee, the full name is not disclosed.

1.1.2 Japanese Commercial Arbitration Association

JCAA, the Japanese Commercial Arbitration Association, is a leading arbitral institution in Japan. For more than 70 years, the institution has continuously provided domestic and international arbitration services. However, compared to the other three institutions, HKIAC, KCAB, and MIAC, the institution's caseloads are not significant. According to JCAA official statistics, between 2016 and 2020, the JCAA received a minimum of nine and a maximum of just 18 cases each year.[17] Thus, the institution's overall appointments are less than the other three institutions in the research due to fewer caseloads. Between 2016 and 2020, the overall number of arbitrator appointments in the institution each year was not more than 46. This lower number of appointments may especially affect the female candidates. However, female representation in the JCAA arbitral tribunals is not just less than in other institutions; it is at rock-bottom.

Table 2. JCAA, Number of female and male arbitrator appointments 2016 to 2020

2016		2017		2018		2019		2020	
Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
46	0	28	2	8	2	12	0	25	1

Source: Statistics provided by the administrative office of the JCAA, July 16, 2021; for the institution's overall appointed arbitrators' statistics, see (July 16, 2021) https://www.jcaa.or.jp/en/arbitration/statistics.html.

The table above shows the total number of female and male arbitrator appointments in the JCAA between 2016 and 2020, indicating female arbitral appointments ranging from zero to two per year. The administrative secretary at the JCAA, Mr. Shinji Ogawa, states that "All these female arbitrator appointments are institutional; none of the parties at the JCAA chose women arbitrators in these five years."[18] Nevertheless,

[17] JCAA, Statistics, see JCAA official website (July 19, 2021) https://www.jcaa.or.jp/en/arbitration/statistics.html
[18] Interviewee: Administrative officer of the JCAA, Shinji Ogawa, "Personal Interview on the phone with administrative officer of JCAA," Interviewer: Munkhnaran Munkhtuvshin, July 16, 2021.

the data indicates that it was not only the parties that chose male decision-makers; co-arbitrators also only chose male arbitrators at the JCAA over the five-year period.

These tendencies of parties and co-arbitrators could have several causes, such as gender bias or implicit bias, or the parties' lack of broad information on potentially capable arbitrators to handle their cases. Still, perhaps the monopoly of a few famous arbitrators in Japan may be the most significant reason. According to the institution's "Arbitrator and Mediator Appointment Record," as of June 3, 2021, the same few arbitrators were appointed several times, usually 10 to 14 times, while the majority of the JCAA arbitrators who had been nominated in the cases were selected one or three times at the most.[19] Moreover, most of these few well-recognized players at the JCAA are over seventy years old, and the youngest are in their sixties.

A well-known maxim in the international arbitration community, "Pale, Male, and Stale Arbitration,"[20] could be applied to the Japanese arbitration community, of course excluding the "pale" part. Conceivably, due to the JCAA's lower number of cases and arbitral appointments, the few well-known arbitrators may have monopolized the small market for the JCAA arbitrators. One may consequently wonder why the parties and counsels prefer to choose from "The Grand Old Men" [21] and not from women arbitrators with similar abilities and capital that the parties and counsels cherish.

At this point, the one reliable explanation for this tendency is gender bias. As Obeid, one of the prominent female arbitrators in the Arabian world, wrote in her 2008 article "*Women in Arbitration*," "appointments are largely made by men who, although paying lip service to encourage women, are still reluctant to do so when large sums of money are involved. [22] She stressed the gender bias in counsels who

[19] JCAA, "Arbitrator and Mediator Appointment Record", June 2021, see the full record at the JCAA official website (July 19, 2021) https://www.jcaa.or.jp/en/common/pdf/arbitration/Arbitrator_and_Mediator_appointment_record.pdf?210603

[20] The Maxim is first mentioned by scholar Michael D. Goldhaber, in his article "Madame La Presidente: A Woman Who Sits as President of a Major Arbitral Tribunal is a Rare Creature. Why?" Transnational Dispute Management journal, no. 1 (2004); the maxim is widely used in international arbitration to refer to the male monopoly in the profession.

[21] Yves Dezalay, and Bryant G. Garth called the popular male and elder arbitrators "The Grand Old Men" for the first time in their book: Yves Dezalay, and Bryant G. Garth, *Dealing in Virtue*, (the University of Chicago Press, 1996)

[22] Nayla Comair-Obeid, "Women in Arbitration," Journal of World Investment and Trade 9, no. 1 (February 2008): 87-90, 89

believe entrusting the management of cases to the male arbitrators might be more reliable than depending on women arbitrators. Whether implicit or explicit, these gender biases may apply more strongly when the market is small, and the few arbitrators acclaimed to be good are all men (gender bias will be detailed in Chapter II).

1.1.3 Korean Commercial Arbitration Board

KCAB, the Korean Commercial Arbitration Board, is the leading arbitral institution in South Korea. As the institution describes itself, "KCAB, founded in 1966 … is the sole arbitral institution in Korea that is statutorily authorized to settle disputes under the Korean Arbitration Act."[23] In 2018, the KCAB launched KCAB International as an independent international division within the KCAB to handle international disputes effectively.[24] Domestically, the institution has a long history and experience in domestic cases. "Over the past 50 years, the Korean Commercial Arbitration Board has handled about 7,000 arbitration cases and 15,000 conciliation cases, marking itself as a leading alternative dispute resolution center." [25] Compared to the JCAA, KCAB receives more cases and appoints many arbitrators each year.

Table 3. KCAB International, Caseload between 2016 and 2020

2016		2017		2018		2019		2020	
Domestic	International	Domestic	International	Domestic	International	Domestic	International	Domestic	International
319	62	307	78	331	62	373	70	336	69

Sources: KCAB, "Annual reports between 2016 to 2020"; see KCAB official website, (July 20, 2021)

[23] KCAB, "About KCAB International," see KCAB official website (July 20, 2021) http://www.kcabinternational.or.kr/main.do

[24] KCAB, Annual Report, 2018, see the report online at the KCAB official website (July 20, 2021) http://www.kcabinternational.or.kr/main.do

[25] KCAB, "About KCAB International," see KCAB official website (July 20, 2021) http://www.kcabinternational.or.kr/main.do

http://www.kcabinternational.or.kr/main.do

The table above indicates the annual caseloads of the KCAB between 2016 and 2020. The table shows the institution's large caseload in both international and national disputes and suggests a significant amount of arbitrator appointments in order to attend these cases. Given the considerable number of cases at the arbitral institution, one might assume that the number of female arbitrator appointments would be relatively high. However, female representation at the KCAB arbitral tribunals is still low.

Table 4. KCAB International, Number of female and male international arbitrator appointments 2019 to 2020

2016		2017		2018		2019		2020	
Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
Not available to the public		Not available to the public		Not available to the public		44	8	54	8

Sources: KCAB, "Annual reports between 2016 to 2020"; see KCAB official website, (July 15, 2021)

http://www.kcabinternational.or.kr/main.do

The table above indicates the total number of female and male international arbitrator appointments in the KCAB between 2019 and 2020. Even though the institution has made its caseload public through annual reports, the KCAB did not disclose its gender diversity in either international arbitral or domestic arbitration appointments between 2016 and 2018. Some attempt being made to address gender balance is reflected in data appearing in the following two years. However, the table shows that the institution had eight female arbitrator appointments each year for both 2019 and 2020 despite a significant increase in the overall number of appointments. This means that international female arbitrators' appointments fell from 15.3% to 12.9% from 2019 to 2020. Despite the KCAB's establishment of a particular working group for diversity

among arbitrators, "The Committee on Diversity and Inclusion," [26] the institution still lacks gender diversity in arbitral appointments.

This lack of female representation at the arbitral tribunals in KCAB may be due to several reasons. The lower number of overall female arbitrators in the KCAB Panel is conceivably one of the fundamental reasons for the lack of gender diversity among arbitrator appointments at the institution. According to the center's Annual Report of 2020, of the 517 arbitrators on the 2020 KCAB Panel, 78 were female.[27] In other words, only 15% of the overall listed arbitrators at the institution were women as of 2020. These fewer female arbitrators listed on the panel may have impacted the lack of female arbitral appointments at the KCAB. Suffice to say, the pool of female arbitrators at the institution lacks diversity as it stands.

[26] KCAB, "Committee on Diversity and Inclusion," see KCAB official website (July 20, 2021) http://www.kcabinternational.or.kr/main.do

[27] KCAB, Annual Report, 2020, see the report online at the KCAB official website (July 20, 2021) http://www.kcabinternational.or.kr/main.do

1.1.4 Mongolian International Arbitration Center

MIAC, the Mongolian International Arbitration Center, founded in 1960, is the leading arbitral institution in Mongolia. "Even though Mongolia is a developing country with only three million people, its arbitration system is rapidly improving." [28] The MIAC notes that between 70 to 100 disputes are filed with the institution each year.[29] The ratio of female representation at the arbitral tribunals in MIAC is the highest among the four arbitral institutions in this. This fact is despite the institution's lack of either a specific gender diversity policy or special working teams and committees for ensuring gender diversity among arbitrators.

Table 5. MIAC, Number of female and male arbitrator appointments 2016 to 2020

2016		2017		2018		2019		2020	
Male	Female	Male	Female	Male	Female	Male	Female	Male	Female
135	38	145	53	165	49	140	55	131	82

Sources: Statistics provided by the Administrative Office of MIAC, April 11, 2023; for the institution's overall arbitrators' information, see (July 16, 2021) http://www.arbitr.mn/.

The table above shows the total number and ratio of female and male arbitrator appointments in MIAC between 2016 and 2020. The table indicates that the MIAC percentage of female arbitrator appointments ranged between 21.9% and 38.4% per year for that five-year period. While the proportion of women arbitrator appointments at the institution is the highest among the four institutions studied here, MIAC can nevertheless still be considered to lack gender diversity in arbitrator appointments given its average of 27.6% female representation in the arbitral tribunals.

[28] Munkhnaran Munkhtuvshin, "Empowering Arbitration in Mongolia: A Study on the Introduction of Interim Measures in Arbitration", (Master's thesis, Nagoya University, Graduate School of Law, June 2020), 5
[29] Ibid; also MIAC, Statistics, 2015-2019, as provided by MIAC administrative office, January 08, 2020

One may wonder why the lowest ranking of the four institutions had the highest female representation in arbitral appointments. One of the vital reasons is perhaps the considerable number of listed female arbitrators in the MIAC Panel compared to the other institutions' panels. The MIAC Panel has 64 national and 28 international arbitrators; 23 local arbitrators and seven international arbitrators are women.[30] In percentage terms, 32.6% of the entire arbitrator population on the MIAC Panel are female arbitrators. The number of listed female arbitrators in the MIAC is high in the region. Although this female representation at the MIAC Panel is still not sufficiently high, this comparatively high number of female arbitrators on the MIAC Panel may have contributed significantly to the institution recording the highest number of female arbitrator appointments among these four arbitral institutions.

[30] MIAC, "The Panel of Arbitrators", see the panel online from the MIAC official website (July 20, 2021) http://www.arbitr.mn/index.php/arbitrators-menu/2019-11-18-06-05-47

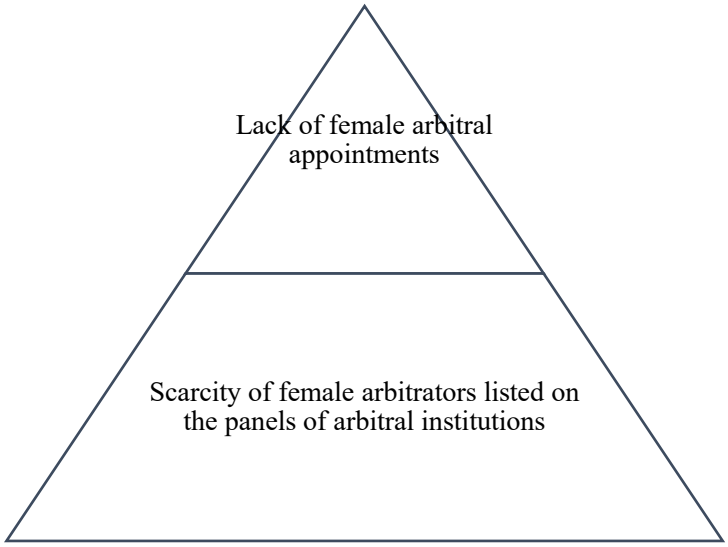
1.2 The impacting factors

This section will examine issues underlying the lack of female arbitral appointments in East Asia that are often overlooked in discussions related to the lack of gender diversity in arbitration both in East Asia and the West. This part will explain two contributing factors in separate parts: the pyramid of female underrepresentation in arbitration, and the complicated nature of appointments. It will elaborate on the lack of female arbitration practitioners, and the significance of the process of selecting arbitrators and their connection to the problem, so that the reader can follow the main discussions in the following chapters.

1.2.1 The pyramid of female underrepresentation in arbitration

Scholars and feminist activists in the arbitration community often overlook the roots of female underrepresentation in arbitral appointments. The roots of the lack of gender diversity in arbitral appointments are conceivably not just related to implicit or explicit gender bias. There is another issue behind the problem: an inadequate number of available female arbitrators listed on the panels. Nonetheless, in almost all of the scholarly discussions regarding gender diversity in arbitration, often only the lack of female arbitral appointments is raised. In contrast, the hidden factor, the low number of female arbitrators recruited by the arbitral institutions and listed on their panels, is usually overlooked. Nevertheless, the lower number of female arbitrators probably affects the number of female arbitral appointments.

Figure 1. The Pyramid of Female Underrepresentation in the Market for Arbitrators



The figure above visualizes the problem of female underrepresentation in the market for arbitrators. The top of the pyramid (lack of female arbitral appointments) often catches the attention, while the bottom (lack of female arbitrators listed on the panels) is overlooked despite being more extensive than the top. The fewer women arbitrators listed on the panels most likely limit the number of female arbitral appointments. According to the Korean KCAB Annual Report of 2020, of the 517 arbitrators on their 2020 panel, 78 were female arbitrators, meaning 15%,[31] while the JCAA panel has 413 arbitrators, of whom only 55 (13.3%) are women.[32] This lower number of female arbitrators on the panels (from which parties and counsels select their arbitrators) must surely have impacted the lack of female arbitral appointments as well.

As examined in the previous section, among the four arbitral institutions, Mongolia's MIAC has the highest female representation rate on its arbitral tribunals. One of the key reasons for this is probably the considerable number of listed female arbitrators on their panel. The MIAC Panel has 64 national and 28 international arbitrators, and of these 23 national arbitrators and 7 international arbitrators are women.[33] This means 32.6% of the total arbitrator population on the MIAC panel are female arbitrators, the highest in the East Asia region. This too suggests that one reason for the lack of female representation on arbitral tribunals is probably the lower numbers of female arbitrators on institutional panels.

[31] KCAB, Annual Report, 2020, see the report online at the KCAB official website (July 20, 2021) http://www.kcabinternational.or.kr/main.do
[32] Statistics provided by administrative office of JCAA, via email from the administrative officer Shinji Ogawa at JCAA, (July 26, 2021)
[33] MIAC, "The Panel of Arbitrators", see the panel online from the MIAC official website (July 20, 2021) http://www.arbitr.mn/index.php/arbitrators-menu/2019-11-18-06-05-47

The problem of insufficient female arbitral appointments and the insufficient number of available women arbitrators listed on the panels at the arbitral institutions together inform the issue of female underrepresentation among arbitrators both at the recruitment level and the appointment level. Nevertheless, most of the scholarly discussions, even among feminist activists in the arbitration community, have been primarily directed toward the top of the pyramid, the lack of gender diversity in arbitral appointments, while the issue of fewer female entries into the arbitration community as arbitrators lacks scholarly attention and research.

1.2.2 No written recipe for selecting arbitrators

The Model Law and many other rules of arbitral institutions provide thirty days for parties and co-arbitrators to choose an arbitrator or presiding arbitrator.[34] The new clerk at the administrative office of an arbitral institution or a young, fresh arbitration practitioner may wonder why most of the arbitration laws and rules often provide parties with such a long time just for choosing one person. Giving a month to appoint an arbitrator offers parties and co-arbitrators sufficient time to select an arbitrator or presiding arbitrator. It is one of the critical decisions that parties make under party autonomy, and that co-arbitrators also make, for the presiding of the case proceedings.

Born (2009) highlighted the importance and complexity of the process of selecting arbitrators in his book *"International Commercial Arbitration" (Volume I*) as follows:

> The process of selecting arbitrators is both essential and potentially time-consuming. It may require substantial effort and attention, for both co-arbitrators, sole or presiding arbitrators. Indeed, the selection of the arbitrators is among the most important decisions that a party will make in an arbitration and it must be approached with diligence.[35]

Thus, choosing an arbitrator is a complicated and, at the same time, crucial process since appointing an arbitrator is not about selecting someone so that the case can be decided, but about choosing a decision-maker who is likely to affect the outcome of the dispute. Moreover, in the arbitration community, almost every arbitrator has excellent potential and (put an adjective here) skills, and has similar educational and professional backgrounds, which makes the process of selecting arbitrators even more complicated.

[34] See UNCITRAL, Model Law on International Commercial Arbitration, (1985, amended in 2006) Article 11 paragraph (3) (a).
[35] Gary B. Born, *International Commercial Arbitration*, Volume I, (Kluwer Law International, 2009), 1387.

Since a pool of arbitrators may be full of similarly qualified and talented candidates, certain arbitrators may be distinguished for appointment because their distinctiveness catches the parties' or co-arbitrators' attention. This appeal usually takes the form of a good reputation, personal image, and connections. Dezalay and Garth analyzed the career path and capital of famous arbitrators who entered the field during the growth of arbitration in the West in the 1970s and 1980s in their book *"Dealing in Virtue"* (1996) and noted:

> The careers of these notable individuals [famous arbitrators in the West during the 1970s and 1980s such as Professor Pierre Lalive and Judge Gunner Lagergren] recall accounts of the medieval church. The son of a nobleman could become a bishop of the church simply because of family background and social prominence. Others would shave their heads, take vows of celibacy, devote everything to the church, and yet have no chance to rise to eminence, such as bishop.[36]

Today in the arbitration world, practitioners who devote everything to arbitration, write scholarly articles, attend many conferences, and read and study like a devoted member of the Christian clergy of the past can perhaps qualify as arbitrators and eventually receive appointments. Nevertheless, the symbolic capital of "recognized power," [37] connections, and social prominence is necessary at some level to be recognized in the field and get appointments in arbitration disputes. For parties, seeing the arbitrator's distinctive recognized power and connections is significant, much as the Christian clergy were more likely to consider the son of a nobleman to be a preferred candidate for the office of bishop. However, most of the female arbitrators lack this symbolic capital, and they lack former appointment experience or strong connections who can recommend them to counsels and parties.

New-generation scholars in the field also pointed out this symbolic capital and connection problem and stressed their opposition to the current culture that the arbitrator's appointments depend on their abilities to enter the information networks within the arbitration community. As an illustration, D'Silva (2014) stresses, "arbitrator appointment in international commercial arbitration occurs via transnational networks of a community comprising relationships of interpersonal trust between individuals, who are dealing in power over subjective arbitrator information." [38] Furthermore, she suggests generating new multiple

[36] Yves Dezalay, and Bryant G. Garth, *Dealing in Virtue*, (The University of Chicago Press, 1996), 23
[37] *Ibid,* 22-23
[38] Magdalene D'Silva, "Dealing in Power: Gatekeepers in Arbitrator Appointment in International Commercial Arbitration," Journal of International Dispute Settlement 5, no. 3 (2014): 605-634

information networks through arbitral institutions, law firms, and law schools as a remedy.[39] Schultz and Kovacs (2012) urge minority and young arbitrators to develop their management skills to dodge the problems of symbolic capital and dependency on collegial connections, and emphasize that rather than being a technocrat, strong management abilities play a significant role in the new generation of arbitrators because their research results suggest that arbitrators are not merely in the traditional role of decision-makers; they are also managers.[40]

Moreover, appointing an arbitrator is not just about numbers, gender, color, or being a manager but also about confidence. When parties select an arbitrator, they choose the one who gives them the most confidence in winning the case. Indeed, parties look at the arbitrator's educational and professional background, abilities, and social capital. But, based on all the information they obtain, parties choose an arbitrator who makes them confident they may win the case.

Nevertheless, there is no theory of how that confidence is established; one counsel may consider a certain arbitrator as perfect for their case, while that arbitrator may be an unsuitable choice in the eyes of another lawyer or for another case. Thus, it is also difficult to say that distinctive recognized power and connections are everything in arbitration. The process of selecting arbitrators is a complicated procedure. There is no written rules or proven theory on how counsels and parties should choose arbitrators.

[39] *Ibid*
[40] Thomas Schultz, and Robert Kovacs, "The Rise of a Third Generation of Arbitrators? Fifteen Years after Dezalay and Garth," Arbitration International, Vol. 28, No. 2 (2012): 161-172

1.3 Lack of gender diversity in arbitration as a legal problem

This section will explain why the lack of female arbitral appointments in East Asia is a legal problem, and it will also highlight the benefits of ensuring gender diversity in arbitration. First, this part will explain how the lack of gender diversity in arbitration and party autonomy relates. Second, it elaborates on the lack of gender diversity in arbitration and its connection to the co-arbitrators' autonomy in independently choosing their presiding arbitrators. Third, this section argues how ensuring gender diversity in arbitral tribunals strengthens gender-sensitive arbitration procedure. Lastly, this part highlights the possible impact of gender diversity in arbitral tribunals on the quality of the decision-making process.

1.3.1 Lack of gender diversity in arbitration and its connection to party autonomy

One might argue that female underrepresentation in arbitration in East Asia is not a legal problem, and it does not impact the arbitration laws and procedures. However, the lack of gender diversity in arbitration is a problem with legal dimensions, including the violation of party autonomy. Greenberg et al. (2011) emphasize that consent (in other words, choice) is a fundamental aspect of party autonomy in arbitration.[41] Indeed, party autonomy is a key issue; parties are able to choose their arbitration venue from many of the world's cities and can do so based on the legal framework offered by various jurisdictions.

Thus, freedom of choice is a significant aspect of party autonomy, and the same applies to the process of selecting an arbitrator. When parties want to choose from female arbitrators and cannot find enough female candidates on the panel, they have limited choices in selecting the arbitrator they want. The ICCA, *"Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings"* (revised, 2022), stresses that lack of gender diversity in the arbitrator pool can be unfair to parties who are looking to exercise their right to choose arbitrators.[42] Karton (2022) highlights that "[i]f parties look into the pool of available arbitrators and see no faces like their own looking back, they are

[41] Simon Greenberg, Christopher Kee, and J. Romesh Weeramantry, *International Commercial Arbitration*, (Cambridge University Press, 2011), 23.
[42] ICCA (International Council for Commercial Arbitration), "Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings", Report No. 8, Published by the ICCA, Revised Second Edition, (2022), 15.

deprived of the autonomy [party autonomy] to appoint an arbitrator of their choice." [43] Moreover, he stresses that the lack of diversity in arbitration does not only violate party autonomy but also neutrality:

> If the arbitration system cannot provide neutral justice between corporations with very different business cultures or in industries that deal with products or services unfamiliar to most 'pale, male, and stale' arbitrators, that is a violation of neutrality. For this reason, lack of diversity poses a threat to due process in arbitrations, both in terms of equal access to sympathetic arbitrators and in terms of how arbitrators understand and adjudge the conduct of parties.[44]

The 2018 case of, *Carter v. Iconix Brand Grp., Inc.,* No. 655894/2018 of the New York Supreme Court, raised awareness among arbitration communities that lack of diversity in arbitration is not merely an abstract philosophical issue, but a legal, procedural problem that needs to be solved for the sake of equality and fairness inside the profession. The case was a commercial intellectual property lawsuit between Carter's *Rocawear* fashion company and Iconix Brand Group, Inc. Carter posed a legal challenge to the lack of African American arbitrators on the AAA roster and the parties could not agree on a final AAA arbitrator who would be the sole arbitrator.[45] The main argument of this case was the fairness to the parties, particularly to parties from minority ethnic groups. In his memorandum, Carter specifically mentioned that the lack of diversity among arbitrators threatened fair and impartial adjudication.[46] The case thus raised awareness of the impact of diversity issues in arbitration on the fairness of the procedure to the parties and legal sides of the problem. Though the case *Carter v. Iconix Brand Grp., Inc.* does not directly raise the issue of lack of gender diversity, it poses the legal aspect of the problem of lack of diversity in arbitration in general.

There are no known cases related to gender diversity in arbitration akin to the *Carter v. Iconix Brand Grp*. in either East Asia or the West. During in-depth interviews with male arbitrators and arbitration practitioners, two male arbitrators (one Mongolian and one Japanese) and one Japanese male arbitration lawyer specifically mentioned that they could not find a good candidate for a chair or as an arbitrator among the few female names on the panels. There are cases, then, albeit unofficial, of parties and co-arbitrators

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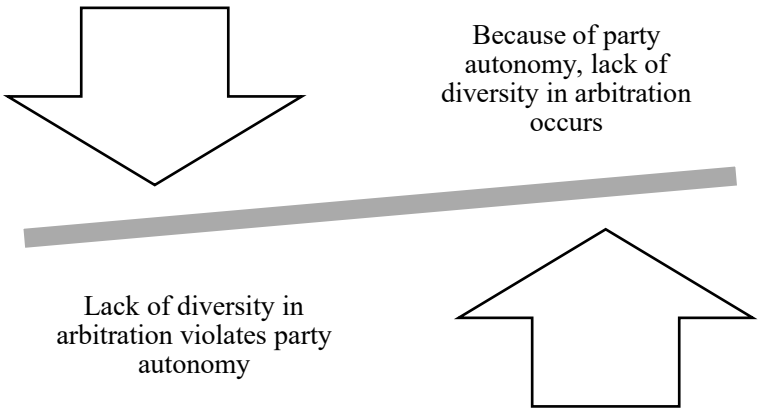
[43] Joshua Karton, "Diversity in Four Dimensions," a contribution in Shahla F. Ali, Flip Balcerzak, Giorgio Fabio Colombo, Joshua Karton, *Diversity in International Arbitration: Why it Matters and How to Sustain It*, (Edward Elgar Publishing, Cheltenham, 2022), 12.
[44] *Ibid*
[45] See Michael Z. Green, "Arbitrarily Selecting Black Arbitrators," Fordham Law Review 88, No. 6 (May 2020): 2255-2286, 2257.
[46] Petitioners' Memorandum of Law in Support of the Order to Show Cause for a Temporary Restraining Order and Preliminary Injunction at the case Carter v. Iconix Brand Grp., Inc., No. 655894/2018 (N.Y. Sup. Ct. Nov. 28, 2018), as cited in the Michael Z. Green, "Arbitrarily Selecting Black Arbitrators," Fordham Law Review 88, No. 6 (May 2020): 2255-2286, 2256.

needing more female arbitral appointment choices, meaning that female underrepresentation in arbitration in East Asia is a legal problem that is limiting party autonomy. This underrepresentation may be an especially serious issue in East Asia since there are so few female arbitrators for parties to choose from.

However, when scholars touch on party autonomy concerns and lack of gender or ethnic and age diversity issues, there are two different and opposite scholarly views of the problem. The first approach assumes that the lack of diversity in arbitration violates party autonomy; the second approach sees party autonomy as a reason for the lack of diversity in arbitration. This thesis supports the first approach; however, the second approach is worth examining in order to understand the scholarly perspectives on the problem comprehensively.

Figure 2. Opposing scholarly views of the lack of diversity in arbitration and its connection to party autonomy



The figure above shows scholars' and practitioners' two diametrically opposed perspectives regarding diversity and its relationship to party autonomy. When scholars such as Karton (2022) focus on the lack of diversity in the pool of arbitrators (the diversity issues surrounding the panels of arbitral institutions), they see how the problem limits the choices of parties and violates party autonomy.[47] In contrast, when scholars such as Green (2020) focus on the lack of diversity at the arbitral appointment level, they

[47] Joshua Karton, "Diversity in Four Dimensions," a contribution in Shahla F. Ali, Flip Balcerzak, Giorgio Fabio Colombo, Joshua Karton, *Diversity in International Arbitration: Why it Matters and How to Sustain It*, (Edward Elgar Publishing, Cheltenham, 2022), 12.

suggest challenging party autonomy as a remedy; [48] in fact, numerous scholarly articles state or imply that there is a lack of diversity in arbitral appointments precisely because of party autonomy.[49]

As the figure above indicates, different ideas and approaches exist regarding party autonomy and diversity issues in arbitration at different levels. This dissertation acknowledges these divergent perspectives to show a connection between party autonomy and the lack of diversity issues in arbitration from various angles. As an approach focused particularly on gender diversity, the research of Duggal and Rangachari (2022) is worth mentioning. They argue that the lack of female representation in arbitration is a systemic problem abutting principles of party autonomy based on the same reason (it creates a lack of choices) that the dissertation mentioned earlier in this section. [50] In addition, almost the only comprehensive research report on the issue of female underrepresentation in international arbitration, the ICCA, *"Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings"* (revised, 2022), reflects the same position that lack of gender diversity in arbitration is a violation of party autonomy.[51]

It is true that most of the time parties choose their arbitrators based on their experience and expertise, languages they speak, or their jurisdictions of practice; few parties may choose their arbitrators based on the arbitrator's gender. However, in a specific situation, parties may look for a prospective female arbitrator. In an MIAC arbitration case regarding a supply purchase agreement, a claimant who was a female director of a small company in Mongolia looked specifically for a female arbitrator according to the following rationale: "I think a female arbitrator can understand me and knows how hard it is for women to handle business, because she is a woman, and she has experience in the same business too."[52]

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[48] See Michael Z. Green, "Arbitrarily Selecting Black Arbitrators," Fordham Law Review 88, No. 6 (May 2020): 2255-2286

[49] See Nayla Comair-Obeid, "Women in Arbitration," Journal of World Investment and Trade 9, no. 1, (February 2008): 87-90; as well as see Deborah Rothman, "Gender Diversity in Arbitrator Selection," Dispute Resolution Magazine 18, no. 3 (Spring 2012): 22-26.

[50] Kabir A.N. Duggal and Rekha Rangachari, "Gender, race, or both? The need for greater consideration of intersectionality in international arbitration," a contribution in Shahla F. Ali, Flip Balcerzak, Giorgio Fabio Colombo, Joshua Karton, *Diversity in International Arbitration: Why it Matters and How to Sustain It*, (Edward Elgar Publishing, Cheltenham, 2022), 51.

[51] See ICCA (International Council for Commercial Arbitration), "Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings", Report No. 8, Published by the ICCA, Revised Second Edition, (2022), 15

[52] Interviewee: Arbitrator M, "Interview with a Mongolian male arbitrator M," (In-person interview conducted in Ulaanbaatar), Interviewer: Munkhnaran Munkhtuvshin, July 2020, For the confidentiality of the interviewee, the full name is not disclosed.

Therefore, while relatively few, in some cases parties may prefer to choose from female arbitrators for their own reasons. Thus, the lack of gender diversity in arbitration limits the choice of female arbitral appointments the parties are able to make, and this violates the party autonomy that parties are supposed to be able to exercise. Based on this argument and similar approaches from other scholars such as Karton (2022) and Duggal and Rangachari (2022), this dissertation stresses that the lack of gender diversity in arbitration is a legal problem that may potentially result in a violation of party autonomy.

1.3.2 Lack of gender diversity in arbitration and its connection to the co-arbitrators' autonomy in independently choosing their presiding arbitrators.

Besides the party autonomy concern, another aspect of the issue impacted by the lack of gender diversity in arbitration is the co-arbitrators' right to independently and freely choose their presiding arbitrators. Perhaps it does not occur often, but co-arbitrators do in some cases appoint female arbitrators as their presiding arbitrators. During an in-depth, in-person interview, a famous male arbitrator of the "grand old man" category in the Mongolian arbitration community stated that he particularly liked to choose a female arbitrator as his chair:

> It (the arbitration procedure) becomes smooth, and parties and counsels behave properly in front of women; thus, the procedure does not become complicated, and we can reach the decision sooner; that is a great advantage. [53]

While one may find the above reasoning sexist, there are social scientific explanations for this viewpoint which will be examined later in this section. For now, the statement suggests that arbitrators may have different perspectives regarding the participation of arbitrators from specific genders. Though the above arbitrator's approach to gender diversity is likely impacted by a distinctive cultural background and personal history, it reveals that in some cases co-arbitrators may prefer to appoint their presiding arbitrators from among women arbitrators.

Therefore, when co-arbitrators want to choose their chairs, particularly from female arbitrators, for their own specific reasons, if they cannot find a sufficient number of potential female presiding arbitrator names on the panel, this would complicate the co-arbitrators' right to choose their chairs freely and independently. Though the arbitration laws of each jurisdiction of this study (Hong Kong, Japan, Korea, and Mongolia) do not explicitly proclaim the co-arbitrators' right to choose their presiding arbitrators, according to the arbitration laws in these four jurisdictions, co-arbitrators are entitled to choose their arbitrators by themselves. Since there are no limits on choosing a presiding arbitrator based on the arbitrator's gender in

[53] Interviewee: Arbitrator M, "Interview with a Mongolian male arbitrator M," (In-person interview conducted in Ulaanbaatar), Interviewer: Munkhnaran Munkhtuvshin, July 2020, For the confidentiality of the interviewee, the full name is not disclosed.

these laws, [54] it is the lack of gender diversity in arbitration that limits the co-arbitrators' autonomy to choose their presiding arbitrators independently.

[54] See Article 11 of the Hong Kong Arbitration Ordinance, (2011); Article 17 of the Arbitration Law of Japan, (2003); Article 12 of the Arbitration Act of Korea, (2016); and Article 13 of Arbitration Law of Mongolia, (2017)

1.3.3 Lack of gender diversity in arbitration and gender-sensitive arbitration procedure

Beyond being role models for female arbitration practitioners and counsels in the hearing room, women arbitrators have another very significant role in arbitration: ensuring the gender sensitivity of the arbitration procedure. Individual arbitrators have different levels of unconscious bias, and the arbitrators' ability to conduct gender-sensitive arbitration procedures depends to a considerable degree on the diversity of their collective backgrounds and skills; at the same time, it is possible that female arbitrators are more likely to ensure gender-sensitivity in arbitration procedures than their male colleagues due to reasons observed by social scientists.

First, social scientists often emphasize men's and women's different conversation styles and conversational values: for females, relationships are more likely to be considered in the process, while males give more importance to the facts.[55] This difference could mean a higher probability that female arbitrators will give more attention to ensuring effective communication during the arbitration hearings and procedures. Indeed, this attention to effective communication is reflected in the observation by the Mongolian arbitrator mentioned earlier in this section, who found that women arbitrators save his time because the arbitration process becomes smoother and more efficient.

Beyond these arguments of effective communication, however, female arbitrators could also focus more on ensuring sensitivity, specifically regarding gender during the arbitration. Furthermore, social scientific studies have observed that people are more likely to feel stressed when interacting with out-group members than in-group members, [56] and this is likely to affect interaction. In that sense, it could be more conducive to the arbitration process to have at least one woman arbitrator to engage with female participants, whether they are parties, counsels, experts, or witnesses. Thus, this dissertation argues that gender diversity can improve the effectiveness and gender sensitivity of communication in arbitration procedures and increase the overall quality of the dispute-resolution process.

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[55] Deborah Tannen, *Talking from 9 to 5: Women and Men at Work,* (William Morrow and Co., 1994), as cited in the Marie-Therese Claes, "Women, Men and Management Styles," International Labour Review 138, no. 4 (1999): 431-446, 443

[56] Carol Izumi, "Implicit Bias and Prejudice in Mediation," SMU Law Review, Vol. 70, Issue 3 (Summer 2017): 681-694., as cited in the Verlyn Francis, "Ethics in Arbitration: Bias, Diversity, and Inclusion," Cumberland Law Review 51, no. 2 (2021): 419-446, 429

1.3.4 Lack of gender diversity in arbitration and its impact on the quality of the decision-making process

The above-mentioned benefits of having women arbitrators engaged in the arbitration lead to another significant potential benefit: improved quality of the decision-making process. Legal scholars Ruiz Fabri and Stoppioni (2020) stress that ensuring gender diversity improves the quality of the decision-making process by enhancing the perceived legitimacy of arbitration procedures. An arbitral tribunal consisting of arbitrators with diverse social and cultural backgrounds, and thus offering differing values and perspectives, will be better able to analyze a dispute through multiple conceptual frameworks and personal viewpoints.[57] Numerous scholars in the field associate the quality of the decision-making process of arbitral tribunals with arbitrator diversity. For instance, Kidane (2018) stresses that diversity in arbitration provides active group thinking in decision-making,[58] while Francis (2021) argues that diversity in arbitration can improve ethical aspects of the arbitration procedures.[59] Thus, a diverse arbitral tribunal may ensure fewer mistakes and issue higher quality decisions.

In addition to these scholarly opinions on the advantages of diverse arbitral tribunals, this dissertation argues that in cases including female arbitrators, parties may also be less likely to challenge arbitral awards and decisions and appeal less to the court. This assertion is based on the social scientific observation cited above that women give more importance to effective communication and may be better at interacting effectively with their in-group members (female arbitration lawyers, counsels, and parties); thus, both parties and their counsels in the arbitration proceedings could be more likely to be satisfied with the opportunities and environment that negotiations including women arbitrators should create.

When parties are satisfied with the communication, they are perhaps less likely to appeal against procedural matters (which are the only matters upon which parties can challenge arbitral awards or decisions); they may feel they have been given adequate opportunities to address procedural issues or any vagueness or doubt they have in an environment including women arbitrators. Therefore, this study suggests

[57] Hélène Ruiz Fabri, and Edoardo Stoppioni, "International Arbitration: A Feminist Perspective," contribution in Thomas Schultz, and Federico Ortino (eds), *The Oxford Handbook of International Arbitration*, (Oxford Handbooks, Oxford University Press, 2020): 537–553
[58] See Won L. Kidane, *The Culture of International Arbitration*, (Oxford University Press, 2017)
[59] See Verlyn Francis, "Ethics in Arbitration: Bias, Diversity, and Inclusion," Cumberland Law Review 51, no. 2 (2021): 419-446

that with the participation of female arbitrators in tribunals, the decision-making process could contribute to fewer mistakes, and reduce the probability of parties appealing to the court regarding the arbitral award or decisions of the tribunal.

1.4 Research questions and thesis statement

This dissertation aims to discover the reasons and issues that cause the lack of gender diversity in East Asian arbitral tribunals and find a way to ensure gender diversity in arbitral appointments in the region. Women arbitrators are one of the largest minority groups in the arbitration community, while the most wanted (frequently appointed) arbitrators are mainly men. However, this research is not denying the current general situation of under-representation of young arbitrators and arbitrators from minority ethnic groups along with the lack of female representation.

As the International Council for Commercial Arbitration (ICCA) stressed in their special report on gender diversity: "The lack of diversity in arbitral appointments and proceedings may not be limited to gender. Moreover, certain individuals practicing in international arbitration may not identify with a particular gender." [60] This research does not deny the under-representation of sexual minority groups in the arbitration community. The problem of the under-representation of these ethnic and sexual minority groups, as well as the lack of age diversity, in arbitral appointments are as critical as the under-representation of females in arbitration appointments.

Nonetheless, studying all underrepresented groups in arbitral appointments in order to identify solutions is likely to be beyond the effective scope of a single study. For conciseness and effectiveness of the research, this dissertation therefore focuses on female under-representation in the arbitral appointments in East Asian arbitral institutions. The study argues that arbitration tribunals in East Asian arbitral organizations can become more gender-diverse if arbitral institutions and law firms support young female lawyers and strengthen their institutional policies on gender diversity.

The research also suggests other ways to encourage junior female practitioners to be more interested in a career in commercial arbitration and to encourage women lawyers to enter the market. The thesis undertakes interdisciplinary and explanatory research to explain the causes of the lack of gender diversity in

[60] ICCA (International Council for Commercial Arbitration), "Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings", Report No. 8, Published by the ICCA, Revised Second Edition, (2022), 4

arbitral tribunals in East Asia and its connections with disciplines beyond law, particularly with behavioral economics, social psychology, and sociology.

The research questions of the dissertation are as follows:

1) What events, beliefs, attitudes, and policies are shaping the problem of the lack of female representation at arbitral tribunals in East Asia?
2) How do these forces interact to result in the lack of gender diversity in arbitral appointments?
3) What are the effective remedies for the under-representation of women in arbitral tribunals at East Asian arbitral institutions?
4) Why is the number of female arbitrators listed on the panels of the East Asian arbitral institutions insufficient? (How does this phenomenon impact the problem?)
5) What are the common obstacles and difficulties women confront in their career paths in arbitration?

In conclusion, the study aims to identify plausible and transdisciplinary causal networks shaping the phenomenon, and to find solutions ensuring gender diversity in arbitral appointments in East Asian arbitral institutions. In addition, it outlines common obstacles junior female practitioners confront to pursue a career in commercial arbitration, and it suggests several ways to encourage women lawyers to enter the market.

Nevertheless, the dissertation does not aim to chase numbers and ensure gender diversity in arbitration at a 50:50 ratio. Not because of its difficulty (even though studies stress that the 50:50 ratio in decision-making and management levels is unlikely to be achieved in the foreseeable future [61]) but because the dissertation's goal is ensuring substantial gender diversity, not just hitting the 50:50 ratio. For the reasons explained in this chapter, diversity in arbitration is highly desirable, and this research would like to contribute to its achievement.

[61] Catherine Drummond, "The Party-Appointment Process: Addressing Barriers to Equal Opportunities for Women in the Appointment of Ad Hoc Adjudicators," contribution in Ed. Freya Baetens, *Identity and Diversity on the International Bench*, (Oxford University Press, 2020): 93, as cited in the ICCA (International Council for Commercial Arbitration), "Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings", Report No. 8, Published by the ICCA, Revised Second Edition, (2022), 91.

1.5 Research map

The dissertation consists of seven chapters. Chapter I identifies the problem, thesis statement, research questions, and the research map of the thesis; moreover, the chapter clarifies the key concepts and their connection to the problem so that the reader can follow the discussions in the ensuing chapters. Chapter II studies the issue from the viewpoint of behavioral economics to explore the concept of a market for arbitrators, and also examines the impact of implicit bias on the problem from the perspective of social psychology. Chapter III investigates the connection between women's studies and the problem by studying three subjects often discussed in feminist studies, motherhood, sexism, ambition in women, and their relationship to, as well as impact on, the issue. Chapter IV investigates self-presentation and impression management strategies of female arbitrators from a sociological perspective, including in-depth interviews with arbitrators and arbitration practitioners and surveys conducted among young female lawyers. Chapter V analyzes the prevalent causes behind the issue and presents several core reasons for the main problem. Chapter VI discusses possible answers to the research questions based on the findings of this research. Chapter VII sums up the research findings and draws the main conclusions and considerations for further research.

Summary: Research impact on East Asian arbitration

This introductory chapter introduced the main problem and thesis statement, research questions, and the research map of the thesis. It has prepared readers to follow and engage smoothly in the main discussions in the ensuing chapters. As identified earlier, all four arbitral institutions in four East Asian jurisdictions (Hong Kong, Japan, Korea, and Mongolia) lack gender diversity in arbitral appointments. Nonetheless, this issue is not simply a phenomenon that occurred because of gender bias, as scholars in the field often tend to argue. The insufficient number of female arbitrators listed on the panels of arbitral organizations and the complicated process of selecting arbitrators from the pool of unknown candidates also contribute to the problem.

Furthermore, this chapter emphasized the legal side of the problem and how it conceivably impacts party autonomy and co-arbitrators' autonomy over choosing their chairs independently. Also, the chapter highlighted possible contributions of ensuring gender diversity to the quality of the decision-making process and gender sensitivity in arbitration practice. Moreover, almost no studies analyze the problem through disciplines outside of law. The succeeding chapters will therefore analyze female underrepresentation in arbitral tribunals in East Asia through behavioral economics, social psychology, and sociology, and based on these interdisciplinary analyses, the dissertation will suggest solutions to ensure gender diversity in arbitral appointments as well as empower young female arbitration practitioners to qualify as arbitrators in East Asia.

Chapter II: Law and Gender Diversity in East Asian Arbitration

The previous introductory chapter introduced the main problem: the lack of gender diversity in arbitral appointments in East Asian arbitral institutions. This chapter investigates more deeply the issue of female underrepresentation in arbitral appointments from the legal viewpoint. It examines how arbitration laws and rules of arbitral institutions indirectly contribute to the lack of gender diversity in arbitration and, at the same time, how "soft laws" serve to empower female representation in arbitration. Also, the chapter analyzes the legal history of arbitration (in the four jurisdictions of this study: Hong Kong, Japan, Korea, and Mongolia) in order to shed light on how East Asian history contributes to a persistent male monopoly.

This chapter found that in each of these jurisdictions, the first informal arbitrators were powerful and respected males; that is, a male monopoly has dominated East Asian arbitration since its inception. Furthermore, even if in recent years so-called soft law instruments have tried to address the issue, it is clear that they alone cannot effectively ensure full gender diversity in arbitral appointments. For the reason that the power to control gender diversity is mainly in the hands of the parties and their counsels, who often have little interest in the issue of female underrepresentation. Based on these conditions, the chapter then argues the need to develop a new approach and strategies to ensure gender diversity based on a more transdisciplinary viewpoint, since in the legal field there are few or no options other than soft laws.

2.1 Arbitration laws and rules on arbitral appointments

Most Arbitration Laws and Rules grant the parties autonomy to select their arbitrators.[62] East Asia is no exception; all arbitration laws in the four jurisdictions in this study and the arbitration rules of HKIAC, JCAA, KCAB, and MIAC provide that parties can appoint arbitrators.[63] As Born (2012) emphasizes, this privilege of parties, the opportunities to select the decision-makers to resolve the disputes, is a defining feature of arbitration.[64] Indeed, it is a remarkable characteristic of arbitration; however, this power to select the decision-makers may indirectly support the current male monopoly in arbitral appointments.

When parties and counsels select their arbitrators, they want to choose a suitable person. One can assume that parties are unlikely to entrust their disputes' fate to someone with insufficient qualifications or skills. The author remembers a simple but reminiscent dialogue with a counsel who had his first arbitration case when the author was a tribunal secretary at MIAC. The counsel said, "Truly can I choose the decisionmaker? That is good, then I should choose someone strong."[65] In litigation, the disputants do not know whether they have a capable judge with sufficient knowledge, experience, and talent to handle their cases. However, since parties can choose their decision-makers in arbitration proceedings, they want to choose someone capable enough (in the abovementioned counsel's words, strong enough) to resolve their disputes. Nevertheless, the parties' desire to choose the best arbitrator leads to repeated appointments of a few well-recognized arbitrators, who are mainly men, resulting in a male monopoly in the field. Hence, in this sense, arbitration laws and rules indirectly contribute to maintaining a male monopoly in arbitral appointments.

[62] As an illustration, see articles 8-10 of the UNCITRAL Arbitration Rules (2021), and article 11 of UNCITRAL Model Law on International Commercial Arbitration, (1985, amended in 2006)
[63] See Tables 6 and 7.
[64] Gary B. Born, *International Arbitration: Law and Practice*, (Kluwer Law International, 2012), 5.
[65] Though MIAC receives 70-100 cases each year, indeed the Mongolian lawyers who know arbitration well are few. Most of the time, counsels on their first arbitration cases ask administrative staff for guidance on procedural matters. Thus, sometimes some lawyers stand in awe when they learn that they can choose their decision-makers.

Table 6. Arbitration laws regarding the appointment of arbitrators

Country	Hong Kong	Japan	Korea	Mongolia
Law	Arbitration Ordinance (Cap. 609 of the Laws of Hong Kong), 2011	Arbitration Law, Law No.138, 2003	Arbitration Act of Korea, Act No. 14176, 2016	Arbitration Law of Mongolia, 2017
Article	Article 11	Article 17	Article 12	Article 13
Regulation on the selection of arbitrators	Parties appoint their arbitrators, and the two arbitrators appoint the third arbitrator.	Parties appoint their arbitrators, and the two arbitrators appoint the third arbitrator.	Parties appoint their arbitrators, and the two arbitrators appoint the third arbitrator.	Parties appoint their arbitrators, and the two arbitrators appoint the third arbitrator.
Gender or ethnic requirements for appointing an arbitrator	None	None	None	None

Sources: Hong Kong Arbitration Ordinance, 2011, see (Sep 14, 2022) https://www.elegislation.gov.hk/hk/cap609; Arbitration Law of Japan, 2003, see (September 08, 2022) https://japan.kantei.go.jp/policy/sihou/arbitrationlaw.pdf; Arbitration Act of Korea, 2016, see (Sep 14, 2022) https://elaw.klri.re.kr/eng_service/lawView.do?hseq=38889&lang=ENG; Arbitration Law of Mongolia, 2017, see (Sep 14, 2022) https://legalinfo.mn/mn/detail?lawId=12456.

Table 7. Arbitration rules regarding the appointment of arbitrators

Institution	HKIAC	JCAA	KCAB	MIAC
Rule	Administered Arbitration Rules, 2018	Commercial Arbitration Rules, 2021	KCAB International Arbitration Rules, 2016	Arbitration Rules, 2017
Article	Articles 7-8	Articles 25-29	Article 12	Article 10
Regulation on the selection of arbitrators	Parties appoint their arbitrators, and the two arbitrators appoint the third arbitrator.	Parties appoint their arbitrators, and the two arbitrators appoint the third arbitrator.	Parties appoint their arbitrators, and the two arbitrators appoint the third arbitrator.	Parties appoint their arbitrators, and the two arbitrators appoint the third arbitrator.
Gender or ethnic requirements for appointing an arbitrator	None	None	None	None

Sources: KCAB, "KCAB International Arbitration Rules 2016", see (Sep 14, 2022) http://www.kcabinternational.or.kr/common/index.do?jpath=/contents/sub020101; JCAA, "Arbitration Rules: Commercial Arbitration Rules, (2021)", see (Sep 14, 2022) https://www.jcaa.or.jp/en/common/pdf/arbitration/Commercial_Arbitration_Rules2021_en.pdf?211223;

HKIAC, "2018 Administered Arbitration Rules", see (Sep 14, 2022) https://www.hkiac.org/arbitration/rules-practice-notes/hkiac-administered-2018; MIAC, "Arbitration Rules," see (Sep 14, 2022) http://www.arbitr.mn/index.php/law-rule-menu/2019-10-14-05-29-06/106-2019-10-14-07-47-10/file.

The tables above indicate that the arbitration laws of Hong Kong, Japan, Korea, and Mongolia, as well as the arbitration rules of the four leading arbitral institutions in the region, provide parties with the autonomy to appoint their arbitrators. Neither the laws nor the rules require the appointment of arbitrators of specific genders or ethnicities as long as the appointment procedure complies with the law and the arbitrator is independent and impartial.

Nevertheless, as mentioned above, these laws and rules, perhaps indirectly, contribute to preserving the current male monopoly in arbitration, since the appointor often wants to choose the best arbitrator with previous experience and recognized power in the arbitration community. However, these regulations are one of the core values of international commercial arbitration which often initially attract disputants. Thus, this dissertation does not argue that party autonomy within a selection of arbitrators is itself disempowering women in arbitration or gender diversity. It simply sheds light on how the law indirectly facilitates the monopoly of a few well-known arbitrators, mainly men.

2.2 Development of arbitration laws and traditions in East Asia and its impact on gender diversity

This part examines the legal history of arbitration in the four jurisdictions of this study. It analyzes the history of arbitration laws and traditions in order to understand the lack of gender diversity in arbitration from the inception of arbitration culture in East Asia.

2.2.1 The history of arbitration in Hong Kong

Arbitration culture developed even before the establishment of a British colony in Hong Kong. Holloway et al. (2018) note that British officers unofficially acted as arbitrators in their paper *Strengthening Hong Kong's Position as an Arbitration Hub in the Belt and Road Initiative*:

> In the early years of Hong Kong as a trade port, the traditional Chinese preference for informal justice over litigation was deep-rooted in the local communities. British officers performed arbitral activities among Chinese and English traders before the colony's establishment. [66]

Given what is known about the 19th-century British military in Hong Kong, these officers were probably males in the uniform of the colonizer country, Great Britain; in other words, because the men projected military power, disputants were likely to respect and enforce their judgments. Later, the Hong Kong Code of Civil Procedure Ordinance of 1901 provided regulations on arbitration procedures based on the English Arbitration Act of 1889.[67]

However, even before the Ordinance of 1901, there were still arbitration practices in Hong Kong that were not limited to the British officer arbitrators; independent arbitrators were also popular.[68] Most of the time, those independent arbitrators in earlier arbitration practice were retired judges. As an illustration, in disputes regarding accounts between Chinese merchants in Hong Kong, the parties appointed the judge Daniel Richard Francis Caldwell, known as Daniel Caldwell, who had recently been disgraced, as their sole

[66] David Holloway, Feng Lin, Linda Chelan Li, Xiaohe Zheng, and Mantak Kwok, "Strengthening Hong Kong's Position as an Arbitration Hub in the Belt and Road Initiative," Policy Paper 8, published by Research Centre for Sustainable Hong Kong and City University of Hong Kong, (June 2018):1-9, 2.
[67] *Ibid*
[68] Neil Kaplan, "The History and Development of Arbitration in Hong Kong," Yearbook of International Financial and Economic Law 1 (1996): 203-224, 205

arbitrator.[69] Since they were former judges, it can be assumed from what is known about the lack of women's employment in the court in that period that these arbitrators also were men.

Later, the Arbitration Ordinance of 1963 was adopted as a separate ordinance for arbitration proceedings. The Ordinance of 1963 was based on the English Arbitration Act of 1950.[70] Though Hong Kong returned to Chinese sovereignty in 1997, the arbitration tradition in Hong Kong kept developing.[71] In 2010, Hong Kong adopted the UNCITRAL Model Law on International Commercial Arbitration.[72] Furthermore, in 2014 an Advisory Committee on the Promotion of Arbitration was established to advise and assist the Department of Justice in promoting regional arbitration.[73] In this way, the arbitration legislation of Hong Kong evolved through the years; now, Hong Kong has become one of the most favored seats of arbitration among disputants and arbitration practitioners.

Through these years, the uniforms of the frequently appointed arbitrators changed: from the British officers in the uniform of the colonized country to the retired judges with their experience in black gowns, and then to the grey suits of the well-known professor-arbitrators and the practitioner-arbitrators in the late 20th century and early 21st century. Nevertheless, the gender of the arbitrators in Hong Kong persisted in being male until recently, with the emergence of a few frequently appointed female arbitrators in Hong Kong, such as Chiann Bao.[74] Arbitration-related legislation in Hong Kong evolved continuously through the years and became more modern and developed; however, regardless of these improvements in the legislation, the male monopoly in arbitration persists outside of a small number of female arbitral appointments.

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[69] Neil Kaplan, "The History and Development of Arbitration in Hong Kong," Yearbook of International Financial and Economic Law 1 (1996): 203-224, 205

[70] David Holloway, Feng Lin, Linda Chelan Li, Xiaohe Zheng, and Mantak Kwok, "Strengthening Hong Kong's Position as an Arbitration Hub in the Belt and Road Initiative," Policy Paper 8, published by Research Centre for Sustainable Hong Kong and City University of Hong Kong, (June 2018):1-9, 2

[71] *Ibid*

[72] See UNCITRAL, "Status: UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006," (Sep, 02, 2022) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status

[73] Hong Kong Government Press Releases, "Government sets up Advisory Committee on Promotion of Arbitration," (Dec 18, 2014) see (Sep 02, 2022) https://www.info.gov.hk/gia/general/201412/18/P201412180576.htm

[74] Independent Hong Kong Arbitrator Chiann Bao is one of the few famous East Asian female arbitrators. She has worked on several cases as a sole arbitrator or a member of a three-member tribunal. Bao is a vice president of the ICC Court of Arbitration and is the chair of the ICC Commission task force on arbitration and ADR, see (Sep 16, 2022) https://arbchambers.com/arbitrators/chiann-bao?lang=en; https://chiannbao.com/

2.2.2 The history of arbitration in Japan

Many businesspeople and companies in Japan prefer to resolve their commercial disputes by *wakai* (amicable dispute resolution) achieved by *hanashi-ai* (consultation). [75] According to some commentators, the reason is perhaps the traditional Japanese cherishing of harmony. Kawashima (1963) concluded that Japanese people are reluctant to seek legal solutions for disputes because even in the case of arguments, Japanese tend to expect that they will resolve conflicts by mutual understanding.[76] While this view is considered by many to be a product of "legal orientalism",[77] the rhetoric of harmony is still very strong even in the field of business law.[78]

Regarding legislative development, for many years Japanese arbitration was regulated by the Japanese Code of Civil Procedure of 1890, and Japan did not possess separate arbitration laws.[79] In 2001, Japan established the Cabinet-based Office for Promotion of Justice System Reform. The Office for Promotion of Justice System Reform encouraged and assisted the adoption of the UNCITRAL Model Law on International Commercial Arbitration,[80] and in 2003, Japan adopted the Model Law.[81] However, scholars such as Kim and Chung (2013) argue that the Japanese Arbitration Law does not reflect the social norms of Japanese society and that this is the reason for the low number of arbitration disputes in Japan.[82]

Yet it is also possible that the arbitral institutions have failed to promote arbitration effectively, with the JCAA insufficiently promoting its arbitration services as a traditional dispute resolution method rather

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[75] Chin-Hyon Kim, Yong-Kyun Chung, "Legal Culture and Commercial Arbitration in the United States and Japan," Journal of Arbitration Studies, Vol. 23 No. 3 (Sep 2013):185-212, 199.
[76] Takeyoshi Kawashima, "Dispute Resolution in Contemporary Japan," contribution in Ed. Arthur Taylor von Mehren, *Law in Japan: The Legal Order in a Changing Society,* (Harvard University Press, 1963): 41-72, 44.
[77] Giorgio Fabio Colombo, "Japan as a Victim of Comparative Law," Michigan State International Law Review, Vol. 22, No. 3 (2014): 731-753.
[78] Mark Van Hoecke, and Mark Warrington, "Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law," International and Comparative Law Quarterly, vol. 47, (1998): 495-536.
[79] Yasunobu Sato, "The New Arbitration Law in Japan: Will It Cause Changes in Japanese Conciliatory Arbitration Practices?," Journal of International Arbitration, Vol. 22, No. 2, (2005):141-148, 142.; as cited in the Chin-Hyon Kim, Yong-Kyun Chung, "Legal Culture and Commercial Arbitration in the United States and Japan," Journal of Arbitration Studies, Vol. 23, No. 3 (Sep 2013):185-212, 201.
[80] Tatsuya Nakamura, "Salient Features of the New Japanese Arbitration Law Based upon the UNCITRAL Model Law on International Commercial Arbitration," JCAA Newsletter, (Apr 2004):1-2.; also see Prime Minister of Japan and His Cabinet, http://www.kantei.go.jp/foreign/policy/sihou/enkaku_e.html, as cited in the Tony Cole, "Commercial Arbitration in Japan: Contributions to the Debate on Japanese 'Non-Litigiousness'," New York University Journal of International Law and Politics (JILP), Vol. 40, No. 1, (2007):29-114, 104
[81] See UNCITRAL, "Status: UNCITRAL Model Law on International Commercial Arbitration (1985, amended in 2006) see (Sep 02, 2022) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status
[82] Chin-Hyon Kim, Yong-Kyun Chung, "Legal Culture and Commercial Arbitration in the United States and Japan," Journal of Arbitration Studies, Vol. 23, No. 3 (Sep 2013):185-212, 201

than as some unknown foreign mechanism to resolve disputes. To increase female representation in arbitral appointments, it is crucial to increase the caseloads so that the market can expand, and the arbitral institutions dominated by a few monopolizing male arbitrators can admit new arbitrators. Therefore, adopting effective promotional strategies is crucial not only for the JCAA but also to ensure gender diversity.

2.2.3 The history of arbitration in Korea

Korea has a long arbitration tradition extending back to the Joseon Dynasty (1392 – 1910).[83] "It has been a common practice for traders to call upon a respected colleague to express a view on disputes between them." [84] However, as one can imagine, most traders in ancient Asia were men, and probably, the "respected colleague" arbitrators at that time were males. Nevertheless, the Korean arbitration tradition offers more than simple colleague traders. The entire legal system of the Joseon Dynasty preferred arbitration and mediation to litigation. The legal system, *Hyang'yak*, was a unique set of rules based on Confucian thinking. *Hyang'yak* was initially designed to lead people to follow Confucianism but later became the law of the Joseon Dynasty.[85]

Nevertheless, arbitration in the Joseon Dynasty was not merely a method of alternative dispute resolution; it contained elements of oppression by the elites, the *Yangban*: the Confucian elite intellectuals.[86] *Yangban*, were respected by commoners, and "almost all government posts were occupied by *yangban* by birth." [87] Significantly, *yangban* acted as arbitrators but in a coercive way; sometimes they punished the parties who submitted their disputes to litigation rather than to them. As Eunok (2018) points out:

> During the Joseon Dynasty, most of the societal disputes were settled autonomously via arbitration by Yangban under the rules of Hyang'yak; indeed, if an individual asked the district office of government to resolve his or her dispute (and thereby ignored the Yangban's decision), he or she was punished.

[83] Liew Song Kun, "Commercial Arbitration in Korea with Special Reference to the UNCITRAL Rules" Korean Journal of Comparative Law, Vol. 5, (1977): 69., as cited in the Rinat Gareev, "The Rise of South Korea as an 'Arbitration Eager' Jurisdiction: Rethinking the Current Role and a Promising Future," published by Asia pacific Regional Arbitration Group, APRAG (May 2021):67-86, 71.; see the full article at APRAG (Sep, 02, 2022) https://www.aprag.org/wp-content/uploads/2021/05/8-The-Rise-of-South-Korea-as-an-Arbitration-Eager-Jurisdiction.pdf

[84] John G. Collier, and Vaughan Lowe, "*The Settlement of Disputes in International Law: Institutions and Procedures*" Published by Oxford University Press, (1999): 45, as cited in the Rinat Gareev, "The Rise of South Korea as an 'Arbitration Eager' Jurisdiction: Rethinking the Current Role and a Promising Future," published by Asia pacific Regional Arbitration Group, APRAG (May 2021):67-86, 71.; see the full article at APRAG (Sep, 02, 2022) https://www.aprag.org/wp-content/uploads/2021/05/8-The-Rise-of-South-Korea-as-an-Arbitration-Eager-Jurisdiction.pdf

[85] Eunok Park, "The Evolving Korean Statutory Law on Arbitration," SJD Dissertations, 14, (2018): 9, see the Penn State Law eLibrary, University of Pennsylvania (Sep 05, 2022) https://elibrary.law.psu.edu/sjd/14

[86] Hiroshi Watanabe, "Jusha, Literati and Yangban: Confucianists in Japan, China and Korea," Senri Ethnological Studies, Vol. 28, (1990):13-30, 16.

[87] *Ibid*

Moreover, by the end of the Joseon Dynasty, even the government encouraged the use of arbitration (i.e., by the Yangban) for dispute settlement.[88]

However, when Korea adopted the Korean Arbitration Act in 1966, the country began to establish a permanent arbitration system.[89] Under the Arbitration Act of 1966, the KCAB was the first and the only arbitral institution; still, today, the institution is the leading arbitral organization in Korea. In 1973, Korea adopted the New York Convention of 1958; in 1999, the country adopted the UNCITRAL Model Law on International Commercial Arbitration; [90] and in 2016, Korea revised the Arbitration Law to comply with the 2006 revision of the Model Law.[91] Today, the KCAB receives hundreds of cases yearly; in 2021, the KCAB's caseload was 500.[92] Nevertheless, as revealed in Chapter I, female representation in arbitral appointments is scarce. The gender of the frequently appointed arbitrators remains much the same as that of the *Yangban* elites.

[88] Eunok Park, "The Evolving Korean Statutory Law on Arbitration," SJD Dissertations, 14, (2018): 9-10, see the Penn State Law eLibrary, University of Pennsylvania (Sep 05, 2022) https://elibrary.law.psu.edu/sjd/14

[89] Hong-Kyu Kim, "Reality and Problem Areas of Korea's Arbitration System," Journal of Arbitration Studies, Vol. 6, (1996):23., as cited in the Rinat Gareev, "The Rise of South Korea as an 'Arbitration Eager' Jurisdiction: Rethinking the Current Role and a Promising Future" published by Asia pacific Regional Arbitration Group, APRAG (May 2021):67-86, 71, see the full article at APRAG (Sep, 02, 2022) https://www.aprag.org/wp-content/uploads/2021/05/8-The-Rise-of-South-Korea-as-an-Arbitration-Eager-Jurisdiction.pdf

[90] See KCAB, "Arbitration in Seoul," n.d., (Sep 05, 2022) http://www.kcabinternational.or.kr/common/index.do?jpath=/contents/sub0403&CURRENT_MENU_CODE=MENU0021&TOP_MENU_CODE=MENU0018; and Rinat Gareev, "The Rise of South Korea as an 'Arbitration Eager' Jurisdiction: Rethinking the Current Role and a Promising Future" published by Asia pacific Regional Arbitration Group, APRAG (May 2021):67-86, 71, see the full article at APRAG (Sep, 02, 2022) https://www.aprag.org/wp-content/uploads/2021/05/8-The-Rise-of-South-Korea-as-an-Arbitration-Eager-Jurisdiction.pdf

[91] See UNCITRAL, "Status: UNCITRAL Model Law on International Commercial Arbitration," (1985, amended in 2006), see (Sep, 02, 2022) https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status

[92] See KCAB, "Annual Reports", Annual Report of 2021, (Sep 20, 2022) http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=174&CURRENT_MENU_CODE=MENU0017&TOP_MENU_CODE=MENU0014

2.2.4 History of arbitration in Mongolia

The Qing magistrates settled all business disputes in Mongolia during the Qing Governance between 1635 and 1911.[93] As in Hong Kong, British officers acted as arbitrators in Mongolia, and Qing magistrates in the local areas acted as small business dispute arbitrators; meanwhile, significant cases reached the courts. Even though permanent arbitral institutions such as LCIA had been established in the West by the 1900s,[94] for Mongolia's few businesspeople, most of whom were craftsmen and livestock herders, arbitral institutions were the Qing magistrates' fortresses. As one might imagine, the Qing magistrates between 1635 and 1911 were almost entirely male.

The dress of the informal arbitrators changed from Qing Magistrates' uniforms to Buddhist monks' robes when Mongolia declared independence and established the Great Mongolian State, the *Bogd Khanate of Mongolia,* in 1911.[95] Nevertheless, the gender of the arbitrators remained much the same as that under Qing Rule. Bogd Khan, the new ruler, governed the country not by legal orders, but mainly by Buddhist Law. [96] Thus, the Buddhist monks, religious scholars, and elders, who were again males, acted as arbitrators when the citizens in their local area had disputes (often limited to disagreements between herders about the ownership of their livestock.)

In 1924, the country changed its political system and became the People's Republic of Mongolia (PRM). The new government of PRM was trying to develop a court modeled on that of the Soviet Union. During that time, Russia had adopted the *Russian Arbitration Rules,* the first legal ordinance on state *arbitrazh* in Russia (1924).[97] Thus, Mongolia adopted Ordinance No. 14, based on the Russian act on state *arbitrazh*.[98] Then, in 1930, the Government of PRM adopted the Arbitration Rules of Mongolia,[99] and in

[93] Xiaoqun Xu, "Law, Custom, and Social Norms: Civil Adjudications in Qing and Republican China," Law and History Review 36, no. 1 (February 2018): 77-104, 79.
[94] For example, in UK, the London Court of International Commercial Arbitration was established in 1892. See the London Court of International Commercial Arbitration Official Website, (December 23, 2021) https://www.lcia.org/LCIA/history.aspx
[95] Батсайхан О., *Монголын Сүүлчийн Эзэн Хаан VIII Богд Жавзандамба,* (Ulaanbaatar, Admon Press, 2008).; Thomas E. Ewing, "Revolution on the Chinese Frontier: Outer Mongolia in 1911," Journal of Asian History (Wiesbaden) 12 (1978): 101–119.
[96] Батсайхан О., *Монголын Сүүлчийн Эзэн Хаан VIII Богд Жавзандамба,* (Ulaanbaatar, Admon Press, 2008).
[97] Teshig Munkhjargal, *Brief History of the Arbitral Tribunals in Mongolia*, (MNCCI Press, 2015) (Тэшигийн Мөнхжаргал, *Монгол дахь Арбитрын Шүүхийн Товч Танилцуулга,* МҮХАҮТ-н хэвлэх үйлдвэр, 2015.)
[98] Teshig Munkhjargal, *Brief History of the Arbitral Tribunals in Mongolia*, (MNCCI Press, 2015) (Тэшигийн Мөнхжаргал, *Монгол дахь Арбитрын Шүүхийн Товч Танилцуулга*, МҮХАҮТ-н хэвлэх үйлдвэр, 2015.)
[99] PRM, Government Gazette, No. 54, (1930) (Засгийн газрын албаны сэтгүүл, УБ, №54, 1930)

1940 the first comprehensive State *Arbitrazh* Law.[100] The State *Arbitrazh* remained a dispute resolution mechanism for civil disputes between state factories or entities. Under the state *arbitrazh* system, the arbitrators were powerful and respected officers in socialist Mongolia; thus, as one can imagine, most arbitrators were again men in powerful positions.

After the democratic revolution of 1990, Mongolia passed its first modern arbitration act in 1995 under the title of International Commercial Arbitration Law.[101] Then in 2003, the country adopted an arbitration act for both domestic and international arbitration, the Arbitration Law,[102] which was in force for 14 years until Mongolia adopted the UNCITRAL Model Law in 2017.[103] Again, during these years of promoting and developing modern commercial arbitration, the gender of the frequently appointed arbitrators, well-recognized and respected male lawyers, as well as retired judges, mostly remained male as in Mongolia under Qing rule, Buddhist rule, and Socialist rule.

This part analyzed how the historical developments of hard and soft laws (arbitration laws and traditions) in the four jurisdictions, Hong Kong, Japan, Korea, and Mongolia, contributed to female underrepresentation in arbitration and developed to favor male decision-makers. The next part will examine the globally renowned soft law initiatives for ensuring gender diversity in arbitration as remedies, and their possible application in East Asia.

[100] PRM, Compilation of Government Laws and Rules, Edition No.1, (1940):47-52. (Улсын бага хурал, Засгийн газраас гаргасан хууль, дүрэм тогтоолын эмхтгэл, нэгдүгээр дэвтэр УБ, (1940) 47-52.)
[101] The International Commercial Arbitration Law of Mongolia, (1995)
[102] Arbitration Law of Mongolia, (2003)
[103] Jae-Hyong Woo; Min Kyu Lee, "A Study on the Amended Arbitration Law of Mongolia," Journal of Arbitration Studies 27, no. 3 (September 2017): 95-112

2.3 Soft laws and activities from arbitration communities for empowering female representation in arbitration

This part introduces the soft law initiatives and activities from arbitration communities for empowering female representation in arbitration. The section analyzes four main projects from arbitration communities that designed to empower women in arbitration: the Equal Representation in Arbitration Pledge, Arbitral Women, Arbitrator Intelligence, Gender diversity policies of arbitral institutions.

2.3.1 ERA Pledge

The international Equal Representation in Arbitration (ERA) Pledge takes commitments from various players in arbitration, including counsels, businesspeople, and arbitral institutions, to appoint more women arbitrators in their arbitration cases. "The pledge seeks to increase, on an equal opportunity basis, the number of women appointed as arbitrators to achieve a fair representation as soon as practically possible, with the ultimate goal of full parity."[104] The pledge was launched in 2015 and currently has 5,000 signatories.[105]

The Pledge has two general committees, the Global Steering Committee and the Arbitrator Search Committee, as well as nine sub-committees: the Corporate Sub-Committee, the Latin America Sub-Committee; the India Sub-Committee; the Africa Sub-Committee; the Middle East Sub-Committee; the Young Practitioners Sub-Committee; the USA Sub-Committee; the APAC Sub-Committee; the UK Bar Sub-Committee.[106] Each committee has several members from its region, but the number of members differs depending on the committees' activities; as an illustration, the India Sub-Committee has only one member, while the Global Steering Committee has 62 members.

East Asia is under the umbrella of the APAC Sub-Committee, which has 25 members, including seven from Hong Kong and two from Korea.[107] The regional committee has no members from Japan or Mongolia. The only member from Japan within the committees of the ERA Pledge is an arbitrator and lawyer, Ms. Yoko Maeda, who is in the Young Practitioners Sub-Committee.[108] Since the pledge was launched, the

[104] ERA Pledge, "About the Pledge", see (Sep 07, 2022) http://www.arbitrationpledge.com/about-the-pledge
[105] ERA Pledge, see (Sep 07, 2022) http://www.arbitrationpledge.com/
[106] ERA Pledge, "Committees", see (Sep 07, 2022) http://www.arbitrationpledge.com/steering-committees
[107] *Ibid*
[108] *Ibid*

West's arbitral institutions have played significant roles in ensuring gender diversity in institutional arbitral appointments.[109] Among the four East Asian arbitral institutions in this study, only the Mongolian MIAC is not a signatory to the pledge.

Among the three signatories, HKIAC and KCAB have probably made the most significant contributions (in percentage terms) in ensuring gender diversity in their institutional appointments. In 2021, the KCAB International appointed 21 arbitrators, of which eight (38%) were female.[110] The HKIAC made 149 appointments in 2020 and 34 (22.8%) of these were female.[111] Meanwhile, in 2019, the JCAA made nine institutional appointments, none of whom were female, and in 2020 the JCAA appointed eight arbitrators of whom only one was female.[112] This distinctive lack of gender diversity in JCAA appointments is perhaps due to the JCAA's lower caseload and its small market for arbitrators, dominated by very few well-recognized grand old men.

The launch of the ERA Pledge itself foregrounded the issue's significance and how men monopolize arbitration practices. After the launch, under the impact of the commitments many arbitral institutions took a step toward increasing female representation in their institutional appointments, particularly the KCAB and HKIAC. Nonetheless, the ERA Pledge has less impact on the decisions of the parties and counsels who make most of the arbitral appointments in East Asia and the West. Male arbitral appointments dominate the HKIAC, JCAA, KCAB, and MIAC's party appointments.[113] The reason for that is probably the parties' limited interest in ensuring gender diversity in arbitral appointments. When selecting arbitrators, parties are often more interested in choosing suitable and capable arbitrators rather than providing gender diversity in

[109] Freshfields Bruckhaus Deringer, "Five years of the ERA Pledge," (May 20, 2021), Distributed by Ashley Jones, see (Sep 07, 2022) https://riskandcompliance.freshfields.com/post/102gyl1/five-years-of-the-era-pledge
[110] See KCAB, "Annual Reports", Annual Report of 2021 (2021):15, 18, (Sep 20, 2022) http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=174&CURRENT_MENU_CODE=MENU0017&TOP_MENU_CODE=MENU0014
[111] HKIAC, "Statistics: 2020 Statistics", n.d., see (Sep 21, 2022) https://www.hkiac.org/about-us/statistics#:~:text=Of%20the%20149%20appointments%20made,over%20the%20last%20three%20years.
[112] The statistics are provided by JCAA Administrative Office, Officer Shinji Ogawa (Jul 26, 2021).
[113] See HKIAC, "Statistics: 2021 and 2020 Statistics", n.d., see (Sep 21, 2022) https://www.hkiac.org/about-us/statistics#:~:text=Of%20the%20149%20appointments%20made,over%20the%20last%20three%20years.; as well as see KCAB, "Annual Reports", Annual Reports of 2021, 2020, and 2019 (Sep 21, 2022) http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=174&CURRENT_MENU_CODE=MENU0017&TOP_MENU_CODE=MENU0014.; See Chapter I, Table 1, 2, 4 and 5.

the market. Therefore, the ERA Pledge may not be ideal for parties to encourage them to make more female arbitral appointments.

2.3.2 Arbitral Women

Arbitral Women (AW) is an international network of women in dispute resolution. AW is an international non-governmental organization that was founded in 1993 and has been actively engaged in empowering women in arbitration since 2000.[114] AW has many objectives, but the main aim is "advancing the interests of female practitioners and promoting women and diversity in international alternative dispute resolution."[115] AW organizes many events and conferences to empower women in arbitration. The institution helps arbitration practitioners and women to network and thereby expand their connections. It also provides mentorship services, discussions of gender diversity issues, and many other activities to empower women in arbitration, including newsletters about recent improvements in female representation.[116]

However, this research discovered that AW has weaknesses that probably make its mission ineffective with respect to both arbitration in East Asia and globally. First, with respect to East Asia, the institution lacks members from the region at the executive level and organizes only a limited number and scale of activities in East Asia. Second, globally, there is little evidence that AW acknowledges the potential significance of male engagement in empowering women in arbitration.

A significant problem is that AW has very few Asian members at the executive level; the Boards between 2022-2024, including the Executive Committee and Board of Directors and Advisory Board, have no Asian national members other than one Chinese-British member on the Board of Directors.[117] The Steering Committee of a networking group for AW members under 40, the Young Arbitral Women Practitioners (YAWP), has only one Asian member (Korean).[118] Arbitral Women's activities primarily focus on Western jurisdictions, and the institution has almost no East Asian members at the executive level.

[114] Arbitral Women, "About Arbitral Women (AW)", (Aug 31, 2022) see (Sep 07, 2022) https://www.arbitralwomen.org/aw-outline/
[115] Arbitral Women, "About Arbitral Women (AW)", (Aug 31, 2022) see (Sep 07, 2022) https://www.arbitralwomen.org/aw-outline/
[116] Arbitral Women, "News and Newsletters: AW Newsletters" n.d., see (Sep 07, 2022) https://www.arbitralwomen.org/newsletters/
[117] Arbitral Women, "AW Board and Committees", Board Members 2022-2024, n.d., see (Sep 07, 2022) https://www.arbitralwomen.org/aw-board/
[118] Arbitral Women, "YAWP: Young Practitioners", n.d., see (Sep 07, 2022) https://www.arbitralwomen.org/young_arbitralwomen_practitioners/

Though recently AW has tried to extend its activities to East Asia, these attempts are still limited to a few webinars on women in arbitration.

Thus, although AW is almost the biggest and most prominent organization in promoting gender diversity in international arbitration, the East Asian or Asian arbitration communities still lack a fully active organization supporting gender diversity in the region. Moreover, AW's activities have mainly focused on international commercial arbitration rather than domestic arbitration; thus, it has limited engagement from women arbitrators and practitioners working at the domestic level.

Another issue is that AW tends to overlook the significance of male engagement in empowering women in arbitration. All members of the AW are women, and most of the activities of the AW have female speakers and reporters, as well as predominantly female attendees. Though it has no problem engaging women members, AW has arguably done little to encourage male engagement. For instance, in 2021 AW organized a webinar dedicated to Women's Day in Japan. One of the organizers of the event said that though the Japanese members of the organizing committee of the webinar initially planned to invite male speakers and hear their perspectives on the lack of female arbitral appointments, the AW disapproved of the idea and suggested the organizing committee have only female panelists at the event, and the webinar held an all women panel.[119]

Though it is beneficial to hear women's voices on the matter, supporting male engagement in promoting gender diversity in arbitration is crucial. Men are members of the dominant group in arbitration; thus, for better or for worse, their influence on empowering women in arbitration is likely to be much greater than that of the few female pioneers in the arbitration community. Moreover, this dissertation found that most of the successful arbitrators and senior arbitration practitioners had male mentors or supervisors who

[119] Interviewee: Arbitration practitioner Ms. X, "Interview with Ms. X, organizing committee member of the Arbitral Women's Japan webinar for the International Women's Day, 2021," (Interview conducted by Zoom Video Conferencing,) Interviewer: Munkhnaran Munkhtuvshin, April 15, 2021, For the confidentiality of the interviewee, the personal and professional information about the interviewee is not disclosed.

helped them enter into and specialize in arbitration or extend their connections and receive recognition in the arbitration community.[120]

According to a 2018 study by the International Center for Research on Women, the role of men in empowering women is generally conceptualized in three main ways: as gatekeepers, as allies or partners, and as stakeholders.[121] As gatekeepers, men hold positions of power and advocate inequitable patriarchal norms; as allies, men assume positive supporting roles; and as stakeholders men gain from more equitable families and societies.[122] In the arbitration community, men can be both allies and stakeholders. They can support equal representation and be co-beneficiaries of the advantages of diverse arbitration communities. Thus, AW perhaps needs to be more supportive of male engagement in empowering women.

[120] Among the seventeen interviews this researcher conducted with female arbitrators and senior arbitration practitioners between September 2020 and September 2022, fourteen of the interviewees said they had male mentors.
[121] A. Glinski, C. Schwenke, L. O'Brien-Milne, and K. Farley, *Gender Equity and Male Engagement: It only works when everyone plays.,* (Washington, D.C.: ICRW., 2018):10-11
[122] *Ibid*

2.3.3 Arbitrator Intelligence

Frequently, the arbitration community receives feedback on arbitrators' performances by word of mouth. Just a few years ago, before the launch of Arbitrator Intelligence, it was almost impossible to see official feedback in written form about an arbitrator. Though confidentiality is one of the attractive characteristics of arbitration, at the same time, it made the information about arbitrators' professional performance confidential at some level, too. According to Greenwood (2017), this information asymmetry also contributes to keeping the monopoly of a few frequently appointed arbitrators (mainly male) in the market.[123]

Thus, Arbitrator Intelligence (AI) was established in 2014 as a non-profit, academically affiliated entity to ensure not only gender, but also ethnic and age diversity in the market for arbitrators. AI is a database that provides exclusive, proprietary feedback about arbitrators regarding their performance during arbitration procedures, such as the quality of document production rulings, the length of time of the proceedings, and the efficiency and fairness of case management.[124]

In other words, AI works to increase transparency, accountability, and diversity in the arbitrator selection process by making available essential information about arbitrators' performances.[125] As of 2022, AI has information on more than 1,000 arbitrators from 125 jurisdictions and received more than 1,200 feedback reports from parties and counsels regarding arbitrator performance.[126] As of 2022 (September), Arbitrator Intelligence has information regarding six Hong Kong SAR nationals and four Korean arbitrators.[127] In the database of Arbitrator Intelligence, no Japanese or Mongolian arbitrators' data has been recorded yet.

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[123] Lucy Greenwood, "Tipping the Balance - Diversity and Inclusion in International Arbitration," Arbitration International, Vol. 33, Issue 1 (March 2017): 99-108

[124] Wolters Kluwer, "Arbitrator Intelligence", AI Reports give parties and counsel access to arbitrators' track records on key issues, enabling them to make more predictable arbitrator appointments, n.d., see (Sep 07, 2022) https://www.wolterskluwer.com/en/solutions/kluwerarbitration/arbitrator-intelligence; as well as see Catherine A. Rogers, "Arbitrator Intelligence: The Basics," Kluwer Arbitration Blog, (Feb 27, 2018) see (Sep 07, 2022) http://arbitrationblog.kluwerarbitration.com/2018/02/27/ai-3/

[125] Catherine A. Rogers, "Arbitrator Intelligence: The Basics," Kluwer Arbitration Blog, (Feb 27, 2018) see (Sep 07, 2022) http://arbitrationblog.kluwerarbitration.com/2018/02/27/ai-3/

[126] Arbitrator Intelligence, Home, n.d., see (Sep 07, 2022) https://arbitratorintelligence.com/

[127] Arbitrator Intelligence, "Arbitrators", n.d., see (Sep 07, 2022) https://app.arbitratorintelligence.com/

Though the founder of Arbitrator Intelligence, (Insert first name here) Rogers (2018), advocates the advantages of AI since it helps to get through the significant problem of information asymmetry on arbitrators' performances, some are more critical. Simpson (2018) criticizes Arbitrator Intelligence in her paper *Arbitrator 'Intelligence' and the Mysterious Brown M&M.* Simpson shed light on several issues related to Arbitrator Intelligence by investigating several cases and reports. These included reports often being based on subjective viewpoints of the parties or counsels rather than objective insight, the institution sharing reports on arbitrators without the arbitrators' consent, and the institution providing a large amount of reporting about arbitrators who have already retired, while providing little information about new and not well-known arbitrators.[128] Moreover, she mentions the disadvantages of feedback submissions only given by the claimants and how this situation may create arbitrator bias towards the claimants. As of 2022, the feedback system has changed, and both parties and counsels can give feedback on arbitrators' performances, while the arbitrators, tribunal secretaries, and arbitral institutions' staff cannot provide feedback.[129]

Arbitrator Intelligence is a useful mechanism for filling the performance information gap in the market for arbitrators; however, it still lacks feedback about arbitrators from East Asia. It mainly provides extensive information about arbitrators who are already well-known. Due to this lack of information on East Asian arbitrators, Arbitrator Intelligence has relatively little impact on the gender diversity issues in arbitration in East Asia.

[128] Katherine Simpson, "Arbitrator 'Intelligence' and the Mysterious Brown M&M," University of Toledo Law Review 52, no. 1 (Spring 2021): 27-40

[129] Arbitrator Intelligence, "FAQs: Who cannot provide feedback", see (Sep 22, 2022) https://arbitratorintelligence.com/avada_faq/who-cant-provide-feedback/

2.3.4 Gender diversity policies of arbitral institutions

In 2018, the HKIAC launched Women in Arbitration (WIA), an initiative committed to empowering women in international arbitration in China.[130] In 2020, the WIA established its first WIA Committee and WIA Executive Committee.[131] The WIA Committee designs the policies and activities of the WIA to empower women in international arbitration and related areas and practice in China.[132] The WIA Committee for 2020-2022 has nine members who are famous arbitrators and senior arbitration practitioners in the region, as well as executive officers in the HKIAC. These include the independent arbitrator, Chiann Bao, arbitrator and professor at the University of Hong Kong, Shahla Ali, Deputy Secretary-General of the HKIAC, and Ling Yang, Chief Representative of the Shanghai Office of HKIAC.[133]

The WIA Committee's primary role is to connect, support, and advance women in arbitration and promote gender diversity within the dispute resolution community not only in Mainland China and Hong Kong, but also globally.[134] The WIA Executive Committee works with the WIA Committee Members to implement policies and activities. The Executive Committee for 2020-2022 has five members, including senior counsels at law firms (Ms. Yu Li and Ms. Connie Lee) and a deputy counsel at the HKIAC (Ms. Xiaojun Wang). Organized WIA activities include roundtable discussions, debates, and social events covering various topics on women's professional growth in arbitration.[135]

In 2021, WIA organized three significant events: "WIA+ Series: Female Uniqueness & Art," co-organized with the Shanghai Women's Chamber of Commerce (June 10, 2021); "WIA+ Series: How to Get Your First Appointment as an Arbitrator," co-organized with the Rising Arbitrators Initiative (RAI) of Beijing (Sep 17, 2021); "WIA+ Series: The Future of Female Legal Professionals," co-organized with the

[130] HKIAC, "HKIAC Launches Women In Arbitration Initiative," (Feb 14, 2018) see (Sep 08, 2022) https://www.hkiac.org/news/hkiac-launches-women-arbitration-initiative
[131] HKIAC, "WIA Establishes its First Committees," (Aug 19, 2020) see (Sep 08, 2022) https://www.hkiac.org/news/wia-establishes-its-first-committees
[132] HKIAC, "WIA Establishes its First Committees," (Aug 19, 2020) see (Sep 08, 2022) https://www.hkiac.org/news/wia-establishes-its-first-committees
[133] HKIAC, "WIA Establishes its First Committees," (Aug 19, 2020) see (Sep 08, 2022) https://www.hkiac.org/news/wia-establishes-its-first-committees
[134] HKIAC, "WIA Committee Members," n.d., see (Sep 08, 2022) https://www.hkiac.org/women-arbitration-wia/WIA-committee-members
[135] HKIAC, "WIA Establishes its First Committees," (Aug 19, 2020) see (Sep 08, 2022) https://www.hkiac.org/news/wia-establishes-its-first-committees

Shenzhen Court of International Arbitration (SCIA) (Dec 09, 2021). WIA also supported several other events.[136] The events and conferences touched on various topics related to women practitioners and arbitrators' empowerment in international arbitration, such as the issue of getting one's first appointment and how to create a clear professional image and design a career path in arbitration as a woman.

Furthermore, out of the three events organized by WIA, 21 of 25 speakers were female (84%).[137] "In the events held by the HKIAC from 2018 to 2021 the percentage of women speakers has risen from 40% to 56%. Regarding female appointments in the HKIAC, we have also seen a rise from 7.1% to 27.4% between 2015 and 2021." [138] Moreover, "in June 2021, WIA launched the "WE GROW Mentorship and Coaching Programme." The program aims to support female professionals in the development of their careers in the field of international arbitration. The mentors are experienced female arbitrators and arbitration practitioners.[139] In 2021, WIA received a total of 53 applications, and WIA mentored ten women.[140] "In February 2022, the program was nominated for the Equal Representation in Arbitration Pledge in the Global Arbitration Review Awards 2022."[141]

The initiatives for launching the WIA were related to the HKIAC's entry into the ERA pledge. In 2016, the HKIAC signed the pledge. The HKIAC reports that female arbitral appointments tripled from 2015 – 2019.[142] In 2018, the HKIAC formalized its internal practice by implementing guidelines to encourage diversity amongst panel speakers. The institution enforced the policies successfully; over half of the panelists at conferences and events at the HKIAC in 2020 were female speakers.[143]

[136] HKIAC, "WIA Annual Report: 2021 WIA Annual Report," see (Sep 08, 2022) https://www.hkiac.org/women-arbitration-wia/2020-wia-annual-report
[137] HKIAC, "WIA Annual Report: 2021 WIA Annual Report," see (Sep 08, 2022) https://www.hkiac.org/women-arbitration-wia/2020-wia-annual-report
[138] HKIAC, "WIA Annual Report: 2021 WIA Annual Report," see (Sep 08, 2022) https://www.hkiac.org/women-arbitration-wia/2020-wia-annual-report
[139] HKIAC, "WIA Annual Report: 2021 WIA Annual Report," see (Sep 08, 2022) https://www.hkiac.org/women-arbitration-wia/2020-wia-annual-report
[140] *Ibid*
[141] *Ibid*
[142] HKIAC, "WIA Establishes its First Committees," (Aug 19, 2020) see (Sep 08, 2022) https://www.hkiac.org/news/wia-establishes-its-first-committees
[143] HKIAC, "WIA Establishes its First Committees," (Aug 19, 2020) see (Sep 08, 2022) https://www.hkiac.org/news/wia-establishes-its-first-committees

Another distinctive aspect of the HKIAC that may play a significant role in ensuring gender diversity and empowering young female practitioners in arbitration is the HKIAC's flexible criteria and procedures for becoming a young arbitrator. The HKIAC has two panels: the HKIAC Panel of Arbitrators and the HKIAC List of Arbitrators.[144] "The HKIAC Panel of Arbitrators comprises members who have acquired particular experience acting as arbitrators. Included on the Panel are senior members of the arbitration community who have been appointed arbitrators in multiple disputes and have significant experience in award drafting."[145] Meanwhile, the HKIAC List of Arbitrators has younger arbitrators who may have some, but not necessarily extensive, experience acting as an arbitrator.[146]

In order to be listed on the HKIAC Panel of Arbitrators, the candidates need to meet four main criteria: to demonstrate substantial experience as arbitrators; to have drafted three or more arbitral awards within the last five years; to provide two written references; and to confirm that they have not been found guilty by a court or disciplinary tribunal of misconduct.[147] However, to be listed on the HKIAC List of Arbitrators, the applicants need to meet four requirements that are more flexible than those of the Panel of Arbitrators. A candidate who wants to be included in the HKIAC List of Arbitrators only needs to demonstrate substantial experience in arbitration (whether as an arbitrator, counsel, expert witness, instructing solicitor, or otherwise), with at least five years of full-time arbitration experience (or the equivalent); have drafted two arbitral awards or arbitration related documents; provide two written references; and confirm that they have not been found guilty by a court or disciplinary tribunal of misconduct.[148] Thus, more young female arbitration practitioners have the possibility of being listed on the HKIAC List of arbitrators. Eric Ng, the Deputy Secretary General of the HKIAC, says:

> As of November 2021, we have 72 (14%) female arbitrators listed on the Panel (a total of 523 arbitrators) and 85 (26%) female arbitrators listed on the List (A total of 329 arbitrators). The total

[144] HKIAC, "Arbitrators: HKIAC's Panel and List of Arbitrators," n.d., see (Sep 08, 2022) https://www.hkiac.org/arbitration/arbitrators#HKIAC's%20Panel%20and%20List%20of%20Arbitrators
[145] HKIAC, "Arbitrators: HKIAC's Panel and List of Arbitrators," n.d., see (Sep 08, 2022) https://www.hkiac.org/arbitration/arbitrators#HKIAC's%20Panel%20and%20List%20of%20Arbitrators
[146] HKIAC, "Arbitrators: HKIAC's Panel and List of Arbitrators," n.d., see (Sep 08, 2022) https://www.hkiac.org/arbitration/arbitrators#HKIAC's%20Panel%20and%20List%20of%20Arbitrators
[147] HKIAC, "Arbitrators: Criteria and Application Procedure," n.d., see (Sep 08, 2022) https://www.hkiac.org/arbitration/arbitrators/criteria-application
[148] HKIAC, "Arbitrators: Criteria and Application Procedure," n.d., see (Sep 08, 2022) https://www.hkiac.org/arbitration/arbitrators/criteria-application

number will be 157 (18%) female arbitrators listed on the Panel and List (A total of 852 arbitrators).[149]

[149] Interviewee: Mr. Eric Ng, "Interview with the HKIAC Deputy Secretary General, Mr. Eric Ng," (the interview conducted by both zoom video conferencing and email form), Interviewer: Munkhnaran Munkhtuvshin, December 02, 2021.

About the JCAA, during the JCAA and Arbitral Women joint webinar held in connection with International Women's Day 2021, entitled "Gender Diversity in International Arbitration: Trends and Developments in Japan and the Asia Pacific," the panelists argued that though the JCAA signed on to the ERA Pledge, the institution still initiates very few activities related to empowering women in arbitration.[150] It is perhaps true that the JCAA does little to ensure gender diversity in its appointments. As of September 2022, JCAA has no internationally known specific working groups or committees on ensuring gender diversity.[151] Except for the above-mentioned joint webinar for International Women's Day in 2021, the institution does not organize any other events for gender diversity, and the JCAA does not often engage in activities for empowering women in arbitration.

Nevertheless, taking into account the institution's small caseload, which is usually limited to around nine to fifteen cases each year, it may be too early to criticize the JCAA for its relative lack of activity empowering women. Perhaps due to the small market and fewer caseloads at present, the institution's primary approach is to increase the overall caseload rather than focusing on strengthening female representation in arbitral appointments. Usually, arbitral institutions focus on gender diversity issues only after they have a considerable number of cases and find a foothold in the market for arbitration.[152] Considering this trend, a certain amount of patience may be required.

[150] the Arbitral Women-JCAA Webinar "International Women's Day 2021 Gender diversity in international arbitration: Trends and developments in Japan and Asia Pacific," (March, 08, 2021); see the details of the webinar: JCAA, "ArbitralWomen: International Women's Day 2021 Gender diversity in international arbitration: Trends and developments in Japan and Asia Pacific," (Sep 19, 2022) https://www.jcaa.or.jp/en/seminar/seminar.php?mode=show&seq=52&past=1

[151] See JCAA, "Arbitration," n.d., (Sep 19, 2022) https://www.jcaa.or.jp/en/

[152] As an illustration, the London Court of International Arbitration (LCIA) is one of the leading international arbitral institutions in the world. LCIA started to focus on its gender diversity issues more earnestly only after it signed the ERA Pledge in 2016 when the institution's caseload already started to be more than 300 cases; see LCIA, "Reports: Facts and Figures-2016: A Robust Caseload" n.d., (Sep 19, 2022) https://www.lcia.org/LCIA/reports.aspx; also see LCIA, "LCIA Signs Diversity Pledge", (May 25, 2016), (accessed Sep 19, 2022) https://www.lcia.org/News/lcia-signs-diversity-pledge.aspx

About the KCAB, in 2021, KCAB launched the Women's Interest Committee, [153] which was established to empower women in arbitration in the region and globally.[154] The Women's Interest Committee has 18 members who are all female arbitration practitioners or arbitrators, and researchers in the field.[155] The Steering Committee Members of WIC are well-known arbitrators and practitioners or professors in South Korea, including the Chair, Una Cho, along with Vice-chair Myung-Ahn Kim and Jeonghye Sophie Ahn who are both successful arbitration practitioners in Korea and abroad.

Nonetheless, due to its recent establishment and limited experience, the Women's Interest Committee has not organized any known significant events other than the "Women in Arbitration Virtual Event: What is the Future for Women in Arbitration?" in November 2021.[156] However, in the Annual Report of 2020, KCAB Chairman Hi-Taek Shin and Secretary General Sue Hyun Lim mentioned the gender diversity improvements in KCAB in their foreword message as follows:

> Great strides in gender diversity were made in 2020. Twenty percent of the newly added KCAB INTERNATIONAL arbitrators are female. Moreover, compared with 2019, the total number of female arbitrators in the KCAB INTERNATIONAL panel rose by 11.4%.[157]

In its 2021 Annual Report, the institution also emphasized that "Of all the 583 arbitrators on the 2021 KCAB INTERNATIONAL panel of arbitrators, 97 were female, increasing 24.4% from 78 in 2020. Their percentage in the whole panel rose by 1.5%, from 15.1 to 16.6%."[158]

Due to its recent establishment, however, the Women's Interest Committee has not made significant contributions to women's empowerment in Korean arbitration practice even though the KCAB

[153] KCAB, Annual Report of 2021, (2021): 26, the report is available at (Sep 08, 2022) http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=174&CURRENT_MENU_CODE=MENU0017&TOP_MENU_CODE=MENU0014

[154] KCAB, "Women's Interest Committee: Who we are," n.d., see (Sep 08, 2022) http://www.kcabinternational.or.kr/common/index.do?jpath=/contents/sub040801&CURRENT_MENU_CODE=MENU0068&TOP_MENU_CODE=MENU0018

[155] KCAB, "Women's Interest Committee: Committee Members," n.d., see (Sep 08, 2022) http://www.kcabinternational.or.kr/common/index.do?jpath=/contents/sub040802&CURRENT_MENU_CODE=MENU0068&TOP_MENU_CODE=MENU0018

[156] KCAB, "Women's Interest Committee: Activities and Events," n.d., see (Sep 08, 2022) http://www.kcabinternational.or.kr/user/Board/comm_notice_view.do

[157] KCAB, Annual Report of 2020, "Chairman & Secretary General's Message," at p. 04

[158] KCAB, Annual Report of 2021, (2021): 18, the report is available at (Sep 08, 2022) http://www.kcabinternational.or.kr/user/Board/comm_notice.do?BD_NO=174&CURRENT_MENU_CODE=MENU0017&TOP_MENU_CODE=MENU0014

administrative office still emphasizes the issue and gives particular attention to it. Thus, the Women's Interest Committee may in the future achieve some positive outcomes with cooperation and support from the institution. However, it may not accomplish satisfactory results in ensuring gender diversity since most of the appointments at the KCAB are made by parties rather than the institution. Nevertheless, the Women's Interest Committee may play a significant role in preparing competitive female arbitrators.

Regarding the MIAC, compared to the other three arbitral institutions, the MIAC lacks initiatives and policies ensuring gender diversity in its arbitration services. The institution has not yet developed gender diversity policies nor established specific working groups or committees for empowering women in the field. Nevertheless, in recent years, the number of female arbitrators has increased due to a significant increase in the new arbitrators listed on the panel of MIAC. As of 2022 (September), 72 national arbitrators have been listed on the panel; among them, 26 (36%) are female,[159] while in 2021, women arbitrators represented 32.6% of the total number of arbitrators listed on the MIAC Panel.[160]

Importantly, even though the institution has no specific policy for gender diversity or committees for empowering women, the number of female arbitrators listed on the MIAC panel is the highest among the four jurisdictions of this study in percentage terms.[161] Hence, one may assume that the MIAC can reach 50% female arbitrators on the panel with an effective policy for empowering women. The administrative office of the MIAC needs to give more attention to designing a suitable policy for increasing female representation on the panel and in arbitral appointments. The MIAC should establish a new committee for empowering women in arbitration.

[159] MIAC, "The Panel of Arbitrators", n.d., see (Sep 16, 2022) http://www.arbitr.mn/index.php/arbitrators-menu/2019-11-18-06-05-47
[160] MIAC, "The Panel of Arbitrators", n.d., see (July 20, 2021) http://www.arbitr.mn/index.php/arbitrators-menu/2019-11-18-06-05-47
[161] See Chapter I, Part 1.2.1 "The Pyramid of female underrepresentation in arbitration".

Summary: Persistent male monopoly and ineffective soft laws and activities from arbitration communities: The need for transdisciplinary research

This chapter examined the history of arbitration tradition and laws in Hong Kong, Japan, Korea, and Mongolia and their impact on the current male monopoly in arbitration. While the arbitration laws and acts in each jurisdiction have constantly improved, men have continued to dominate arbitration practice and the market for arbitrators. One or two hundred years ago, in Hong Kong, the informal first arbitrators were British officers; in Mongolia, they were Qing magistrates; in Korea, the first arbitrators were respected intellectual elites (who were powerful males.) Arbitration laws have changed and arbitral institutions have grown more powerful, but the market for arbitrators in East Asia remains dominated by men.

The arbitration laws in Hong Kong, Japan, Korea, and Mongolia and the arbitration rules of the HKIAC, JCAA, KCAB, and MIAC provide party autonomy in selecting an arbitrator. Even though the privilege of choosing a decision-maker is one of the most attractive characteristics of arbitration, it renders management of gender diversity in arbitral appointments challenging for arbitral institutions. Regardless of the gender diversity policies of arbitral institutions and the committees for empowering women in arbitration established next to these institutions, the number of female arbitral appointments is still relatively low in East Asia.

Arbitral institutions have some power over appointing arbitrators in certain situations, yet it is the parties that make most of the appointments at the end of the day. Often, parties and counsels do not have vital interests in gender diversity issues or a sincere wish to empower women in arbitration. Since disputants may feel that they only need to have a suitable arbitrator capable of successfully handling their cases, gender issues may be of little concern to them. Thus, the parties and counsels often choose well-known and predictably effective arbitrators, who are mainly men. Hence, the most attractive feature of arbitration can become a curse when it comes to managing gender diversity in the market for arbitrators. It is for this reason that soft law initiatives emerged, such as the ERA Pledge and groups like Arbitrator Intelligence and Arbitral Women, and also gender diversity policies and special committees of arbitral institutions.

Nevertheless, this dissertation found that each of these well-known soft law initiatives has some flaws in application or in securing benefits for female arbitrators in East Asia. The ERA Pledge is a mainly

Caucasian institution consisting of many women practitioners, mainly from the USA or Europe. Thus, there is a high probability that the ERA Pledge cannot produce effective and practical projects in East Asia and cannot make significant contributions in the region. Meanwhile, Arbitrator Intelligence is criticized for creating issues and biases in arbitration rather than eliminating the information asymmetry regarding arbitrators' performance and opening the market for minority arbitrators. Arbitral Women also tends to promote a radical feminist approach to female underrepresentation in arbitral tribunals and overlook the significance of male engagement in the issue.

Regardless of their flaws, however, the soft laws and the activities from arbitration communities have brought the attention of arbitral institutions to the issue. This research found that due to the ERA Pledge and Arbitral Women's advocacy, most arbitral institutions have become aware of gender diversity issues in their organizations and regions. They have designed policies to ensure gender diversity and created committees to empower women in arbitration at their institutions. Unfortunately, the power to control gender diversity is mainly in the hands of the parties and counsels, who often have no interest in the issue of female underrepresentation in arbitration. Moreover, parties and counsels choose their arbitrators based on many conditions related to law and arbitration, behavioral economics, and social psychology.

At present, there is almost no comprehensive research on how the parties and counsels select their arbitrators, what conditions affect the parties' preferences, and what kind of circumstances and preferences lead them to choose men rather than women. Therefore, the following chapters will investigate how parties make their appointment choices using a transdisciplinary approach, drawing on not only legal study, but also behavioral economics and social psychology.

Chapter III: Gender Diversity in Arbitration and Common Theories from Economics and Psychology

The prior chapter investigated the issue of female underrepresentation in arbitral appointments from the legal viewpoint. It examined how arbitration laws and rules of arbitral institutions indirectly contribute to the lack of gender diversity in arbitration and, at the same time, how soft laws and activities of arbitration communities serve to empower female representation in arbitration. However, analyzing the issue only from the legal viewpoint is not enough, since the selection of arbitrators is a complicated procedure that often involves sociological, psychological, and economic aspects, as analyzed in Chapter I.

Thus, this chapter examines some theories on how the lack of gender diversity in arbitral appointments is established from the viewpoint of behavioral economics and social psychology. It analyzes two notions of behavioral economics and a conception of implicit bias from a social psychological perspective, and their connections to the problem. In the end, the chapter concludes with the significance of the interdisciplinary research for establishing more effective strategies for ensuring gender diversity in arbitration.

"Interdisciplinarity or interdisciplinary studies involves the combination of two or more academic disciplines into one activity." [162] Though economics, psychology, and the law are not the same academic discipline, thinking across boundaries of different schools of thought may help reach more reasonable analyses and effective remedies for problems. Thus, an interdisciplinary approach to gender diversity issues in East Asian arbitration conceivably would help to achieve effective and practical solutions for the problem. This chapter explains a rudimentary interdisciplinary study that involves the disciplines of economics and psychology.

[162] M. Nissani, "Fruits, Salads, and Smoothies: A Working definition of Interdisciplinarity," the Journal of Educational Thought, Vol. 29, No. 2 (1995): 121–128.

3.1 Lack of gender diversity in international arbitration and Behavioral Economics

This part will examine the problem from the viewpoint of behavioral economics. There are two theories in behavioral economics that possibly apply to the phenomenon of female underrepresentation in arbitration: the "Expected Utility Theory" and the "Market for Lemons." This part will discuss the possible application of these two theories in the process of selecting arbitrators and how they may lead to a lack of gender diversity in arbitral appointments. About the literature on the application of these notions in gender diversity issues in arbitration, almost none of the former studies on the problem touched upon the Expected Utility Theory; meanwhile, the theory of the Market for Lemons was formally addressed by scholars and feminist activists in arbitration in the West.[163]

[163] See Lucy Greenwood, "Tipping the Balance - Diversity and Inclusion in International Arbitration," Arbitration International, Vol. 33, Issue 1 (March 2017): 99-108

3.1.1 Expected utility theory and the market for arbitrators

This section analyzes the current male dominance in arbitral tribunals by "Expected Utility Theory" of economics (EUT).[164] EUT was conceived by a Swiss mathematician, Daniel Bernoulli. Bernoulli (1738) proposed two famous theses on EUT.[165] His second thesis could possibly be used in relation to the current lack of gender diversity issues in arbitral appointments. Bernoulli's second thesis notes that a risky prospect on levels of wealth ought to be evaluated by its expected utility of wealth—the more, the better.[166] In other words, EUT states that the decision-maker chooses between risky or uncertain prospects by comparing their expected utility value.[167]

Bernoulli's Expected Utility Theory is about a hypothetical situation where people choose to have one apple without gambling rather than gambling between two apples or zero since having one apple without gambling gives the most expected utility. Selecting arbitrators is no different from gambling for a tree that may give a significant number of apples or zero at all, or just picking a well-known tree that often gives a certain fixed number of apples that may be less than the unknown tree may provide, but definitely more than zero. In arbitration practice, counsels usually decide on appointing whom as arbitrators rather than parties choosing by themselves. However, lawyers tend to calculate the risks narrowly. Due to risk aversion, the counsels usually select well-known arbitrators who had been chosen at least once or twice before.

These tendencies lead to the repeated appointments of a group of famous arbitrators who are mainly men with few exceptions. And at the end of the day, women arbitrators do not get appointments; also young arbitrators and arbitrators from minority groups end up without appointments. Risk aversion and longing for the most foreseeable desired outcome contribute to the lack of gender diversity as well as ethnic diversity in arbitral appointments. During the growth of commercial arbitration around the 1970s and 1980s in the West and later in East Asia, almost all of the first arbitrators appointed in the early arbitral disputes were men (in the West, *Caucasian* men.)

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[164] Daniel Bernoulli, "Exposition of a New Theory on the Measurement of Risk," Econometrica, published by the Econometric Society, Vol. 22, no. 1 (Jan, 1954): 23-36

[165] Peter C. Fishburn, "Expected Utility: An Anniversary and a New Era," Journal of Risk and Uncertainty, Published by Spring, Vol. 1, No. 3 (September 1988): 267-283, 268

[166] *Ibid*

[167] John B. Davis, and Et Al. *The Handbook of Economic Methodology*, (Edward Elgar Publishing, 1998): 171

Thus, later when a diverse group of newcomers entered the arbitration field as arbitration practitioners and later as arbitrators, still the counsels and co-arbitrators had voted for the experienced arbitrators (primarily male) since these arbitrators had been proven to be good arbitrators by their experience, and were giving the most expected utility value to the appointers. Hence, when the EUT is applied to the commercial arbitration, which has a male-dominated history, it again creates the same male dominance in arbitral appointments. This is one possible cause of the insufficient female arbitral appointments, explained by EUT in behavioral economics. There are some studies and articles on the potential application of EUT in selecting arbitrators.[168] However, this dissertation, almost for the first time, sheds light on EUT's possible connection with the issue of female underrepresentation in arbitration in East Asia.

[168] See J.K. Rosenblatt, "Maximising Expected Utility for Behaviour Arbitration," contribution in Ed. N. Foo, *Advanced Topics in Artificial Intelligence, Lecture Notes in Computer Science*, Published by Springer, Berlin, Heidelberg, vol 1747, (1999), (May 25, 2022) https://doi.org/10.1007/3-540-46695-9_9; also see Ahmad E. Alozn, and Abdulla Galadari, "The Arbitrating Party Utility Function: An Expected Utility Approach," Journal of Legal Affairs and Dispute Resolution in Engineering and Construction, Vol. 9, No. 3 (2017): 04517013, (May 25, 2022) https://www.researchgate.net/publication/317090423_The_Arbitrating_Party_Utility_Function_An_Expected_Utility_Approach

3.1.2 "Market for lemons" and the market for arbitrators

Greenwood (2017) noted that women could not enter the market for arbitrators due to information asymmetry: that is, the decision-makers are few, the process is relatively closed, and those deciding have limited knowledge of candidates outside. Consequently, the repeated appointments have become customary.[169] Greenwood (2017) also referred to economist Akerlof's 1970 theory "Market for Lemons" for the first time to address the male monopoly in international arbitration.[170] The "Market for Lemons" is about how the market suffers from information asymmetry. Consumers may choose the lemons (as Akerlof highlighted in his original paper, lousy quality goods such as bad cars are known as "lemons" in America. Thus, he gave this name to his theory.)[171] rather than qualified goods because of the asymmetric information.

Greenwood stressed due to information asymmetry and lack of familiarity with the qualified but inexperienced arbitrators, the experienced, well-known arbitrators are often appointed and monopolize the market for arbitrators.[172] She pointed out:

> Market for arbitrators … consists of at least two 'submarkets': one composed of well-known arbitrators, and another one composed of relatively inexperienced, but qualified ones; this second group is not only larger than the first group, but younger and more diverse. Information asymmetry affects the market as a whole but disproportionately affects the second group.

Though Greenwood did not refer to it, in addition to the impact of asymmetrical information in the market for goods, in the original paper of Akerlof (1970): *"The Market for 'Lemons': Quality Uncertainty and the Market Mechanism,"* Akerlof also mentioned the impact of asymmetrical information in employing the minorities. He stressed less hiring of members of minority groups in responsible positions due to uncertainties in distinguishing those with good job qualifications from those with inadequate qualifications among minorities.[173] In the 1970s, when Akerlof wrote the article, the ethnic minorities and women had difficulties displaying their qualities and capabilities since most of the members of minority groups were

[169] Lucy Greenwood, "Tipping the Balance - Diversity and Inclusion in International Arbitration," Arbitration International, Vol. 33, Issue 1 (March 2017): 99-108
[170] *Ibid*, see 106
[171] George A. Akerlof, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism," The Quarterly Journal of Economics, Published by Oxford University Press, Vol. 84, No. 3 (Aug, 1970): 488-500, 489
[172] Lucy Greenwood, "Tipping the Balance - Diversity and Inclusion in International Arbitration," Arbitration International, Vol. 33, Issue 1 (March 2017): 99-108 (see 105-106)
[173] George A. Akerlof, "The Market for 'Lemons': Quality Uncertainty and the Market Mechanism," The Quarterly Journal of Economics, Published by Oxford University Press, Vol. 84, No. 3 (Aug, 1970): 488-500, 495

inexperienced and had almost the same educational backgrounds. Thus, he stressed the “Market for Lemons” limits the employing of minorities.

At present, this application of “Market for Lemons” to the employment of minorities is not robust, and many members of the minority groups are equipped with distinguished educational backgrounds and experience in their professional field. Nonetheless, in the present arbitration community, the situation of appointing female arbitrators is just like the 1970s difficulties in hiring members from minorities in responsible positions. In the list of arbitrators on the panels, almost all arbitrators have similar competent educational backgrounds and achievements. And most of women arbitrators lack former experience working as an arbitrator. Thus, it is challenging for parties, counsels, and co-arbitrators to select from these unfamiliar female arbitrators.

3.2 The Notion of implicit gender bias

This part investigates the concept of implicit gender bias and its connection to the female underrepresentation in East Asian arbitration. First, the study explains the general idea of implicit gender bias, and second, its application in commercial arbitration and its possible impact on the problem. Implicit bias is normally a research area in social psychology, not in the legal field, and exploring the concept effectively requires theoretical knowledge and psychology background. Thus, this thesis could not conduct comprehensive research on the topic. Nevertheless, it delivers a rudimentary grasp of the concept of implicit bias and its relation to the female underrepresentation in arbitral appointments in East Asia.

3.2.1 The concept of implicit bias in social psychology

Most scholars and feminist activists in arbitration argue that implicit gender bias is one of the main reasons for the lack of gender diversity in the field. Nonetheless, very few scholars and practitioners did a comprehensive study on the notion of implicit gender bias and its application in the arbitration practice. To answer the foremost question of whether implicit gender bias exists in commercial arbitration and to study its impact on the problem, first, one may need to understand the general theory of implicit gender bias and its place in arbitration. Implicit bias is a study in psychology and sociology (and is challenging to explore effectively in arbitration and the legal profession; thus, this study could not investigate the concept thoroughly, but it introduces the most rudimentary explanation of the theory of implicit gender bias in general.)

Payne et al. gave a simple explanation of the implicit bias as follows:[174]

> … the same thought processes that make people bright can also make them biased. This tendency for stereotype-confirming thoughts to pass spontaneously through our minds is what psychologists call implicit bias.

Nosek (2018) also noted that "implicit social cognition describes the unconscious thoughts and feelings regarding social psychological constructs, such as attitudes and stereotypes."[175] The concept has many other explanations, but in short, the main idea of implicit bias is having an unconscious bias towards

[174] Payne et al, "How to Think about 'Implicit Bias'," Scientific American, (Mar 2018), see (May 2022) https://www.scientificamerican.com/article/how-to-think-about-implicit-bias/

[175] Brian A. Nosek et al., "Implicit Social Cognition," contribution in Ed. Susan T. Fiske, and C. Neil Macrae, *The Sage Handbook of Social Cognition* (2012): 31, 32; as cited in the Debbie A. Thomas, "Bias in the Boardroom: Implicit Bias in the Selection and Treatment of Women Directors," Marquette Law Review 102, no. 2 (Winter 2018): 539-557, 551

specific groups or populations. As an illustration, if a child grows in a family where patriarchy is strong, and the father used to make all the critical decisions in the household after the child becomes an adult, they may unconsciously experience difficulties seeing women as good decision-makers.

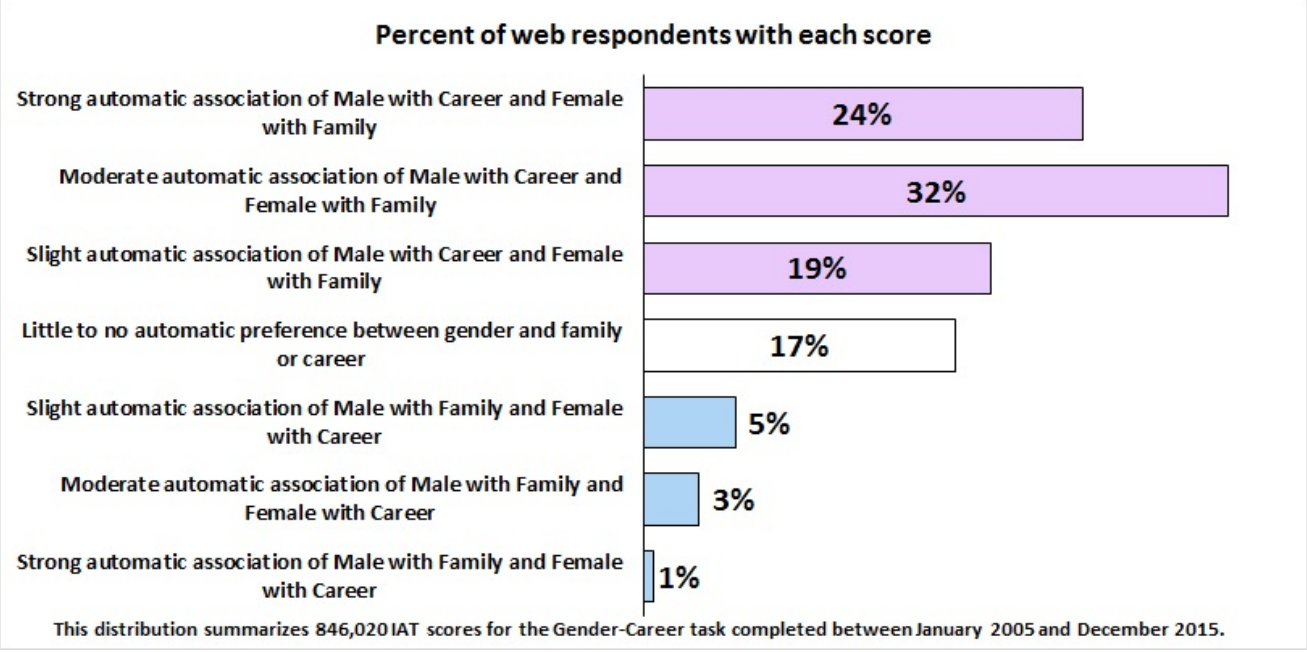
The arbitration community and parties perhaps have an implicit bias towards female arbitrators and practitioners, as many scholars and feminist activists in the field argue.[176] Nonetheless, it is not easy to investigate and prove it. There is still a lack of quality research on the implicit bias of parties and co-arbitrators towards women arbitrators, probably due to the difficulties in studying the phenomenon. Moreover, implicit bias studies are conceivably one of the most challenging research areas. The argument largely rests on unexpressed normative disagreements between implicit bias scholars, not to mention the obstacles in studying the invisible human mind. Nonetheless, there are some well-accepted theories and psychological tests for revealing implicit bias. The one famous test for measuring implicit bias is the Harvard Implicit Association Test. The following section will examine the test's possible use in arbitration practice.

[176] See Nayla Comair-Obeid, "Women in Arbitration," Journal of World Investment and Trade 9, no. 1 (February 2008): 87-90; as well as see Deborah Rothman, "Gender Diversity in Arbitrator Selection," Dispute Resolution Magazine 18, no. 3 (Spring 2012): 22-26

3.2.2 The Harvard Implicit Association Test and its possible use in arbitration practice

One of the well-known methods for revealing implicit bias is the Harvard Implicit Association Test. "The Implicit Association Test (IAT) measures attitudes and beliefs that people may be unwilling or unable to report."[177] The project was first founded in 1998 by three scholars: Dr. Tony Greenwald, Dr. Mahzarin Banaji and Dr. Brian Nosek, from three different universities in the USA.[178] When the IAT was first designed, many scholars hoped to use it in broader social aspects. Indeed, some scholars such as Ayres (2001) suggest that "IAT scores might 'be used as a criterion for hiring both governmental and nongovernmental actors' to reduce the prevalence and effects of implicit bias."[179] Perhaps it may be used well nowadays in some areas, such as politics or social sciences. Nonetheless, in arbitration studies, almost no known research used the IAT to study the gender diversity issues in arbitral appointments.

Figure 3. Percent of Harvard Implicit Association Test, IAT Web Respondents with Each Score for Ten Years between January 2005 and December 2015



[177] Harvard University, Project Implicit, "Learn More: Overview", (May 06, 2022) https://implicit.harvard.edu/implicit/education.html

[178] Harvard University, Project Implicit, "About Us", (May 06, 2022) https://implicit.harvard.edu/implicit/aboutus.html

[179] Ian Ayres, "*Pervasive Prejudice? Unconventional Evidence of Race and Gender Discrimination,"* (The University of Chicago Press, 2001): 424-425; as cited in the Samuel R. Bagenstos, "Implicit Bias, Science, and Antidiscrimination Law," Harvard Law and Policy Review 1, no. 2 (Summer 2007): 477-494, 478.

Source: Harvard University, Harvard Implicit Association Test, Gender-Career IAT, Completed Test Results between January 2005 and December 2015; see https://implicit.harvard.edu/implicit/selectatest.html.

The figure above indicates the IAT scores for the Gender-Career task completed between 2005 and 2015. It shows that the largest group of the respondents (32%) have a moderate automatic association of males with careers and females with family. Only 17% have little to no automatic bias regarding gender and family or career. Though these IAT results do not specifically present the status of implicit bias in arbitration practitioners and lawyers, it gives an insight into how common implicit bias is in individuals in society.

Nonetheless, this study does not recommend publicly using IAT in the arbitration community. Through this advanced technology and social psychology research method, the implicit bias in arbitrators or parties and counsels can be determined. However, the disclosure of implicit bias of individuals is against their privacy since the test results reveal private information that even the people who take the tests do not know consciously. Thus, it may not be wise to publicly use IAT in the arbitration community or mandatory use it for counsels, or co-arbitrators during the process of selecting arbitrators.

However, IAT tests can be used in two specific scenarios: first, in case the particular individual arbitration practitioner or an arbitrator or an administrative officer in arbitral institutions wants to take the IAT privately to know their implicit bias status; second, if the scholars in the field use the IAT among arbitration practitioners and arbitrators for educational use. Otherwise, using IAT among arbitration communities may create bias against those whose tests showed high implicit bias. Hence, only the private use of IAT tests is perhaps well-preferred by arbitration practitioners and arbitrators.

3.2.3 Three types of *Mindbugs* in Arbitration Practice

Banaji and Greenwald (2016) first used the term *mindbugs*[180] in their book *"Blindspot: Hidden Biases of Good People*" to explain implicit bias. For them, "implicit bias is a '*mind bug,*' a cognitive and social error in which 'ingrained habits of thought ... lead to errors in how we perceive, remember, reason, and make decisions.'"[181] Perhaps *mindbugs* or in other words, implicit gender bias, is common among the arbitration community, but it is still challenging to prove. However, women are late joiners into the arbitration community and legal profession while still often multitasking by being responsible for primary childcare and household chores (as is common in most Asian traditions), so it is possible that female arbitrators may be considered to be an inappropriate choice for being a decision-maker due to the implicit bias associated with women as breeders and family members who are often engaged in unimportant domestic tasks.

Even some scholars such as Cockburn (2002) harshly stressed *mindbugs* and highlighted that "men do have difficulty in seeing a woman as anything other than a secretary, a sex object or a wife."[182] Though in arbitration it is not common for scholars and feminist activists to make harsh statements regarding the implicit or explicit bias like Cockburn did, still most of the scholars and activists for empowering female representation point out the *mindbugs* as one of the principal reasons for the lack of gender diversity in arbitral appointments.[183] However, despite the arguments, it is challenging to do a comprehensive study on *mindbugs* in arbitration practitioners or parties or co-arbitrators since it takes place in the mind even when the owner of the mind is not aware of its progress.

Regarding the current scholarly approaches to implicit bias and its connection with the gender diversity in arbitral appointments, Rothman (2012) concludes that:

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[180] Banaji and Greenwald, "*Blindspot: Hidden Biases of Good People,*" (Bantam, 2016) 4.
[181] *Ibid*, as cited in the Debbie A. Thomas, "Bias in the Boardroom: Implicit Bias in the Selection and Treatment of Women Directors," Marquette Law Review 102, no. 2 (Winter 2018): 539-574, 551.
[182] Cynthia Cockburn, "Resisting Equal Opportunities: The issue of maternity," contribution in *Gender: A Sociological Reader*, Ed. Stevi Jackson and Sue Scott, (Routledge, 2002): 180-191, 187.
[183] Nayla Comair-Obeid, "Women in Arbitration," Journal of World Investment and Trade 9, no. 1, (February 2008): 87-90; as well as see Deborah Rothman, "Gender Diversity in Arbitrator Selection," Dispute Resolution Magazine 18, no. 3 (Spring 2012): 22-26

> Even the rare woman who achieves the same level of experience, expertise and success as her male counterparts may be selected less frequently as a commercial arbitrator because implicit bias prevents equally qualified women from being perceived as similarly qualified.[184]

Moreover, Rothman (2012) shed light on how implicit bias also impacts lessening the women arbitrators' opportunities to demonstrate that they have the same abilities as their male counterparts.[185] Nevertheless, Rothman supports her idea of implicit bias preventing women arbitrators from getting appointments only using a Harvard Business School study of MBA students at New York University as illustrative.[186] Likewise, scholars in the field usually support their implicit bias arguments in arbitral appointments by quoting from other social psychological and sociological studies conducted for the general public.

Indeed, it is challenging to do quality research on implicit bias and its impact on gender diversity in arbitral appointments. It requires scholars to know both social psychology and commercial arbitration practice. Hence there is an insufficient number of scholarly articles and research comprehensively studying implicit bias and its role in arbitral appointments. However, for future studies, it is advisable for scholars in the field to thoroughly analyze the implicit bias in the arbitration community and its impact on the number of female arbitral appointments.

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[184] Deborah Rothman, "Gender Diversity in Arbitrator Selection," Dispute Resolution Magazine 18, no. 3 (Spring 2012): 22-26, 25

[185] *Ibid*

[186] *Ibid*. The study required participants to comment on two fictional persons named "Heidi" and "Howard" (who in reality were one single person) and assessed the differences in their comments to reveal their implicit bias.

The implicit bias among arbitration community members could be divided into three classes. These three types of *mindbugs* in arbitration practice are: implicit bias in appointers (parties, counsels, co-arbitrators), implicit bias in administrative staff, and implicit bias in women arbitrators. The issue of *mindbugs* in the appointers is often raised, but the other two types of *mindbugs*, in administrative staff and female arbitrators themselves, are usually left outside the frame of scholarly discussions.

Figure 4. Three types of *mindbugs* in arbitration practice

In arbitration, scholars and feminist activists often shed light on *mindbugs* in appointers since it is more related to arbitral appointments. Thus, the discussions and articles on implicit bias in arbitration mainly focus on parties, counsels, and co-arbitrators. Though arbitral institutions are also appointers (as they make institutional appointments), they are often more aware of female underrepresentation issues than the counsels and co-arbitrators. Most of the arbitration centers have gender diversity policies and typically try to appoint women arbitrators. Hence, the scholarly discussions on gender diversity issues in the field are mainly addressed to parties, counsels, and co-arbitrators. Nonetheless, these discussions and articles mention implicit bias in appointers usually lacks comprehensive research, probably due to difficulties studying the concept as mentioned earlier.

Nevertheless, being aware of these *mindbugs* in appointers is crucial to the arbitration community's well-being. In a one-on-one interview for this dissertation, a Singaporean arbitrator who is also listed in the panels of Korean KCAB and Japanese JCAA said:

> The institution appointed me in one dispute [in Singaporean International Arbitration Centre]… I headed to the meeting room where the case's preliminary hearing occurred. Suddenly one Caucasian male arbitrator came to me, handed his documents to me, and asked me to place them in the hearing room. He had thought that I was the tribunal secretary.[187]

Then the arbitrator stressed that she felt uncomfortable, though she was behaving professionally.[188] Implicit bias in appointers not only affects the gender of arbitral appointments, but also affects the atmosphere and interaction in the hearing room during the proceedings.

[187] Interviewee: A Singaporean arbitrator X, "Interview with a Singaporean arbitrator X, listed in the panels of Korean KCAB and Japanese JCAA," (interview conducted by zoom video conferencing) Interviewer: Munkhnaran Munkhtuvshin, January, 2021, the name of the arbitrator is not disclosed due to confidentiality reasons.
[188] *Ibid*

In a highly complex case where the author was a tribunal secretary at the Mongolian International Arbitration center, MIAC, a well-known male arbitrator in Mongolia, complained to the author, saying "From where did you find her?" He referred to the young female arbitrator, who was sharing the same arbitral tribunal with him and had been addressing several questions to the parties during the hearing. The famous male arbitrator, a member of one of the important judicial institutions in Mongolia, had found the young female arbitrator irritating. Perhaps, he assumed she was trying to show off and found it annoying. Nonetheless, in a different scenario, if the young female arbitrator was male, it is doubtful that he would find his co-arbitrator's active questioning of the counsels irritating.

Indeed, there are double standards for judging the behaviors and actions of women and men. One elder arbitrator may find a young male arbitrator raising tons of questions to the parties during the hearing as a dynamic young man. In contrast, he may find a young female arbitrator who asks the same questions as an aggressive young woman in need of showing herself. Rajoppi (1993) pointed out several double standards for women and men in her book "*Women in Office: Getting There and Staying There.*" She mentioned the well-known satiric verses based on the double standards for professionals of different genders as follows:[189]

> A working man is dynamic; a working woman is aggressive.
> A working man is good at details; a woman is picky. …
> He exercises authority diligently; she is power-mad. …
> He's a stern taskmaster; she's hard to work for.

Although it is not wise to invoke implicit bias based only on anecdotes or mere speculations, there are possibilities that these signs of gender bias in co-arbitrators, such as co-arbitrators' assuming the female arbitrator annoying or aggressive or confusing her with a tribunal secretary, may influence the interaction and communication between arbitrators. To produce better outcomes from the brainstorming of the arbitral tribunal members and issue well-reasoned arbitral awards, the arbitrators need to communicate effectively. However, actions or assumptions based on explicit or implicit bias could become a barrier for arbitrators to collaborate productively. Moreover, it may create a stereotype threat in women arbitrators and prevent female arbitrators from communicating effectively with their co-arbitrators and presenting themselves fully to the other tribunal members (it will be detailly examined in Chapter Five.)

[189] Joanne Rajoppi, *Women in Office: Getting There and Staying There*, (Bergin and Garvey, 1993) 29-30.

One of the author's colleagues, Mr. C, who is a tribunal secretary at the Mongolian International Arbitration Center, MIAC, had his first experience as a tribunal secretary in a three-women-tribunal, and right after the hearing, he came back to the office complaining, "*these women do not know what they are doing.*" Perhaps, it may be true that the women arbitrators in that specific tribunal lacked knowledge or abilities. But the tribunal secretary C had had an aversion against that tribunal throughout the arbitration proceedings. He usually serves teas to the arbitrators when they come to the administrative office for hearings in which he assists as a tribunal secretary. Still, in this all-women tribunal, he asked a young female colleague to serve tea to the female arbitrators.

Though it is not wise to conclude tribunal secretaries have implicit gender bias just because of one person, one cannot deny the possibility that the implicit bias in administrative staff may exist in arbitration practice. But it does not have a major impact on the choice of arbitral appointments, so the arbitration community does not give significance to the issue. Nonetheless, to provide parties with the best arbitration experience and issue productive and well-reasoned arbitration awards, both arbitral tribunals and administrative staff at the arbitral institutions should collaborate and communicate effectively without any aversion or looking down on each other. These *mindbugs* in administrative staff may have less impact on arbitral appointments, nevertheless, they could affect the effective collaboration between tribunal secretaries and arbitrators and the quality of arbitration proceedings, as well as the overall atmosphere in the hearing room.

Dasgupta (2004) emphasized that IAT studies show that minorities and women usually harbor the same implicit gender biases about their groups that others, such as Caucasians and men, harbor against them.[190] Women arbitrators could have an implicit bias about their groups. Nonetheless, scholars and feminist activists in the arbitration community rarely research it. The scholarly discussions and articles about gender diversity in arbitration often bring the issues of implicit bias in appointers (such as parties, counsels, and co-arbitrators) to the table. However, it is possible that women arbitrators or female arbitration practitioners could have *mindbugs* about their own group.

Though probably many women arbitrators would say they do not have any *mindbugs* about their group, when someone asks about their gender bias, in some cases they may prefer to be one of the few female winners who passed the harsh demands to enter the field and unconsciously want to limit the numbers of successful women arbitrators. A Vietnamese national, female arbitrator listed on panels of Hong Kong's HKIAC and Singaporean SIAC said, "it is challenging to be appointed for the first time, but a nice feeling to be an only woman in the tribunal."[191] Indeed for entering into arbitration and getting qualified as arbitrators, women arbitration practitioners face many challenges and obstacles. As a result, it is also possible that the few successful conquerors may develop the "*Queen Bee Syndrome*."

The term "*Queen Bee Syndrome*" was established in 1973 by psychologists studying the effect of the female's entry into the workforce.[192] "The psychologists used the term to describe the stereotype of a woman who has sacrificed everything to get where she is, worked harder than any man, and expects everyone else to do the same."[193] The female arbitrator who has sacrificed many things to be a successful professional and worked harder than anyone else may find the young female arbitration practitioners—who seem not to devote their everything to their work—lazy and may unconsciously develop some aversion and bias against them and may end up giving more credits to their male counterparts.

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[190] Nilanjana Dasgupta, "Implicit Ingroup Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations," Social Justice Research, Vol. 17, No. 2 (June 2004):143-169, 149; as cited in the Samuel R. Bagenstos, "Implicit Bias, Science, and Antidiscrimination Law," Harvard Law and Policy Review 1, no. 2 (Summer 2007): 477-494, 477.

[191] Interviewee: Vietnamese female arbitrator, "Interview with a Vietnamese female arbitrator who is listed on the HKIAC panel," Interview is conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, January 07, 2021, For the confidentiality of the interviewee, the full name is not disclosed.

[192] Emily C. Wilson, "Call Me Queen Bee," Women Lawyers Journal 100, no. 2 (2015): 10-25, 11

[193] *Ibid*

Nevertheless, this kind of complicated unconscious bias issue in the field are researched scarcely in scholarly discussions and studies on gender equality and diversity topics in arbitration. This kind of implicit bias study focused on women arbitrators, not the parties or counsels, should be broadly studied to fully understand the lack of gender diversity in arbitration. This part studied the general notion of implicit bias and its application in arbitration, and Harvard Implicit Association Test and its possible use in arbitration practice and study, as well as three types of *mindbugs* in arbitration practice which include not only implicit bias in parties, counsels, co-arbitrators but also implicit bias in administrative staff, and *mindbugs* in women arbitrators.

Implicit bias is a study area in social psychology, and it is challenging to explore the concept thoroughly and comprehensively understand its application in arbitration practice. Hence, this study did not investigate the notion of implicit bias in arbitration in depth. However, it sheds light on the overlooked side of implicit bias studies in arbitration, such as unspoken bias issues in the administrative staff of arbitral institutions and implicit bias in women arbitrators about their own group. Studying the causes of the phenomenon of female underrepresentation in arbitration comprehensively would help to establish effective remedies for ensuring gender diversity in the field. Thus, it is advisable for scholars and feminist activists to further explore the overlooked implicit biases in administrative staff, co-arbitrators, and female arbitrators.

Summary: The significance of interdisciplinary research

With the exception of mediation, arbitration is probably the legal area that gives perhaps the most freedom to the parties to control the dispute resolution procedures. Thus, it consists of procedural rules and choices impacted by parties' behaviors, which often relate to the broader economic and psychological aspects outside the law. Notably, behavioral economics and social psychology may have a massive impact on parties' conducting of their party autonomy in arbitration. This chapter studied the applications of two theories from behavioral economics: the "Expected Utility Theory" and the theory of "Market for Lemons" along with the notion of "Implicit Bias" from social psychology for the process of selecting arbitrators.

From the behavioral economics side, the chapter has emphasized the potential application of Expected Utility Theory in choosing arbitrators and pointed out how risk aversion and longing for the most desirable outcome lead to the repeated appointments of well-known arbitrators who are primarily men. It also investigated the application of economist Akerlof's theory of "Market for Lemons" and studied the literature in the field that studied the concept's possible application in selecting arbitrators, and shed light on how asymmetrical information about inexperienced women arbitrators leads to frequent appointments of the famous male arbitrators.

From the social psychology viewpoint, this chapter studied the notion of implicit bias, which is a trendy discussion topic regarding the lack of gender diversity among arbitration scholars and feminist activists in the field. Despite the topic's popularity in discussions on empowering women in arbitration, most scholarly discussions and articles only focus on its application in parties' and counsels' or co-arbitrators' preferences in selecting arbitrators or presiding arbitrators. The implicit bias issues in administrative staff and women arbitrators themselves are often overlooked in the research on implicit bias in arbitration. Thus, this chapter explored the possible application of implicit bias in these two overlooked groups.

The chapter sheds light on the significance of understanding the overlooked implicit bias issues at the administrative level and its possible harm to the arbitration proceedings. The seemingly unharmful actions or attitudes of tribunal secretaries, based on potential unconscious gender bias, adversely impact the productivity of the arbitration proceedings, not to mention polluting the atmosphere in the hearing room.

The chapter also pointed out the possible application of the "Queen Bee syndrome" among women arbitrators and potential issues of female arbitration practitioners' having an implicit bias against their group.

This chapter studied the possible answers to the factors and phenomena that trigger the problem from two different disciplines, behavioral economics, and social psychology. However, the study only did a rudimentary analysis of how the three concepts of other academic disciplines could be applied in selecting arbitrators. The legal scholars' further research on the issue collaborating with researchers, mainly from economics and psychology, is needed. The author also suggests scholars and feminist activists in arbitration conduct more interdisciplinary research on the problem.

Chapter IV: Women's Studies and Female Arbitrators and Arbitration Practitioners in East Asia

The former chapters studied the lack of female arbitral appointments in East Asian arbitral institutions from legal, social psychological, and economic viewpoints. However, it is also impossible to study female underrepresentation in arbitration without mentioning feminism or women's studies. Thus, this chapter analyzes the problem from the viewpoint of women's studies. Though there is still no agreed definition of what precisely feminism is, any theory, beliefs, and ideas that support or empower women in any area are considered feminist.[194]

The primary purpose of this study is to enable women arbitrators, who are the minority in the arbitration community and legal profession. Thus, this dissertation utilizes a feminist approach to East Asian arbitration. Hence, it is impossible not to mention feminist studies and their connection with the lack of gender diversity in East Asian arbitration. However, this study cannot cover all the feminist research topics. Therefore, it chose two main subjects which often raised in feminism and career issues: motherhood and gender discrimination in the workplace, and ambition in women.

This chapter investigates the impact of motherhood and sexism in the workplace and women's initiative on pursuing a career in arbitration. The primary purpose of this chapter is to show how situations related to reproduction, sexism, and ambition impact female practitioners' activities and entry into arbitration. When feminist activists and scholars first established feminism and the notion of feminist jurisprudence, many argued that lawmakers designed the entire law system for men and that it is thus the root of the lack of gender diversity and gender inequality.[195] Like this, arbitration practice has been a masculine area since it is designed.

It is not a proven fact that the arbitration dispute resolution system and its practice are mainly designed for men. Still, one may agree that it does not fit women practitioners' living situations well as Baer (2018) underlined that "whether or not male decision-makers conspire to disadvantage women, policies

[194] Owen M. Fiss, "What is Feminism," Arizona State Law Journal 26, no. 2 (Summer 1994): 413-428, 413.
[195] Judith A. Baer, "Feminist Theory and the Law," contribution in *the Oxford Handbook of Law and Politics,* Ed. Gregory A. Caldeira, R. Daniel Kelemen, and Keith E. Whittington, (Oxford University Press, 2018) 439.

designed for men have fit badly with women's lives."[196] Law firms where future arbitrators are produced require practitioners to be available at anytime, anywhere. Nonetheless, reproduction and motherhood occur in women's lives, which sometimes prevents female practitioners from being available anytime and anywhere. Moreover, there are hidden struggles with sexism at law firms and, in some cases, sexual harassment in the workplace and the traditional female tendency of fear to show ambition.

[196] *Ibid.*

4.1 Motherhood and Careers in Arbitration

Even though mothering is often considered part of one's private life and is utterly unrelated to international arbitration law, motherhood should not be divorced from the discussions on arbitration practice and a feminist approach to arbitration. Mothering is not unworthy of research as most scholars ignore it; it is an independent research area related to maternal feminism. Motherhood studies is a recognized field of study primarily advanced by scholar Andrea O'Reilly since 1998. As Kawash emphasized in her famous article *New Directions in Motherhood Studies* (2011), without the enormous efforts of O'Reilly, motherhood studies could not have become a recognized field of study and progress.[197] Moreover, Kawash also stressed that indeed, academic institutions or researchers do not encourage or support motherhood studies.[198] Possibly, motherhood studies are discouraged due to their complicated nature and well-established traditional conception.

However, motherhood is a shared concern for female arbitrators and arbitration practitioners. A key reason for this is that during private interviews with female arbitrators and practitioners for this study, almost all interviewees mentioned mothering when they discussed their careers. Even women arbitrator or practitioner without children were concerned about their future family planning and career. Nonetheless, there are almost no specific research or comprehensive studies that analyzed the impact of motherhood on women's professions in arbitration, except for just a few brief references in papers about the lack of female arbitral appointments.

Hardly any conferences and research bring the topic of mothering to the table. The lack of scholarly attention is conceivably due to the scholars' apathy toward motherhood studies. Kaufman Kitchen (2011) argued that the legal discussions and legislative response to gender issues primarily focused on discrimination and gender bias in the workplace, not on motherhood and its impact on careers.[199] The same applies to the arbitration community. In international arbitration, discussions on ensuring gender diversity are predominantly concerned with gender bias or discrimination in appointments and practice.

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[197] Samira Kawash, "New Directions in Motherhood Studies," Signs Journal, University of Chicago Press, Vol. 36, No. 4 (Summer 2011): 969-1003, 977.
[198] *Ibid*.
[199] Rona Kaufman Kitchen, "Eradicating the Mothering Effect: Women as Workers and Mothers, Successfully and Simultaneously," Wisconsin Journal of Law, Gender and Society 26, no. 2 (Fall 2011): 167-212, 169.

Nevertheless, unconscious bias towards mothers is conceivably the main barrier to women's career progression in arbitration. Though there is scarce research in East Asia, the Law Society of England and Wales concluded a review of barriers to female lawyer retention across the globe in 2019, observing broad trends in the factors that prevent women from progressing into senior roles. Out of over 7,700 participants around the world, 52% responded that "unconscious bias was the main barrier to women's career progression in law (including the effects of implicit gender stereotypes, particularly those affecting mothers)."[200] Thus, the dissertation investigates the impact of motherhood on female practitioners' entry into arbitration and female arbitral appointments and practice.

[200] The Law Society of England and Wales, *Advocating for Change: Transforming the Future of the Legal Profession Through Greater Gender Equality: International Women in Law Report*, (The Law Society of England and Wales, 2019) 8.

4.1.1 The "anytime, anywhere" performance model and mothers' entry into arbitration

Almost thirty years ago, Sanford and Donovan (1984) stressed, "some women might be helped by their mothers, or by their husbands, or daycare facilities. But overall, the primary responsibility for 'mothering' falls on the mother and the mother alone."[201] Even though childcare facilities and services have increased today and spouses have started to share their household chores and childcare responsibilities, most of the primary childcare falls only on mothers' shoulders. Particularly in Asian culture, mothers are often the primary caretaker of their young children.[202] This study does not argue that parents must share this vast responsibility or that women should not parent their juniors. It underlines those traditional concepts of motherhood, and its relation to paid work limits women's arbitration practice.

Among the few studies in arbitration that referred to mothering and its impact on gender diversity is Rothman's short paper *Gender Diversity in Arbitrator Selection* (2012).[203] Even though the article only briefly referred to the effect of mothering on careers in arbitration, it described how motherhood could be an obstacle for women to succeed as full equity partners in their law firms and later as commercial arbitrators. The paper explained how mothering negatively impacts a woman lawyer's ability ultimately to achieve success as a commercial arbitrator, though it did not profoundly explore it.

Rothman (2012) pointed out that success is often equated with 24/7 availability and total geographical mobility or the "anytime anywhere" performance model in law firms. Under this performance model, mothering is an obstacle to success as full equity partners in their firms and later as commercial arbitrators for female lawyers or associates. Thus, many women lawyers cannot qualify for recruitment by the arbitral institutions for their panels.

As an illustration, let us examine the requirements for the HKIAC List of Arbitrators, which has minimal requirements for listing compared to most of the arbitral institutions in the region. For recording on the HKIAC List of Arbitrators, a prospective arbitrator must demonstrate significant arbitration knowledge

[201] Linda Tschirhart Sanford, and Mary Ellen Donovan, *Women and Self-Esteem*, (the Penguin Group, (published in the USA by Anchor Press/Doubleday) 1984) 143.
[202] Though in not just in Asia but also in the West, it is still common that mothers solely take the primary care of their children.
[203] Deborah Rothman, "Gender Diversity in Arbitrator Selection," Dispute Resolution Magazine 18, no. 3 (Spring 2012): 22-26

and have five years of full-time arbitration experience. In addition, must have drafted two arbitral awards or two other arbitration-related documents provide two written references.[204]

To fulfill these requirements, the applicants should be successful arbitration practitioners. Five years of full-time arbitration experience and two arbitration-related document drafting experiences translate into being a good and recognized lawyer at a law firm, so that the firm let her have full-time arbitration experience. To fulfill these requirements, law firms should accept their women lawyers first. However, the female lawyers or trainees often have to demonstrate subservience to the "anytime, anywhere" performance model for the law firms' acceptance and approval or recognition.

Nonetheless, while mothering, female lawyers are often unable to be sufficiently flexible and available anytime and anywhere. Thus, very few women pass this hidden initial screening process and qualify for recruitment by the arbitral institutions for their panels. Then, the problem may reside at the level of law firms, as they feed human resources into the arbitration system.

[204] HKIAC, "Criteria and Application Procedure," n.d., (March 01, 2022) https://www.hkiac.org/arbitration/arbitrators/criteria-application

4.1.2 Few conquerors and compromises

At the CIArb International Women's Day Webinar in 2021, CIArb and FCIArb arbitrator Dorothy Udeme Ufot emphasized the overlooked reality of mothers in arbitration. She stressed that female lawyers should have many sleepless nights for becoming successful practitioners and arbitrators since the women lawyers are also in charge of their children's primary childcare at home and only nights left to work overtime. Then she shared her story of leaving her sick kid unattended in an air-conditioned car for an hour for attending a hearing in which she was a counsel.[205] Some women lawyers like Ufot indeed became successful arbitrators. After all, they sacrificed their night's sleep because they were strong enough to handle all their work and household stress. Most importantly, these female practitioners are ambitious. They love their jobs, so they were ready to sacrifice themselves by not sleeping at night or not sparing private time for themselves.

For that reason, only a few women lawyers who are in "mothering" can become successful practitioners and become arbitrators. But there is also a flip side of the coin; some female lawyers choose not to become mothers or to postpone childbirth until they ensure their positions at their law firms. Indeed, it is not uncommon for female arbitration practitioners who are ambitious and love their jobs to choose not to become mothers or postpone motherhood. During a private interview for this study, a Swiss female senior practitioner who also practices in East Asia said:

> I need to travel a lot for my job; I am in Zurich now, last week I was in Finland, and I need to travel to Singapore again this week. If I had a child, I could not do it. … Of course, if you are not flexible, you can tell [the law firm] that you cannot. They can send another person. But it affects your career at the firm. [206]

Choosing not to be a parent or staying single is not common for women only in arbitration; it is also common among female politicians. Rajoppi (1993) pointed out the problem in her book "*Women in Office: Getting There and Staying There.*" Rajoppi stressed, "because of the many demands on women with young children, most women in politics wait until their children are older before entering the arena. Some, of course, are single, and that status raises additional questions."[207] Both politicians and arbitrators have one similar

[205] CIArb, International Women's Day Webinar, 2021; for details of the webinar, see (March 01, 2022) https://www.ciarb.org/events/iwd-2021/
[206] Interviewee: Swiss female arbitration practitioner R, "Interview with Arbitration Practitioner R," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, (January 28, 2022). For the confidentiality of the interviewee, the full name is not disclosed.
[207] Joanne Rajoppi, *Women in Office: Getting There and Staying There,* (Bergin and Garvey, 1993) 42.

characteristic: they should have an excellent public image no matter what. In politics, politicians should look flawless so voters can choose them, while in arbitration, arbitrators should look knowledgeable, reliable, and respectable so the parties can appoint them. To meet these high demands, female politicians and arbitrators sometimes prefer not to be a parent or stay single so that they can devote all their time and energy to their careers. It is good that in arbitration, arbitrators' being single and having no children do not raise concern for the parties like it occurs in politics.

However, another significant question comes: Do women arbitration practitioners have to give up reproduction for their career and love for their positions in arbitration? If the particular practitioner chooses not to be a mother, by all means, it is excellent, and there is any problem with it since motherhood is not every woman's call. Nevertheless, if the female lawyer wants to be a mother and have children, still she cannot freely pursue her desire because of the risks that may bring to her career, it is a problem. And this practice must be considered and analyzed again critically.

4.1.3 Women arbitrators' different perspectives and mothering styles

Generally, there are two main feminist approaches to mothering: the cultural feminist approach and the radical feminist approach. Wing and Weselmann (1999) point out the differences between these two feminist schools on mothering: "while cultural feminists embrace women's differences from men, radical feminists view biological difference as the means to enforce male supremacy, and therefore, 'women's celebration of their difference through the experience of mothering is simply an acceptance of female subservience.'"[208]

In East Asian arbitration communities, most female arbitrators and arbitration practitioners hold what may loosely be called cultural feminist approaches to mothering. They try to balance their arbitration career with motherhood, or they accept the traditional approach but want to pursue their career, thus, postponing becoming a mother. Meanwhile, some of them take a radical feminist approach and genuinely do not want to be mothers due to their revolutionary feminist approach to mothering. Still, others may have no particular feminist perspective on motherhood.

Nonetheless, to participate in the market as qualified commercial arbitrators, women in arbitration should develop their perspective or a particular approach to mothering. Otherwise, since the international arbitration law and practice are predominantly masculine, women arbitrators or practitioners cannot fit into the arbitration club or become successful in the field with their baggage overloaded with many responsibilities in and out of office. To break the glass ceiling and become successful commercial arbitrators, women have first to break social norms. Particularly for East Asian female arbitrators, it is crucial to develop a well-established personal perspective on mothering since East Asian communities often consider childcare as a sacred duty solely of mothers.

Female arbitration practitioners' developing their approach to mothering could significantly impact their future qualification and success as arbitrators. Based on the empirical study conducted for this dissertation, successful women arbitrators with kids generally show two mothering styles: perfectionist mothering and assisted mothering.

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[208] Adrien Katherine Wing, and Laura Weselmann, "Transcending Traditional Notions of Mothering: The Need for Critical Race Feminist Praxis," Journal of Gender, Race and Justice 3, no. 1 (Fall 1999): 257-282, 264.

Public and private expectations and traditional conceptions frame the notion of mothering. Thus, some mothers prefer not to receive external support, such as hiring nannies or babysitters, and they choose to be in the "I can do it all" mode. These arbitrators are in the first type of mothering style: the perfectionist mothers prefer to do primary childcare for their kids solely while pursuing a career in arbitration. A Korean arbitrator and arbitration lawyer, X explained her mothering style: "Even though I can hire babysitters or housekeepers, I prefer to do it myself because it is difficult to find someone I can trust and ensure my kids. I have one housekeeper; she comes once a week and prepares me some frozen meals and goes."[209] Though arbitrator X handles work and mothering pressure well, she often feels exhausted.

Other arbitrators are in the second type of mothering style, assisted mothers. They have a more welcoming attitude towards receiving external support, such as nannies and babysitters. Japanese arbitrator Z, who is one of the only three female arbitrators appointed at JCAA for the last three years (between 2018 and 2021 March), said during an interview with her that she has no specific pressure to maintain work-life balance since she is a full-time nanny takes care of her two children, including sending and picking up her juniors from school and cooking and helping them with homework.[210]

Nonetheless, she was specifically concerned that many people find her having a nanny abnormal. She said, "You know, nannies are not common in Japan. When I was in the States, I had a nanny… No one finds it strange or awkward because it is common to have nannies there. But here [in Japan], people find it abnormal like I am not a good mother and doing the mothering wholly by myself."[211] Though arbitrator Z often receives public criticism for her assisted mothering, she did not give up on her mothering style since she had a well-established approach to mothering and pursuing her career. Hence, young female practitioners pursuing a career in arbitration may better develop their perspective on motherhood without traditional biases or standard norms even before they become mothers.

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[209] Interviewee: Korean female arbitrator X, "Interview with Arbitrator X," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, December 15, 2021, For the confidentiality of the interviewee, the full name is not disclosed.

[210] Interviewee: Japanese female arbitrator Z, "Interview with Arbitrator Z," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, October 11, 2021, For the confidentiality of the interviewee, the full name is not disclosed.

[211] Interviewee: Japanese female arbitrator Z, "Interview with Arbitrator Z," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, October 11, 2021, For the confidentiality of the interviewee, the full name is not disclosed.

It is true, in reality, particularly in Japan, assisted mothers like arbitrator Z often receive judgments from the people around them for they are not doing the mothering by themselves. But for fitting into the current "anytime, anywhere" performance model in law firms and working conditions of international commercial arbitrators that often require travel abroad, the assisted mothering style is perhaps suitable for mothers in arbitration. Nonetheless, every woman pursuing a career in arbitration knows what a good choice for them is. They may prefer not to be mothers, or decide to follow a career and primary childcare of their children simultaneously, or choose to be in an assisted mothering model. It depends on that particular female practitioners' perspectives and viewpoints on career and motherhood.

Therefore, mothering impacts each female arbitration practitioner's career due to their diverse perspectives and preferences. However, the essential bottom line in this relationship between mothering and a career in arbitration is female arbitration practitioners have their idea and approach to it without being affected by traditional norms or public criticisms. Hence, this dissertation also does not try to argue that mothering harms female practitioners' career paths. But it simply points out that motherhood may impact each female lawyer's and arbitrators' career differently. Thus, junior female practitioners need to establish their independent perspective and conception on becoming mothers or mothering style and their career.

4.2 Sexism and sexual harassment and its impact on women's careers in arbitration

Sexism and gender discrimination in the workplace are common discussions in feminism; notably, the sexual harassment issues raised concerns in recent years. The arbitration community mostly discusses implicit gender bias in arbitral appointments, but hardly mentions sexism at the law firm level where the prospective arbitrators are produced. Nevertheless, the gender bias in the law firms is possibly one of the principal reasons for the low number of successful female lawyers or partners who are recognized by their firms. For practicing in arbitration, any lawyers should have recognized and accepted by their law firms first, and later these successful arbitration practitioners can become arbitrators. Thus, the law firm's good evaluation and acceptance of the particular lawyer as a trustworthy professional is crucial for any lawyer who want to succeed not just in arbitration but also in any legal area.

Therefore, this study does not intend to disregard sexism and sexual harassment, one of the common barriers to female empowerment in law firms. In addition to the secondary data analysis and qualitative research, this dissertation also conducted a survey for getting more in-depth insights from the professionals. The research surveyed six young female associates, two in-house counsels, and three arbitration tribunal secretaries based in Japan, Mongolia, Hong Kong, Korea, and Singapore. The goal of the survey was to know whether the young female associates or in-house counsels have long-term plans for their careers and the common barriers and challenges for them to be accepted at their law firms. The survey was conducted between 2020 October and 2022 April via face-to-face and online surveying via the hybrid form. This part analyzes the phenomena by presenting some of the findings of the survey and studying the literature review.

4.2.1 Group *Wa* and Tea serving training for female associates in Japan

Every small and big group has its priorities and perspectives regarding its group well-being. Not just in East Asia, but also in any region, group harmony and peace are cherished. One of the ideal countries where group peace is appreciated very much is Japan. Though the notion of group peace looks like it does not have anything to do with empowering gender equality, indeed the concept of preserving group harmony has a huge impact on fighting against gender discrimination in the workplace. One's speaking up about sexism or sexual harassment within the group could be considered to be a disturbance to the group's peace in some cultures where the group harmony is appreciated deeply like Japan. Thus, anyone who complains about sexism and sexual harassment in their group regardless of their gender takes a huge risk of agitating their group's peace and being discriminated against because of their intrusion.

Muta (2008) lucidly explains the female workers' vulnerability to sexism and sexual harassment in Japan and stresses how working women of low status are in the least advantageous position to reject unwelcome advances and are the least able to speak out.[212] Moreover, she points out sexism and sexual harassment are justified in the name of developing group *Wa* (group harmony among the workforce), and in case women complain about any sexism or sexual harassment incidents in their groups, the group would see them as disrupting the group *Wa*.[213] Thus, Japanese female workers perhaps choose not to speak out for not become a problem in their workplace.

The Japanese law firms also cherish group *Wa* a lot just like many other Japanese communities. Hence, even during the pandemic, law firms still organize many events like cherry blossom viewing or office going out for dinner which often end up becoming drinking parties. Nonetheless, lawyers are usually aware of sexual harassment because of their professional education. Some Japanese female lawyers who participated in the one-on-one interviews and surveys say during the law firm drinking parties (which are organized for group *Wa)*, the sexual harassment incidents are not common as it happens in regular companies like Muta pointed out.

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[212] Kazue Muta, "The Making of Sekuhara: Sexual Harassment in Japanese Culture," contribution in *East Asian Sexualities: Modernity, Gender and New Sexual Cultures,* Ed. Jackson Stevi et al, (Zed Books Ltd, 2008): 52-68, 57.
[213] *Ibid.*

Nonetheless, still, the lawyers and partners at law firms are not fully aware of sexism issues. Japanese female lawyers suffer from sexist, toxic traditions at their law firms. One of the notable sexist customs at law firms in Japan is training for female lawyers, which teaches how to serve tea. Some Japanese law firms give special training for new female associates and trainees which teach how to serve tea properly to the customers.[214] A young female lawyer at a middle-sized law firm in Hyōgo prefecture, Japan explained:

> In our law firm, we have ten employees among them seven are women so we do not have incidents like sexual harassment because most of us are women. [smiled] But I think there is a little bit of gender discrimination regarding tea serving to the customers. When clients come, women lawyers should serve tea, if there are any available women, the male lawyers serve the tea. Actually, we have a tea serving training for new female lawyers not for male lawyers.[215]

Even though the legal profession is aware of gender discrimination and sexual harassment issues, still traditional stereotyping is strong in the law firm hierarchy. Thus, some law firms still have gendered roles in their law firm activities. This kind of stereotyping issue at law firms conceivably affects female lawyers' recognition in their law firms as talented professionals. Indeed, it is difficult to give a good performance evaluation to a lawyer who often prepares tea and coffee, and the authorities and partners may end up evaluating the young female associates at their firms with cognitive bias. Thus, perhaps because of it very few young female lawyers get a good evaluation and recognition for their hard work from their authorities.

Furthermore, there are other scholars who have the same approach as the author. McGowan (2019) stressed that sexist evaluations or less challenging work assignments for women could discourage women from being ambitious and giving it their all to make partners at their law firms.[216] McGowan emphasizes cognitive biases which undermine the perception of women's competence and commitment, and she criticized law firms for tasking women with less substantive and lower-profile work.[217] Not surprisingly, during the interview with female arbitrators and senior arbitration practitioners this research conducted, many women argued that they still are not evaluated highly and allocated less challenging tasks. They are

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[214] Interviewee: A female lawyer in Hyōgo Prefecture, Japan, "Interview with a female lawyer in Hyogo Prefecture, Japan," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, April 02, 2022, For the confidentiality of the interviewee, the full name is not disclosed.
[215] *Ibid*
[216] Miranda McGowan, "The Parent Trap: Equality, Sex, and Partnership in the Modern Law Firm," Marquette Law Review 102, no. 4 (Summer 2019): 1195-1268, 1206.
[217] *Ibid.*at 1206-1207.

also not getting promotions and are still in associate positions. At the same time, their male colleagues who entered the law firm had already become partners.

4.2.2 Drinking Culture and Young Female Lawyers in Korea

Regarding sexual harassment in Korean business culture, Lee (2008) pointed out that women employers feel uncomfortable attending drinking parties since sexism and sexual harassment cases are almost expected on such occasions. Still, at the same time, attending these kinds of leisure activities demonstrate loyalty to the group.[218] Thus, it takes a vital role in promotion. If the female employees skip these uncomfortable leisure activities, her authority may consider her unreliable and not a good employee. Therefore, it is a challenging situation for not only female arbitration practitioners or lawyers at law firms but also for all young female workers. Although in the legal profession, lawyers are aware of the issue, still the sexist tradition persists in law firms. During a one-on-one interview for this study, a Korean arbitration practitioner S said "though we are lawyers and aware of women's rights, sometimes we [women lawyers] have to serve alcohol and snacks to the males sitting next to us during parties."[219]

As mentioned in the previous section, this kind of sexist attitude and tradition in the law firms perhaps triggers cognitive biases in women lawyers' performance evaluation. Indeed, some may find it challenging to consider female associates who often serve teas or clean or cook for office activities which are common in both Japan, Korea, and Mongolia, as reliable and talented lawyers who can handle complex arbitration cases. Lee (2008) names these kinds of activities of cleaning and cooking female employees in Korean are supposed to do at their workplaces as 'office wives' syndrome. In Korea, female workers do mundane chores at offices, even preparing food for company picnics.[220] It also often applies to the Japanese and Mongolian work cultures as well. The 'Office wives' syndrome may also create cognitive bias in performance evaluation.

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[218] Sung-Eun Lee, "The Office Party: Corporate Sexual Culture and Sexual Harassment in the South Korean Workplace," contribution in *East Asian Sexualities: Modernity, Gender and New Sexual Cultures,* Ed. Jackson Stevi et al, (Zed Books Ltd, 2008): 69-84, see 73-77.

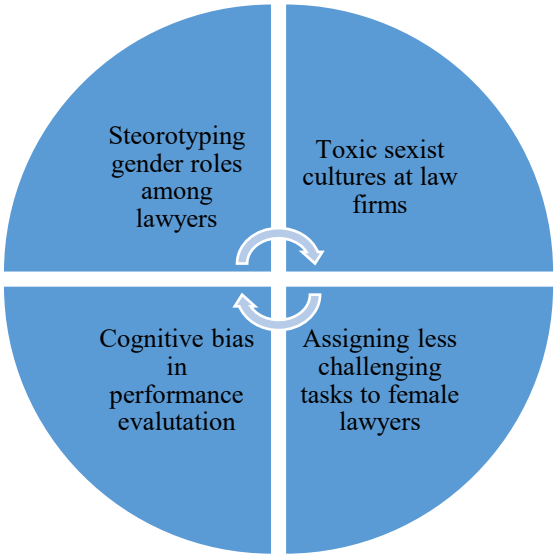
[219] Interviewee: A female lawyer, Ms. S, "Interview with a female lawyer in Seoul, Korea," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, October 04, 2021, For the confidentiality of the interviewee, the full name is not disclosed.

[220] Sung-Eun Lee, "The Office Party: Corporate Sexual Culture and Sexual Harassment in the South Korean Workplace," contribution in *East Asian Sexualities: Modernity, Gender and New Sexual Cultures,* Ed. Jackson Stevi et al, (Zed Books Ltd, 2008): 69-84, 81.

4.2.3 The vicious link between toxic, sexist cultures at law firms and female entries into arbitration

Though the legal profession is dedicated to protecting human rights and equality, inside the legal profession, in law firms, the toxic, sexist cultures persist. According to Forbes, "it [toxic workplace cultures] can be anything from bullying or harassment to a company that engages in unethical practices and is dishonest with its employees."[221] One may consider that it does not have any direct relationship with and impact on empowering women in arbitration practice. Nonetheless, these kinds of persistent old sexist cultures like tea serving training for only female lawyers in some Japanese law firms, or women lawyers serving vodkas to the male colleagues sitting next to them in the Korean law firm drinking parties indirectly discourage women from receiving recognition and attention fairly from their law firms and creating a good professional image and raising as successful practitioners who can handle complex arbitration cases. The stereotyping culture and toxic sexist tradition at law firms could be leading to the development of cognitive bias in performance evaluation.

Figure 5. The Vicious Circle of Sexism and Bias in performance Evaluation at Law Firms



[221] Forbes, "Toxic Work Culture Is The #1 Factor Driving People To Resign", Contributed by Mark C. Perna, (June 01, 2022), see (November 14, 2022) https://www.forbes.com/sites/markcperna/2022/06/01/toxic-work-culture-is-the-1-factor-driving-people-to-resign/?sh=4c4a00fe68f1

The figure above shows the endless loop of how stereotyping of gender roles leads to toxic sexist cultures at the law firms, and the sexist cultures also could obliquely impact allocating less challenging tasks to female lawyers and create a cognitive bias in performance evaluation. And the cognitive bias in evaluating triggers the implicit gender bias which had already been developed before among authorities and partners who evaluate junior associates or young trainees at their law firms. Then the implicit gender bias in performance evaluation leads to persisting the stereotyping of gender roles among lawyers at the law firms again.

Though the sexism and stereotyping issues at law firms could not be a direct reason to blame the insufficient female entries into arbitration in east Asia, it is one of the barriers that female arbitrators confront to becoming recognized arbitration practitioners at their law firms. Since often only lawyers who are accepted and recognized at their law firms for their abilities and talent can have easier access and more chances to practice arbitration. Thus, the sexism and toxic, sexist culture at law firms may have some indirect impact on few female entries into arbitration practice.

4.3 Self-esteem and ambition and women's careers in arbitration

Self-esteem is one of the principal forms of capital that prospective arbitrators should obtain. Nonetheless, young women are often not self-confident. Sanford and Donovan (1984), in "*Women and Self-Esteem,*" pointed out how not just the gender discrimination in a workplace oppresses women in their career path. Still, also women can oppress themselves internally, noting that "A woman whose career opportunities, for example, is restricted because of sex discrimination is externally oppressed. But a woman whose career opportunities are restricted because she had been taught to think of herself as lacking in capabilities and not worth much is also internally oppressed.[222]"

As Sanford and Donovan emphasized, women with low self-esteem preemptively oppress their careers before the external factors of gender discrimination from outside torment them. In this genuinely competitive market, every female arbitration practitioner faces challenges related to her work performance and gender. Thus, only practitioners with some level of self-esteem can persistently pursue their careers in arbitration. Hence, for young female practitioners, not just advancing their legal skills in arbitration but also growing their self-esteem and establishing self-confidence are significantly crucial for their career path.

However, self-esteem is not enough: the young female lawyers who want to enter the arbitration club also have to be ambitious and persistent. The international arbitration community is an ambitious institution where almost everyone seeks betterment and wants to be chosen. Not just arbitrators but also arbitration practitioners need to be selected to take place in the arbitration proceedings. However, being chosen is not easy. Arbitrators need to be ambitious and persistent to be appointed by the counsels or parties. In contrast, arbitration practitioners need to be earnest to be selected to work in arbitration disputes. Just to be chosen once for an arbitration dispute, the arbitrator must overcome a long road of practicing persistently in arbitration until the field recognizes her. Thus, one of the initially hidden screenings for entry into the arbitration club as an arbitrator is being ambitious and persistent.

[222] Linda Tschirhart Sanford, and Mary Ellen Donovan, *Women and Self-Esteem*, (the Penguin Group, (published in the USA by Anchor Press/Doubleday) 1984), xiv-xv.

Perhaps, because of these hidden initial criteria of being persistent and ambitious, scarce female practitioners become arbitrators. The number of available women arbitrators listed on the panels of many arbitral institutions is insufficient. As an illustration, the JCAA panel has 413 arbitrators, of whom only 55 (13.3%) are women.[223] Many women fail to be persistent and ambitious. So, what is being persistent and ambitious? Rosenthal (2019) spelled out ambition and being tenacious and ambitious in the legal profession as "desire for external validations that you already know you want"[224] in her lecture *"Ambition and Aspiration: Living Greatly in the Law"* at Marquette University Law School. The question arises: Do young female lawyers not have sufficient desire for external validation, or do they not know what they want, thus are not ambitious enough to be arbitrators?

This research surveyed six young female associates, two in-house counsels, and three arbitration tribunal secretaries based in Japan, Mongolia, Hong Kong, Korea, and Singapore. The goal of the survey was to know whether the young female associates or in-house counsels have long-term plans for their careers and the common barriers and challenges for them to be accepted at their law firms. The survey was conducted between 2020 October and 2022 April via face-to-face and online surveying via the hybrid form. One of the noteworthy findings from the survey results was the young women lawyers' purposelessness in their careers. six of eleven respondents said they had no particular long-term goal for ten years. For the question "Are you an ambitious person?" Only five respondents said yes. And for the question, "Are you a confident person with high self-esteem?" Six respondents answered no, while five respondents answered yes.

Also, in light of the limited dataset, the survey results are not a scientific fact, but they give some insight into the young female practitioners' perspectives on ambition and long-term goals. Ambition and persistence are the keys to opening the doors to arbitration for prospective arbitrators. Nonetheless, female practitioners are perhaps not very ambitious about becoming arbitrators or are not persistent in practicing in

[223] Statistics provided by administrative office of JCAA, via email from the administrative officer Shinji Ogawa at JCAA., (July 26, 2021)
[224] Lee H. Rosenthal, "Ambition and Aspiration: Living Greatly in the Law," Marquette Law Review 103, no. 1 (Fall 2019): 217-236

arbitration cases. The reasons are maybe the social norms or traditional conceptions of ambitious women. Indeed, it is often argued that ambitious women are viewed as pushy, selfish, and unlikeable.[225]

As Liz (2017) criticizes the traditional misconception of ambition in women, "women are supposed to be helpful, pliant, comforting—but never ambitious."[226] Moreover, she stresses "we [women] are supposed to accept our place, take up as little space as possible, be thankful for what little room we're allowed, and never make waves lest we be perceived as difficult."[227] Sometimes females who speak up or are opinionated may be perceived as difficult. Nonetheless, hardly anyone cannot be ambitious and persistent in their professional lives for fear of looking difficult or aggressive. Unfortunately, in the survey, eight of eleven respondents answered yes to whether they worry about what other people think about them or not. Thus, young female lawyers might not want to look ambitious, so they hold themselves back. It is perhaps one of the implicit reasons for the low number of female entries into the arbitration market.

[225] Forbes, "Why Ambition Isn't A Dirty Word For Women,"(contributed by Caroline Castrillon, (July 2019) see (March 07, 2022) https://www.forbes.com/sites/carolinecastrillon/2019/07/28/why-ambition-isnt-a-dirty-word-for-women/?sh=365ff866e07c

[226] Forbes, "The High Cost Of Ambition: Why Women Are Held Back For Thinking Big," contributed by Liz Elting, (April 2017) see (April 06, 2022) https://www.forbes.com/sites/lizelting/2017/04/24/the-high-cost-of-ambition-why-women-are-held-back-for-thinking-big/?sh=3d037a6b1ee6

[227] *Ibid*

Summary: Role of feminist approach and its impact

Feminism is not just merely declaring that women should have equal rights and opportunities, but it is critically approaching the phenomenon which already accepted as normal in society, with gender sensitivity for the better.[228] This study investigates the lack of female arbitral appointments and female entries into arbitration in East Asia from different angles and gives some insights into how stereotyping social norms related to motherhood and sexist cultures cause the underrepresentation of women in arbitration indirectly. As discussed above, motherhood-related cognitive bias issues and childcare support issues, sexism and sexist cultures at law firms, and complicated perceptions of ambition for women affect female lawyers' entries into arbitration obliquely.

Nonetheless, these issues are considered normal in society, and law firms and legal professionals do not take these toxic cultures seriously. Furthermore, female lawyers and arbitration practitioners often refrain from bringing these issues into the light, perhaps because of the fear of shedding light on their differences from men and disturbing the group harmony. Particularly, Asian culture deeply cherishes group peace and harmony. Moreover, the rhetoric of harmony is often used to enforce pre-existing power structures and it tends to condemn violence and soft power of the prevailing system.[229] Thus, it is oftentimes difficult for women lawyers to speak up against unfair sexist attitudes at their law firms such as organizing training for tea serving only to the female associates since it is a commonly accepted norm in their societies and complaining would disturb the group harmony in the firm. But these issues need to receive more attention from scholars and the arbitration community since it is one of the common barriers for female arbitration practitioners to be recognized as successful professionals in their law firms.

This chapter investigated the hidden connection between a low number of female arbitrators and cognitive biases related to reproduction and motherhood, as well as sexist cultures at law firms and sexist conceptions of ambition for women. Though at the first sight, these women's studies subjects look general

[228] Peace Kiguwa, "Feminist approaches: An exploration of women's gendered experiences," contribution in *Transforming Research Methods in the Social Sciences: Case Studies from South Africa,* Ed. Sumaya Laher, Angelo Fynn, and Sherianne Kramer, (Wits University Press, 2019): 220-235, 220.; see the chapter at jstor.org, (November 14, 2022) https://www.jstor.org/stable/10.18772/22019032750.19

[229] Linus Hagström, and Astrid H M Nordin, "China's 'Politics of Harmony' and the Quest for Soft Power in International Politics," International Studies Review, Volume 22, Issue 3, (September 2020): 507–525

and unrelated to the problem, they impact the female arbitration practitioners and arbitrators' career paths since they are common barriers female lawyers confront. Thus, the role of feminist study in investigating the roots of the lack of gender diversity in East Asian arbitration is crucial.

However, this chapter merely provided some insights into the connection between the problem and few women's study subjects. It is advisable for scholars and arbitration practitioners to research more on the core reasons for the underrepresentation of women in arbitration and its connection with the other feminist study areas and long-persisted sexist social norms and cultures in the legal profession.

The effective feminist approach to the problem is not just merely urging for, shouting, or paying lip service to ensure gender diversity in arbitral appointments. But the efficient feminist approach to the problem is analyzing the deep-down causes of the phenomenon not just for fewer female arbitral appointments but also for an insufficient number of female arbitrators on the panels. This chapter studied how some sexist social norms and cultures in the legal profession which usually look unharmful and unrelated to the problem impact the female lawyers' entries into the commercial arbitration as successful practitioners and arbitrators, indirectly and invisibly. Scholars and arbitration practitioners should give more attention to exploring the social norms and cultures and other factors that create barriers to women's entry into arbitration rather than just focusing on the problem solely.

Chapter V: Women Arbitrators' Representation of Self and Impression Management

The previous chapters studied the lack of female arbitral appointments in East Asian arbitral institutions through diverse conceptual frameworks from various legal, social psychological, economic, and feminist viewpoints. Nonetheless, to more profoundly understand the problem, the struggles female arbitrators and arbitration practitioners confront in their careers in arbitration should be examined closely. However, just mentioning the challenges women face is not enough; the theoretical analysis of the problems women in arbitration confront is also necessary. Social psychology can be the best tool to examine the obstacles women face in their careers in arbitration thoroughly.

Hence, this chapter borrows a concept from social psychology which is called "impression management," and the chapter studies female arbitrators' impression management styles (sometimes referred to as a representation of self or self-representation) that can interpret the reasons for many obstacles women face in the pursuit of their careers in arbitration and can help to thoroughly understand why it is extra challenging for women to advance their careers in arbitration than their male counterparts.

"Impression management" (hereinafter also "IM") is a concept from social psychology,[230] indicating that it is common for people to influence one another to reach specific goals. Though impression management is neither a legal concept nor a study area in arbitration, it plays a significant role in not just female arbitrators' but also male arbitrators' everyday professional lives, since they are players in a very competitive field in which social appearances often define their status.

The chapter first gives a rudimentary outline of the concept of impression management, and it analyzes how it is crucial for arbitrators and studies female arbitrators' impression management styles, including their professional attitudes, clothing styles, and mannerisms. In the end, the chapter points out the challenges female arbitrators encounter when changing their IM styles from feminine to more masculine to comply with the perceived image of a qualified arbitrator. This study discovers that women arbitrators often

[230] Impression management was first conceptualized by social psychologist Goffman in his book *The Presentation of Self in Everyday Life* (1959), and after that, it became an area of study in social psychology.

develop a "hybrid" impression management style wherein they use feminine and masculine-typed tactics to represent themselves in arbitration professionally.

5.1 Impression management in arbitration

As this dissertation explained in Chapter II, appointers choose the arbitrators who give them the most expected utility value and minimum risks. To display their values well, arbitrators may need to have one special ability: a good impression management style. As players in one of the most competitive fields in the legal profession, arbitrators often find themselves in a situation where they need to leave a good impression, looking professional and projecting a sense of "class" (some scholars call it "looking elite"[231]), so the lawyers and parties can have confidence in them as trustworthy and qualified arbitrators. Thus, for arbitrators, impression management plays a significant role in their advancement in the arbitration community.

Social psychologist Goffman first conceptualized impression management in his book *The Presentation of Self in Everyday Life* (1959). Goffman viewed everyone as actors in a series of social interactions. Like a theatrical performance, individuals project an image to those who view them through impression management or self-representation.[232] According to Goffman, as social creatures, humans adapt to socially constructed situations by presenting ideas of their selves that match their desired interactional outcomes. Individuals modify their actions during public and social interactions to control what others see and perceive about them.[233]

Also, concerning strategic self-representation, social psychologist Schlenker (1980) stressed in his book *Impression Management: The self-concept, Social Identity, and Interpersonal Relations*:

> There are numerous similarities between our daily lives and theater. We possess scripts that allow us to know what to expect in situations. We perform roles that symbolize how we wish to appear to others.

[231] See Florian Grisel, "Marginals and Elites in International Arbitration," in t*he Oxford Handbook of International Arbitration*, Ed. Thomas Schultz, Federico Ortino, (Oxford University Press, 2020), Ch.10.
[232] Erving Goffman, "The Presentation of Self in Everyday Life," (Garden City, New York: Doubleday and Company, Doubleday Anchor Books Series, 1959) 6-7.
[233] *Ibid.*

> We select words, gestures, and props to illustrate our character just as an author does in fleshing out the characters in a play.[234]

As explored above, social psychologists in impression management studies consider that individuals present their selves according to what others expect from them in certain circumstances, akin to theatrical performances. For arbitrators, arbitration is a stage in which they must supervise other actors and act simultaneously. By conducting arbitration proceedings, arbitrators abide by and control the acts of the other players (the parties), and by acting as arbitrators they play the role of qualified decision-makers. When the author first started her position as a tribunal secretary at Mongolian MIAC, she was indeed shocked in her very first arbitration hearing when the arbitrators talked casually and even made jokes during a break in a very intense hearing. All the serious faces stuck on their faces for hours of hearing were gone when they casually talked with each other over a coffee break. Arbitrators often need to present their selves in specific ways that may be different from their everyday representation of self since they abide by and control the parties and counsel's acts while acting according to the script for their roles as arbitrators.

Nevertheless, this study does not claim that all arbitrators perform as theater actors or fake their actions, demeanor. It simply points out that individuals, as mentally healthy and capable people, present their selves differently in specific situations to meet the social norms and requirements in their professional and private lives. Likewise, arbitrators sometimes present their selves in particular ways since they want to ensure that parties and counsels know how they care for their profession and role as arbitrators. Thus, all arbitrators have their own specific IM tactics or styles. Some arbitrators may try to present themselves as serious or thoughtful, while others just want to look passionate about their work. Some arbitrators perhaps prefer to remain silent and give sharp looks to the audience during a hearing; meanwhile, some may choose to look curious and address several questions to the parties.

It is remarkable that IM is significant for arbitrators but also crucial for anyone who often engages in social interactions; it particularly plays a considerable role for professionals in social sciences, such as politics and law, since their social interactions usually affects the evaluation of their performance. As an illustration, a young counsel who attends a trial may try to look serious by wearing a suit and giving severe

[234] Barry R. Schlenker, *Impression Management: The self-concept, Social Identity, and Interpersonal Relation*s, (Brooks/Cole Publishing Company, 1980) 33.

looks to the audience in the hearing room. However, the young lawyer may not be that serious in their everyday life. In this case, attempting to look knowledgeable and trustworthy is that young lawyer's IM style as a counsel. Likewise, IM has a huge impact on professionals in social sciences, and arbitrators are ones of these many majors.

5.2 Women arbitrators' impression management styles

All arbitrators have their own specific IM tactics or styles. Then the question arises: What kind of impression management styles and tactics do female arbitrators often use in East Asian arbitration practice? To understand that, first, one needs to know what kind of IM styles exist. Social psychologists variously divide the IM styles. Some, such as Rosenfeld et al. (1995), categorize IM styles as acquisitive (attempts to be seen positively) and protective (attempts to avoid looking bad or to minimize deficiencies)[235]; while Cialdini (1989) categorizes IM styles as only direct (the self-presenter uses tactics that are self-relevant) and indirect (the self-presenter uses tactics that attempt to control the people and things with which they are seen to be associated.)[236]

There are, according to the literature, many types of IM styles. Covering all the IM tactics and their possible use in women arbitrators' professional self-representation within a single study is challenging. Thus, this study analyzes only three main categorizations of IM styles that may be applied to female arbitrators and arbitration practitioners: acquisitive and protective IM styles, idealized and dramatized IM performances, and feminine and masculine-typed IM tactics.

[235] P. Rosenfeld, R. A. Giacalone, and C. A. Riordan, *Impression Management in Organizations*. (Routledge, London., 1995); as cited in the R.E. Guadagno, R.B. Cialdini, "Gender Differences in Impression Management in Organizations: A Qualitative Review," Sex Roles, 56, (2007): 483-494, see (June 24, 2022) https://doi.org/10.1007/s11199-007-9187-3

[236] R. B. Cialdini, "Indirect tactics of image management: Beyond basking," contribution in *Impression Management in the Organization,* Ed. P. Rosenfeld, and R. A. Giacalone, (Hillsdale, NJ: Erlbaum., 1989): 45-56, as cited in the R.E. Guadagno, R.B. Cialdini, "Gender Differences in Impression Management in Organizations: A Qualitative Review," Sex Roles, 56, (2007): 483-494, see (June 24, 2022) https://doi.org/10.1007/s11199-007-9187-3

5.2.1 Acquisitive and protective IM styles

Rosenfeld et al. (1995) categorize IM styles as acquisitive (attempts to be seen positively) and protective (attempts to avoid looking bad or to minimize deficiencies).[237] Acquisitive IM style is often associated with moving forward and success, while protective IM style is more associated with getting along with people or groups.[238] In the arbitration market, perhaps every arbitrator wants to be perceived as a qualified and trustworthy arbitrator among their colleagues and to get along with them. To show their fine capitals, arbitrators may often tend toward an acquisitive IM style.

However, some women arbitrators may tend to have protective IM styles along with the acquisitive, since getting along with the arbitration club members is important for them as representatives from a minority group in the arbitration community. Moreover, many of the female arbitrators who are listed on the HKIAC, JCAA, KCAB, and MIAC panels lack appointment history, as studied in Chapter I, and in the market for arbitrators, for an arbitrator without any appointment history, the only way to get forward and to secure their professional standings is having a good relationship and getting along with the arbitration community, particularly with so-called elite arbitrators (who have been appointed frequently and have a professional brand name) and the arbitral institution authorities or members.

Thus, perhaps it is easy for women arbitrators to develop protective IM styles. During in-depth interviews with female arbitrators conducted for this study, three of six young arbitrators (under 40 years old) said they often worry if they make mistakes, particularly in tribunals with important members.[239] Nevertheless, female arbitrators tending more toward the acquisitive IM style may be more likely to get appointments. During in-depth interviews with female arbitrators, a frequently appointed Mongolian arbitrator X said that she usually takes things positively and does not hide her flaws by saying, "… when I

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[237] P. Rosenfeld, R. A. Giacalone, and C. A. Riordan, *Impression Management in Organizations*. (Routledge, London., 1995); as cited in the R.E. Guadagno, R.B. Cialdini, "Gender Differences in Impression Management in Organizations: A Qualitative Review," Sex Roles, 56, (2007): 483-494, see (June 24, 2022) https://doi.org/10.1007/s11199-007-9187-3

[238] R. M. Arkin, and J. A. Shepperd, "Self-presentation styles in organizations," contribution in *Impression Management in the Organization,* Ed. P. Rosenfeld, and R. A. Giacalone, (Hillsdale, NJ: Erlbaum., 1989): 125-139

[239] Interviews with six young female arbitrators (under 40 years old) including two Japanese, one Korean, two Mongolian, and one Chinese arbitrator. Five of six interviews were conducted in zoom online conference method, while one interview was on phone. All six interviews conducted between September 15, 2021 and June 30, 2022.

do not know something, I say I do not know it. Sometimes, it is the best answer."[240] While another Japanese arbitrator, Y says: "… I take criticism appreciatively and I always try to adapt myself better."[241] Likewise, all of the four successful women arbitrators who participated in the in-depth interviews tended more toward the acquisitive IM style or similar ones than a protective IM style.

Nevertheless, this dissertation does not argue that only women arbitrators have protective IM styles and that men do not. Both male and female arbitrators may tend to have protective IM styles, mainly when they are inexperienced and young. However, male arbitrators often receive more appointments over time than women, as identified in Chapter I. Since most women arbitrators thus lack appointment history even after many years of listing on the panels, they may tend to continue to have protective IM styles since they lack essential experience. During an in-depth interview conducted for this study, a Japanese female arbitrator who had been appointed for the first time in her career said ever since her appointment experience, she felt much more confident than she used to be.[242]

Getting an appointment plays a significant role in women arbitrators' developing confidence and changing their IM styles from protective to more positive and acquisitive. Subsequently, female arbitrators who are more self-confident and focused on positively showing their good qualities rather than hiding their weaknesses advance their career quickly. However, this dissertation does not argue that every female arbitrator without appointment history has a protective IM style. It simply claims that getting an appointment perhaps plays a significant role in women arbitrators' developing an upbeat, acquisitive IM style and establishing self-confidence as professional arbitrators.

To grow as a professional, one may need to loosen one's approach and focus positively on growth rather than simply avoid making a poor impression. Thus, developing an acquisitive IM style rather than the

[240] Interviewee: Mongolian female arbitrator X, "Interview with Arbitrator X," conducted by phone, Interviewer: Munkhnaran Munkhtuvshin, December 20, 2021, For the confidentiality of the interviewee, the full name is not disclosed.

[241] Interviewee: Japanese female arbitrator Y, "Interview with Arbitrator Y," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, December 27, 2021, For the confidentiality of the interviewee, the full name is not disclosed.

[242] Interviewee: Japanese female arbitrator, "Interview with a Japanese arbitrator who had had her first appointment a year ago before the interview," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, November 13, 2020, For the confidentiality of the interviewee, the full name is not disclosed.

protective one is crucial for female arbitrators. However, without an appointment history, it may be difficult for women arbitrators to develop assertive and confident IM styles. Nevertheless, there are other ways to boost confidence; two good methods are to write scholarly articles on arbitration and give speeches and presentations at arbitration-related conferences or events. In these ways, women arbitrators can extend their connections and learn to become more comfortable showing their knowledge and expressing viewpoints in contemporary arbitration debates. Significantly, these activities may have a huge impact on women arbitrators' developing confidence, and confidence would help them to establish more acquisitive IM styles rather than protective ones.

5.2.2 Idealized IM style and its contradictions for women arbitrators

According to Schlenker (1980), IM performances are often dramatized or idealized.[243] As he points out, "a *dramatized performance* makes it clear to the audience exactly what is going on; it leaves no doubt about how the actor views the situation. A student may dramatize his performance in class by appearing so attentive and enthralled by the lecture that he actually loses track of what the lecturer is saying."[244] Similarly, as an illustration, an arbitrator with a dramatic IM style may dramatize her performance in the hearing room by addressing seemingly essential questions to which she already knows the answers to the parties just to show she is passionate about the case and has explored all of the case documents well.

An "idealized IM style," as Schlenker views it, "is one that fulfills, and perhaps exceeds, the stereotypes held by the audience. A priest might present himself as being even more devout, humbler, more moral than he really believes himself to be."[245] In idealized performance, arbitrators present themselves more fully according to the stereotype of a good arbitrator. Perhaps, most of the arbitrators use idealized IM styles since they are in an infinite contest to catch an appointment and need to present themselves as though they are one of a kind and deserve appointment.

Nevertheless, for women arbitrators, idealizing a perceived image of a good arbitrator may be at odds with an idealization of women's social roles they carry with them. From the beginning of the growth of international arbitration, one vital capital that played a significant role in defining an arbitrators' quality was "recognized power."[246] Recognized power could be related to many things, such as experience, known status, or educational background. But the concept of power is often associated with masculinity.[247] Moreover, from the dawn of international arbitration in East Asia, the image of ideal arbitrators was created by men (just like the precedent in the West.) As an illustration, in Japan, lawyers in the arbitration field

[243] Barry R. Schlenker, *Impression Management: The self-concept, Social Identity, and Interpersonal Relations,* (Brooks/Cole Publishing Company, 1980) 39.
[244] *Ibid*
[245] *Ibid*
[246] Yves Dezalay and Bryant G. Garth, *Dealing in Virtue*, (the University of Chicago Press, 1996) 18.
[247] R. W. Connell, *Masculinities*, Second Edition, (the University of California Press, 2005) 246.

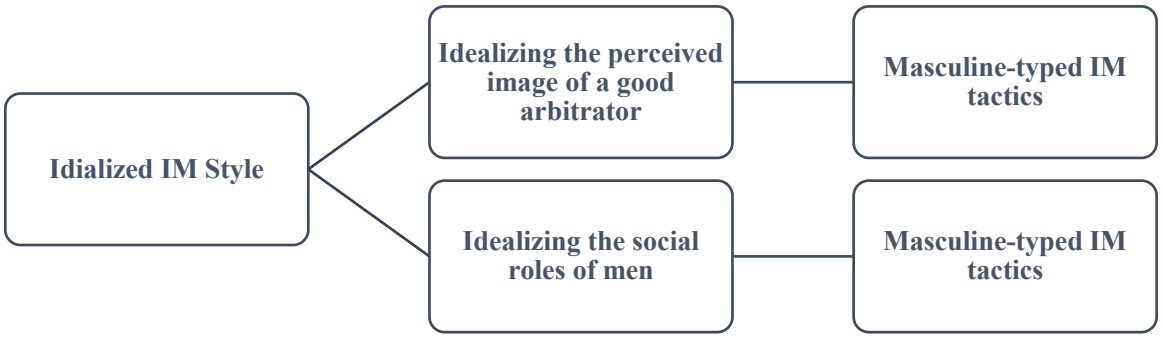
probably perceive the image of an ideal arbitrator through the form of the famous arbitrators and professors Dogauchi and Freeman (both are male).[248]

Thus, the ideal arbitrator image is masculine, and it contradicts the femininity which female arbitrators are expected to present according to their gender. As women from the very beginning of their lives, most female arbitrators conceivably developed their IM styles to show more femininity. These already developed feminine-typed IM styles and the perception and expectation from society for women to present femininity contradicts the masculine concept of arbitrators. Therefore, it is challenging for female arbitrators to prescribe to an image of an ideal arbitrator which is already against their own perceived image of women.

Figure 6. Idealized IM Styles and the complexity of women arbitrators' self-representation

[248] Arbitrator Masato Dogauchi was one of the few frequently appointed arbitrators between 1990s to 2010s at JCAA, while arbitrator Douglas K. Freeman is one of the frequently appointed arbitrators in 2010s and 2020. See JCAA, "Arbitrator and Mediator Appointment record," (July 5, 2022) https://www.jcaa.or.jp/en/arbitration/candidate.html

Figure 7. Idealized IM Styles and the male arbitrators' self-representation



The figures above show that for women, idealizing both the perceived image of a suitable arbitrator and the stereotypical social expectation of their gender holds contradictions, while, for men, idealizing the perceived image of a qualified arbitrator and idealizing the stereotypical social expectation of their gender has no such contradictions.

5.2.3 Masculine Feminine: Hybrid IM styles of women arbitrators

As mentioned in Schlenker's application of Idealized IM styles to women, behaving according to the perceived expectation as a suitable arbitrator and the social expectations based on gender roles is contradictory and complicated for women. As a decision-maker in international arbitration cases, arbitrators are well-conceived as confident, decisive, serious, and perhaps a little cold, which are all masculine-typed representations of self.[249] However, female arbitrators are expected to be nurturing, sensitive, demure, and timid as women.[250] Thus, women arbitrators and young female practitioners perhaps find it more challenging to find their foot in representing themselves professionally and to establish suitable IM styles.

Moreover, social psychology studies have found that women do not advance in the workplace due to their feminine self-representation.[251] Guadagno and Cialdini pointed out:

> women do not advance as quickly in the workplace nor earn salaries as high as men in comparable positions do in part because women tend to self-present in a manner consistent with feminine gender role expectations, as derived from social role theory.[252]

Thus, taking into account the present arbitration culture that highly values masculinity (at present, not just arbitration but also overall working culture favors masculinity,) and the low probability of women's promotion in the workplace because of the solid feminine-typed IM styles, female arbitrators find it necessary to adopt some masculine traits.

One may wonder why female arbitrators cannot adapt to masculine-typed IM tactics, leave their feminine self-representation, and behave like men. But "social roles impact impression management because they establish normative expectations for behavior."[253] Social psychology scholars such as Tebo and Badasa (2018) find that even in primary school, females are already socialized to be more feminine than males and

[249] Kay M. Palan, Charles S. Areni, and Pamela Kiecker, "Reexamining Masculinity, Femininity, and Gender Identity Scales," Marketing Letters, Vol. 10, No. 4, (November 1999): 363-377, 365
[250] Elroi J.Windsor, "Femininities," International Encyclopedia of the Social and Behavioral Sciences (Second Edition) Vol. 8, (2015): 893-897
[251] R. E. Guadagno, R. B. Cialdini, "Gender Differences in Impression Management in Organizations: A Qualitative Review," Sex Roles, 56, (2007): 483-494, see (June 24, 2022) https://doi.org/10.1007/s11199-007-9187-3
[252] *Ibid*
[253] *Ibid*

develop more feminine-typed IM styles rather than masculine ones.[254] Thus, many women may have trouble changing their feminine-programmed self-representation, which they learned from the very early stages of their lives.

However, it is inevitable to avoid masculinity in the market for arbitrators. To present themselves professionally and become successful arbitrators, women arbitrators and young female arbitration practitioners need to create a public image of confidence, decisiveness, seriousness, trustworthiness, and skill—all masculine traits.[255] Hence, many women arbitrators adopt or try to adapt themselves to masculine-typed IM styles. During an in-depth interview, a Korean female arbitrator who had been appointed in several cases and worked both in Korea and Japan, as well as in Thailand, said, "I always try to be tough. It is very difficult, but every new year, I tell myself: this year I will be tougher."[256] During the in-depth interviews and meetings conducted for this study, many other female arbitrators (including even women arbitrators who had already become a part of the arbitration club, secured their standing in arbitration, and even created their brand name) said that they wanted to be tougher (more masculine) and often worried that they looked soft or sweet or even sexy.[257]

However, there are risks when female arbitrators shift from a feminine to a masculine IM style since the women are trying to breach a social code. Guadagno and Cialdini (2007) stressed that:

> in some cases, masculine-typed impression management tactics tend to lead to better performance evaluations and salary, whereas feminine-typed impression management tactics tend not to lead to those benefits. Furthermore, the literature shows that, when women adopt masculine impression management tactics, they are often punished for transgressing norms rather than rewarded for adopting what for men are successful tactics.[258]

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[254] Gemechu Deresa Tebo, and Gamachu Gishe Badasa, "Gender Difference in Perception of Masculine and Feminine Gender Roles among Primary Schools Children," Developing Country Studies, Vol.8, No.9, (2018): 31-33

[255] Kay M. Palan, Charles S. Areni, and Pamela Kiecker, "Reexamining Masculinity, Femininity, and Gender Identity Scales," Marketing Letters, Vol. 10, No. 4, (November 1999): 363-377, 365

[256] Interviewee: Korean female arbitrator, "Interview with a Korean female arbitrator," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, December 06, 2021, For the confidentiality of the interviewee, the full name is not disclosed.

[257] During the ten interviews with female arbitrators on their professional looks, two of four experienced female arbitrators, and four of six young female arbitrators said that they often put a lot of consideration into their clothes and actions not to look soft or sweet or sexy. Nine of ten interviews were conducted in zoom online conference method, while one interview was on phone. All ten interviews on professional looks and clothing were conducted between September 15, 2021, and June 30, 2022.

[258] R. E. Guadagno, R. B. Cialdini, "Gender Differences in Impression Management in Organizations: A Qualitative Review," Sex Roles, 56, (2007): 483-494, see (June 24, 2022) https://doi.org/10.1007/s11199-007-9187-3

Indeed, women who break the femininity rules are often considered to be "difficult women." Perhaps because of this, some female arbitrators urge female arbitration practitioners not to deny their femininity. During SIAC, International Women's Day Webinar: Celebrating Women in Arbitration, 2021, one of the most well-known and respected Japanese female arbitrators, Yoshimi Ohara, said, "Do not deny your gender; I serve tea to my colleagues; they wonder and say are you serving tea? … I like it…"[259]. In another webinar organized by Arbitral Women and JCAA, Ohara said, "Don't be afraid to take childcare leave. Our career road is long since the arbitration community has a great fondness for older arbitrators."[260]

Arbitrator Ohara's IM style is perhaps more feminine-typed. However, Ohara's speaking style and presentation of self in public are very confident and assertive, and she is in a leadership role in ICC, other arbitral institutions, and her law firm. Thus, though arbitrator Ohara advocates femininity among female arbitrators and practitioners, her IM style is perhaps a hybrid, consisting of feminine and masculine self-representation tactics.

Moreover, though, her idea of not giving up idealizing traditional gender expectations as women could be reasonable, that depends on the particular status of the women. For example, suppose a senior arbitration practitioner or a well-known arbitrator like Ohara serves tea to her colleague. In that case, the colleague will consider it an award or gracious gesture. Yet, in the case of a young and new arbitration lawyer serving tea to her colleague, she could be considered as announcing her inferiority to her colleague by this act. Therefore, finding the balance between masculine and feminine self-representation in different stages of one's career and according to one's standing is crucial for female arbitrators' professional lives.

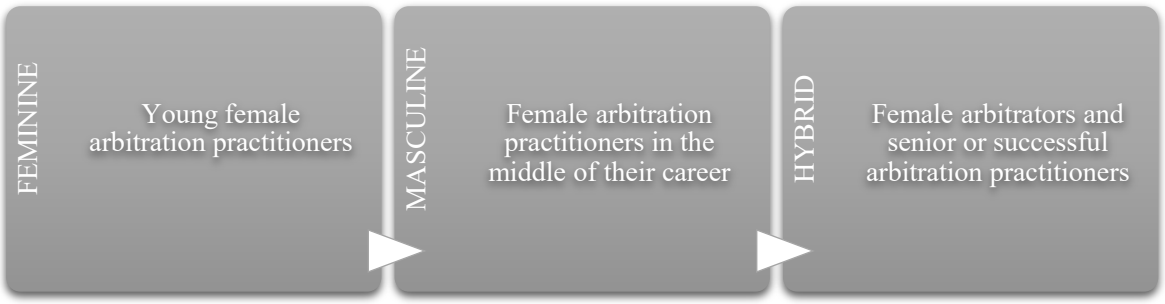
As observed above, finding a balance between feminine and masculine self-representation in different times of one's career is essential, and fully adopting the masculine IM style is risky as well as challenging for women, since from the early stages of their lives most women arbitrators' IM styles were programmed to be feminine. Thus, women arbitrators may develop their own "hybrid" IM styles. Guadagno

[259] SIAC, International women's Day Webinar: Celebrating Women in Arbitration, March 5, 2021. For the details of the webinar: https://www.siac.org.sg/component/registrationpro/event/558/SIAC-International-Women-s-Day-Webinar--Celebrating-Women-in-Arbitration/0?Itemid=0

[260] the Arbitral Women-JCAA Webinar "International Women's Day 2021 Gender diversity in international arbitration: Trends and developments in Japan and Asia Pacific," 08 March, 2021

and Cialdini (2007) found successful women essentially use a "hybrid" IM style,[261] and they defined the "hybrid" self-representation tactics as "an equal number of masculine and feminine-typed impression management tactics to balance out the conflicting demands made by their gender and occupational roles."[262]

Figure 8. Transformation of women arbitrators' IM styles through their career



The figure above shows the transformation of female arbitrators' IM styles throughout their careers. Though every woman lawyer has a different IM style, most young women tend to have more feminine-typed IM styles since they are more familiar with feminine-typed IM and experience discomfort with the strategic use of IM.[263] When young female lawyers start their careers, they may tend to have more feminine-typed IM styles than masculine ones for many reasons, such as social expectations, family background, or traditions. However, after some experience, or when female arbitration practitioners achieve middle positions in their law firms or in the middle of their career at some time, many female arbitration practitioners with feminine-typed IM styles may become aware of the disadvantages of feminine-typed IM styles.

For their career and to become recognized at their law firms, female arbitration practitioners with some experience try to change their feminine-typed IM styles to masculine-typed IM styles. Nevertheless, many women arbitration practitioners find it very challenging, and most of them cannot fully transform their IM styles from feminine to solid masculine. Thus, after some time trying to adopt the masculine-typed IM

[261] R. E. Guadagno, R. B. Cialdini, "Gender Differences in Impression Management in Organizations: A Qualitative Review," Sex Roles, 56, (2007): 483-494, see (June 24, 2022) https://doi.org/10.1007/s11199-007-9187-3
[262] *Ibid.*
[263] Val Singh, Savita Kumra, and Susan Vinnicombe, "Gender and Impression Management: Playing the Promotion Game," Journal of Business Ethics, Vol. 37, No. 1, (April 2002): 77-89, 85.

styles, the female arbitrators and arbitration practitioners become aware of the difficulties in changing their feminine IM styles, which they have learned from a very early stage of their lives, as well as the social sanctions against their breach of femininity (such as partners or co-workers disliking masculine females).

Therefore, in the latter part of the IM styles transformation journey, many women arbitrators and female arbitration practitioners may develop "hybrid" IM styles consisting of both feminine and masculine traits, which are neither so feminine nor so masculine. During the in-depth interviews with women arbitrators and young female arbitration practitioners conducted for this study, all ten experienced arbitrator interviewees showed a "hybrid" self-representation style. Moreover, twelve of fourteen young arbitration lawyer interviewees had feminine-typed IM styles when they started their careers. They eventually wanted to adopt masculine traits to benefit masculinity in their workplace. Almost all of the interviewees use "hybrid" IM styles now.

5.3 Portraying an image of a qualified arbitrator as a woman

In the first and most famous book on self-representation, *The Presentation of Self in Everyday Life* (1959), social psychologist Goffman divided the good qualities that play significant roles in impression management (in his words, stimuli) into two categories: "appearance" and "manner."[264] He divided these according to the function performed by the information these qualities convey. As Goffman emphasizes:

> "Appearance" may be taken to refer to those stimuli which function at the time to tell us of the performer's social statuses…. "Manner" may be taken to refer to those stimuli which work at the time to warn us of the interaction role the performer will expect to play in the oncoming situation.[265]

"Appearance" and "manner" also play a significant role in female arbitrators' representation of self. Indeed, these are the main two forms of capital to build a good IM style. The following two parts will study appearance: what kind of clothes female arbitrators usually choose to wear, and how women arbitrators establish a good impression by their manner. Moreover, this study also sheds light on the difficulties women arbitrators confront when establishing their own IM styles by strategically working on their appearance and manner.

[264] Erving Goffman, *The Presentation of Self in Everyday Life*, (Garden City, New York: Doubleday and Company, Doubleday Anchor Books, 1959) 24.
[265] *Ibid*

5.3.1 Clothes make the woman: "appearance" and female arbitrators' IM styles

"The dress has the most direct contact with the human body and is therefore considered an integral part of the Self."[266] Thus, garments play significant roles in the construction of social identity.[267] However, most women's clothes are dresses or other garments designed to present female sexuality and attractiveness or just gender differences. As examined above, showing femininity is not highly appreciated in arbitration practice. Indeed, particularly in the legal profession, dressing in clothes that show strong femininity, such as fancy women's dresses, could be considered against the professional dress code. Moreover, there is a study that found many men feel uncomfortable around female colleagues who dress in provocative clothes that present female sexual power.[268]

Therefore, in the male-dominated arbitration world, female arbitrators tend to stay neutral by choosing clothes that show less sexuality and femininity but show masculinity at some level. Understandably, women arbitrators cannot easily find the right clothes as a female arbitrator and establish a good appearance just by grabbing the first clothes they like in the mall. The reason is most of the garments are made with a clear distinction of gender. Thus, clothes designed for women often show the feminine side, and the market for female business outfits lacks a well-established tradition.

The first men's suit was worn in seventeenth-century England by King Charles II,[269] and through to the present day it has been the ideal men's clothing for certain types of work and official events and ceremonies in some cultures. From the first boom of international commercial arbitration in the west and later in East Asia, the "appearance" of arbitrators has been in men's suits, much as it has been in other professions. However, women's business outfits do not have such a well-established standard. After World War II, when women first entered the workforce in many countries including East Asian nations, many women faced difficulties with clothing. When they wore feminine clothes such as dresses and skirts they

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[266] E. Tseelon, "Communicating via clothes," Unpublished paper, Department of Experimental Psychology, University of Oxford, (1989), as cited in the Zoi Arvanitidou, "Construction of Gender through Fashion and Dressing," Mediterranean Journal of Social Sciences, Vol 4, No 11 (Oct, 2013): 111-115, 111.
[267] *Ibid.*
[268] R. Curle, *Women, An Analytical Study*, (London:Watts & Co., 1949), as cited in the Zoi Arvanitidou, "Construction of Gender through Fashion and Dressing," Mediterranean Journal of Social Sciences, Vol 4, No 11 (Oct, 2013): 111-115, 113.
[269] Ben Barry and Nathaniel Weiner, "Suited for Success? Suits, Status, and Hybrid Masculinity," Men and Masculinities, Vol. 22, No. 3 (Jan, 2017): 1-26, 2.

were not taken seriously, but when they wore pants and suits, they were considered abnormal; fortunately, the female suit eventually became popular.[270] Nonetheless, still, traditional feminine clothes did not give up their popularity, and business clothing for women could not develop strongly. Even today in the business world, including arbitration, women lack a consistent, recognized standard of professional clothing.

This lack of a solid dressing tradition persists among female arbitrators and workforce of women more generally. Like many other women in decision-making positions such as politicians, leaders, and managers, women arbitrators have difficulty finding the clothes which can deliver a good self-representation and send a message that they are not just beautiful or feminine, but also intelligent and qualified enough to handle complicated arbitration cases. One might perhaps ask, then, why women arbitrators cannot adapt to wearing suits.

However, wearing suits or similar men's attire comes with risks. Barry and Weiner (2017) observe that "with its connotations of rationality and the renunciation of femininity, the suit is often understood as emblematic of dominant masculine ideals."[271] Suits have been a popular masculine form of dressing almost since the beginning of their production. As discussed in the previous parts of this chapter, adapting to strong masculine-typed IM styles is risky for women arbitrators; they may be regarded critically or even ostracized by their colleagues. But some women, such as arbitrator, senior arbitration practitioner, and YSIAC Co-Chair Wendy Lin, often wear masculine suits and are comfortable with them. Such women arbitrators not only take on traditionally male attire but also choose haircuts similar to males such as pixie cuts.[272]

While not all women arbitrators wear masculine trouser suits, some may pursue a certain neutrality in clothing by wearing women's trouser suits, skirt suits or office dresses. An interesting point of women's fashion in arbitration is that female arbitrators and senior arbitration practitioners often dress in dark colors such as black, navy, gray and dark brown.[273] In contrast, young female arbitration lawyers sometimes wear

[270] Michael Andrews, "Journal: What to wear: A Brief History of Women's Suits," n.d., (July 22, 2022) https://www.michaelandrews.com/journal/history-womens-suits

[271] Ben Barry and Nathaniel Weiner, "Suited for Success? Suits, Status, and Hybrid Masculinity," Men and Masculinities, Vol. 22, No. 3, (Jan, 2017): 1-26, see 3-4.

[272] See Wong Partnership, "People: Wendy Lin," n.d., (July 22, 2022) https://www.wongpartnership.com/people/detail/wendy-lin

[273] This dissertation conducted twenty-four surveys among ten female arbitrators and senior arbitration practitioners and fourteen young female lawyers on the colors and styles of the outfit they choose for their professional self-representation. Eight experienced female arbitrators and practitioners (above forty years old)

more light-colored outfits such as beige, white and red.[274] Women arbitrators and senior arbitration practitioners perhaps prefer to show masculinity in their dress by choosing dark-colored gender-neutral outfits; in contrast, young female lawyers are less likely to avoid showing femininity through bright female dresses.

However, a limitation of this study on the business outfits of women arbitrators and lawyers is that it is only based on twenty-four surveys among ten arbitrators and fourteen young female lawyers. Moreover, this study does not deny that every female arbitrator and arbitration practitioner has a unique clothing style and personal preference for strategically controlling her professional appearance. Thus, the dissertation does not claim that every female arbitrator prefers similar gender-neutral or masculine clothing styles or that all young female practitioners dress in feminine clothes; it simply sheds light on the possible tendency that female arbitrators try to control their impression management by choosing gender-neutral or masculine outfits that can show both femininity and masculinity, or more masculinity than femininity.

said they preferred dark colors. The method of the survey was online in email form as well as on phone and on paper. The survey is conducted between March 01, 2022, and July 15, 2022.

[274] Eleven of fourteen young female lawyers who participated in the survey on the colors and styles of the outfit they choose for their professional self-representation revealed tendencies that they are not afraid of wearing colorful and feminine outfits in their professional events. The method of the survey was online in email form as well as on phone and on paper. The survey is conducted between March 01, 2022, and July 15, 2022.

5.3.2 "Manner" in women arbitrators' IM styles

As asserted in the above sections, leaving an excellent impression on the co-arbitrators and lawyers is essential for arbitrators. Though professional qualifications and abilities are crucial for becoming a recognized arbitration lawyer and eventually becoming an arbitrator, manner also plays a significant role in the impression management of arbitrators and arbitration practitioners. So, what is a good manner for arbitrators in their relationships with their colleagues? There is no standard for an excellent manner of colleagues in international arbitration. Some arbitrators may value colleagues who are very careful and contained; conversely, some may favor humorous, outgoing co-arbitrators.

In short, there are no written rules on the favored manner of arbitrators in the arbitration community, and everyone has different characteristics and attitudes. Nevertheless, a suitable manner is perhaps simply a solid one: any vital positive characteristic. As explained in Chapter I of this dissertation, the pool of arbitrators is full of talent; thus, to be recognized in this competitive field, arbitrators may be better served by a strong positive manner that can distinguish them from the rest. This positive manner could be any valued characteristic such as good humor, persistence, speaking up without fear in any situation, being chatty, or being a good listener. The essential point here is having a strong, solid, and unforgettable or recognizable presentation of these characteristics.

During the in-depth interviews with experienced female arbitrators from Japan, Korea, China, Mongolia, Vietnam, and Hong Kong conducted for this study, almost all of the female arbitrators with appointment history have specific strong positive characteristics which they are not afraid to demonstrate in their professional interactions.[275] As an illustration, a Vietnamese female arbitrator who is listed on both HKIAC and SIAC panels and had been appointed several times pointed to her strongly opinionated side as

[275] During eight in-depth, private interviews with experienced female arbitrators on their professional interaction and attitudes, all eight interviewees said they were not afraid to show strong positions and attitudes in their careers. Seven of eight interviews were conducted in the zoom online conference method, one interview was on phone. All eight interviews were conducted between September 15, 2021, and June 30, 2022.

her most valuable capital as an arbitrator. She emphasized that she learned not to be afraid when expressing her opinions when she was a tribunal secretary at one of the most famous arbitral institutions.[276]

Also, another Korean arbitrator said she liked to share amusing anecdotes that happened during her professional life with her colleagues. One time she shared anecdotes with a famous Japanese arbitrator and chatted with him for almost a day. After that remarkable interaction, the Japanese arbitrator later invited her to take the leading role in an important arbitration project in Japan.[277] Likewise, any robust positive manner opens doors and improves the female arbitrator's professional relationships with her colleagues, distinguishing her from the rest.

Nevertheless, for young female arbitration practitioners and arbitrators, working on their strengths, developing positive characteristics and eventually demonstrating strong personalities could be challenging since the idea of having a solid character contradicts the social norms for women (particularly in East Asian cultures where ideal women are considered to be humble, silent and supporting.[278]) As Graves and Leahy (2019) stress, when women in decision-making positions demonstrate a strong personality, they experience social stigma and are often labeled negatively.[279] Thus, perhaps some young female arbitration practitioners cannot develop and establish strong characters in their professional lives, or fear doing so. This hypothesis also suggests one of the reasons behind the mystery of an insufficient number of successful female arbitrators in East Asia.

In conclusion, any strong positive manner is crucial capital in women arbitrators' impression management in the arbitration community. In the pool of arbitrators, almost all arbitrators are talented and well-qualified professionals; however, manner plays a significant role in distinguishing one from another,

[276] Interviewee: Vietnamese female arbitrator, "Interview with a Vietnamese female arbitrator who is listed on the HKIAC panel," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, January 07, 2021, For the confidentiality of the interviewee, the full name is not disclosed.
[277] Interviewee: Korean female arbitrator, "Interview with a Korean female arbitrator," conducted by online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, December 06, 2021, For the confidentiality of the interviewee, the full name is not disclosed.
[278] Japanese and Korean women are often encouraged to be silent and caring. Even feminist activists in Japan urge women to be supportive and humble rather than ambitious. See Kazue Muta, "The Making of Sekuhara: Sexual Harassment in Japanese Culture," contribution in *East Asian Sexualities: Modernity, Gender and New Sexual Cultures,* Ed. Jackson Stevi et al, (Zed Books Ltd, 2008): 52-68.
[279] Daniella Graves, and Martin J. Leahy, "Actors of Discourse: Gender Performativity in Women's Leadership," contribution in *Women and Inequality in the 21st Century*, Ed. Brittany C. Slatton, and Carla D. Brailey, (Routledge, 2019): 116-136, 122.

and it has a substantial impact on establishing effective impression management. A robust positive manner may separate an arbitrator from the rest and make her recognizable among many. Thus, young female arbitration practitioners and arbitrators perhaps better develop and demonstrate at least one recognizable, vital positive characteristic in their professional lives, regardless of whether the manner is against social norms for women.

Summary: Women arbitrators' IM styles: Hybrid arbitrators

This chapter studied the concept of impression management from social psychology and its significance for women arbitrators' professional self-representation, as well as different types of IM styles and their applications in female arbitrators' and arbitration practitioners' professional lives. Women are the minority in the men-dominated arbitration community; thus, to be recognized and accepted among their colleagues (co-arbitrators) and arbitration lawyers as capable arbitrators, not just as charming or feminine women, they need to have effective IM styles. Nevertheless, as a minority group, they confront many challenges in establishing suitable IM styles of their own.

Moreover, based on the in-depth interview results and other supporting studies, this dissertation argues that often from the very beginning of their career, women in arbitration start their profession with IM styles that are not beneficial for their advancements (taking into account the current masculine arbitration tradition,) such as protective IM styles and strong feminine-typed IM styles. Thus, eventually, some female arbitrators and arbitration practitioners become aware of the disadvantages of their initial IM styles and try to change their IM tactics to be recognized and endorsed by their law firms or arbitral institutions. These women arbitrators and arbitration lawyers often attempt to add more masculine traits to their professional self-representation since the history of arbitration already idealized the ideal image of a good arbitrator in men's suits.

Nevertheless, this shift from a feminine-typed IM style to a masculine one is very challenging for women since they learned to be feminine early in their lives, and most cannot fully transform their IM styles from feminine to solidly masculine. Thus, after some time trying to adopt the masculine-typed IM styles, the female arbitrators and arbitration practitioners become aware of the difficulties in changing their feminine IM styles and the social sanctions against their breach of femininity (such as partners or co-workers disliking masculine females). Therefore, at the end of the IM styles transformation journey, many women arbitrators and female arbitration practitioners develop "hybrid" IM styles consisting of feminine and masculine traits, which are neither so feminine nor so masculine.

The chapter also studied Goffman's two good qualities one should have for effective impression management: "appearance" and "manner." Clothes have a massive impact on the appearance-related

presentation of self. Thus, many women in arbitration put a lot of consideration into their professional dressing. Due to the disadvantages of showing femininity in arbitration, women arbitrators often choose gender-neutral or masculine business outfits in dark colors; in contrast, young female arbitration practitioners often tend not to avoid presenting femininity by wearing feminine and colorful dresses.

Moreover, about manner, this dissertation stresses that though there is no established rule concerning an excellent manner for arbitrators, good impression management is made in a firm, positive manner. Only a robust positive manner can separate an arbitrator from the rest and make her recognizable among many. However, yet again, showing a strong personality contradicts a gender stereotype; hence, female arbitrators and arbitration lawyers face challenges in working on their strengths, developing their positive characteristics, and eventually demonstrating recognizable personalities.

In conclusion, studying the IM styles of women arbitrators unveils a social-psychological explanation of why it is difficult for women to advanced and be recognized in the arbitration community and become successful arbitrators. To survive in the masculine field, women arbitrators and arbitration practitioners try to change feminine-typed IM styles and feminine behaviors that they learned from the early stages of their childhood to adopt more masculine traits. However, is it indispensable? Do women have to change their behavior and dress, and even the colors of their outfits, to suit men’s arbitration culture?

In East Asia's current culture of arbitration, women find shelter in choosing gender-neutral or masculine IM styles. Nevertheless, contemporary women in arbitration are not simple followers of the masculine code but also creators of the social norms and standards for the ideal female arbitrator for future women arbitrators. Thus, adopting too much masculinity is perhaps dangerous for the future well-being of female arbitration communities.

Chapter VI: Different Arbitral Proceedings and Different Female Representation

The prior five chapters studied the lack of female arbitral appointments in East Asian arbitral institutions from legal, social psychological, economic, and feminist viewpoints. In addition, the dissertation analyzed the common challenges that female arbitrators and arbitration practitioners experience in the pursuit of their careers in arbitration. However, to make this study more comprehensive, the different types of arbitral procedures and their tendencies to contribute to changes in the number of female arbitral appointments should be investigated as well. In arbitration practice, there are different types of arbitral proceedings, and these different procedures may result in different female representation rates.

Thus, this chapter investigates how types of arbitration proceedings, the number of tribunal members, and the amount in dispute may contribute to changes in the number of female arbitral appointments. As Chapter III demonstrated, the appointors often select male arbitrators for reasons such as implicit gender bias and risk aversion. Nevertheless, the types of procedures, the number of tribunal members, and the amount in dispute may also impact the gender of the appointments. The chapter investigates the correlation between the rate of female arbitral appointments and the different types of arbitration proceedings and tribunals: the classic arbitration procedure with a three-member tribunal, sole arbitrator tribunals including an expedited arbitration procedure, and the emergency arbitration procedure.

This chapter found that parties and counsels tend to make more female appointments in low-value claims; meanwhile, co-arbitrators tend to appoint more female chairpersons if the number of experienced female arbitrators known by the co-arbitrators is high. However, often only a few arbitrators have numerous experienced female colleagues. Thus, in three-member arbitral tribunals, the probability that presiding arbitrators will be male is high. Furthermore, the research discovered institutions tend to select first-time female appointees more in low-value disputes, such as expedited arbitration cases, than in high-value disputes. Also, the institutions appoint fewer women as emergency arbitrators. Significantly, this research stresses that women are often appointed less in high-value cases and as presiding arbitrators and emergency arbitrators because of their lack of experience, not just because of an implicit or explicit gender bias.

6.1 Gender diversity and three-member tribunals

This part analyzes the likelihood of parties and co-arbitrators choosing women for three-member tribunals and how the size of claims impacts the selection of arbitrators in the four arbitral institutions of this study: the HKIAC, JCAA, KCAB, and MIAC.

6.1.1 Party appointments

Parties make the majority of arbitral appointments at the HKIAC, JCAA, KCAB, and MIAC.[280] Parties and counsels rarely fail to appoint decision-makers since it is the arbitration procedure's privilege, and "it is often argued that due to this privilege, parties opt for arbitration over the adjudication of disputes through courts." [281] Thus, parties and counsels take advantage of this opportunity to choose their decision-makers in arbitration dispute resolution (except for some cases where defendants prefer not to appoint their arbitrators for tactical purposes.)

Hence, unsurprisingly, many arbitral appointments are party-made ones, both in East Asia and globally.[282] At the same time, the parties make the majority of the male arbitral appointments, and a low number of party-appointed arbitrators are women.[283] It is almost impossible to analyze every scenario and find what aspects and figures contribute to the parties' decision to choose or not choose female arbitrators. Nonetheless, this research discovered that as the average amount of dispute claims increases, the number of party-made female arbitral appointments decreases. In other words, this study found that women arbitrators have more chances to get selected when the value of the cases is low.

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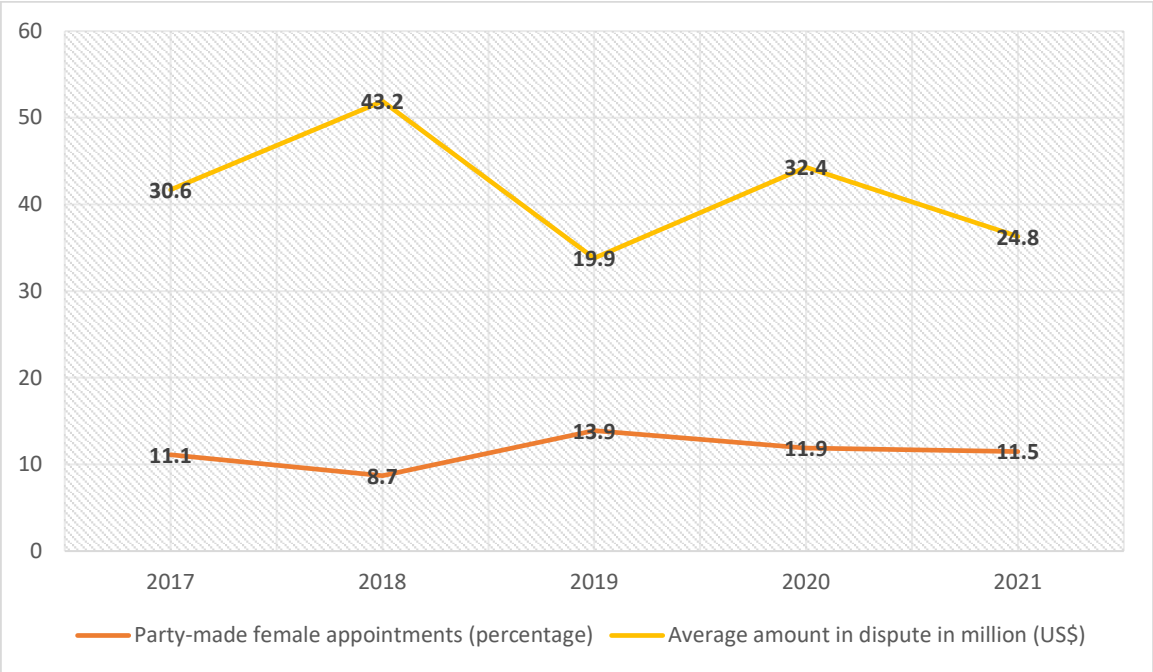
[280] See Annual reports and Statistics of the HKIAC, KCAB, JCAA, and MIAC between 2017 and 2021; at each institution, usually more than 60% of the appointments are party-made. See Hong Kong International Arbitration Centre, "Statistics," 2017-2021, see (Oct 03, 2022) https://www.hkiac.org/about-us/statistics; JCAA, "Arbitration: Statistics", see (Oct 11, 2022) https://www.jcaa.or.jp/en/arbitration/statistics.html; KCAB, "Publications: Annual reports," 2017-2021 (Oct 03, 2022) http://www.kcabinternational.or.kr/main.do; and MIAC, "About Us, Statistics", (in Mongolian) see (Oct 11, 2022) http://www.arbitr.mn/index.php/about-us

[281] Dhiraj Abraham Philip, "Neutrality vis-a-vis Party Autonomy in Appointment of Arbitrators," International Journal of Law Management and Humanities 4 (2021): 1203-1220

[282] See Annual reports and Statistics of HKIAC, KCAB, JCAA, and MIAC between 2017 and 2021; at each institution, usually more than 60% of the appointments are party-made. See Hong Kong International Arbitration Centre, "Statistics," 2017-2021, see (Oct 03, 2022) https://www.hkiac.org/about-us/statistics; JCAA, "Arbitration: Statistics", see (Oct 11, 2022) https://www.jcaa.or.jp/en/arbitration/statistics.html; KCAB, "Publications: Annual reports," 2017-2021 (Oct 03, 2022) http://www.kcabinternational.or.kr/main.do; and MIAC, "About Us, Statistics", (in Mongolian) see (Oct 11, 2022) http://www.arbitr.mn/index.php/about-us

[283] *Ibid*

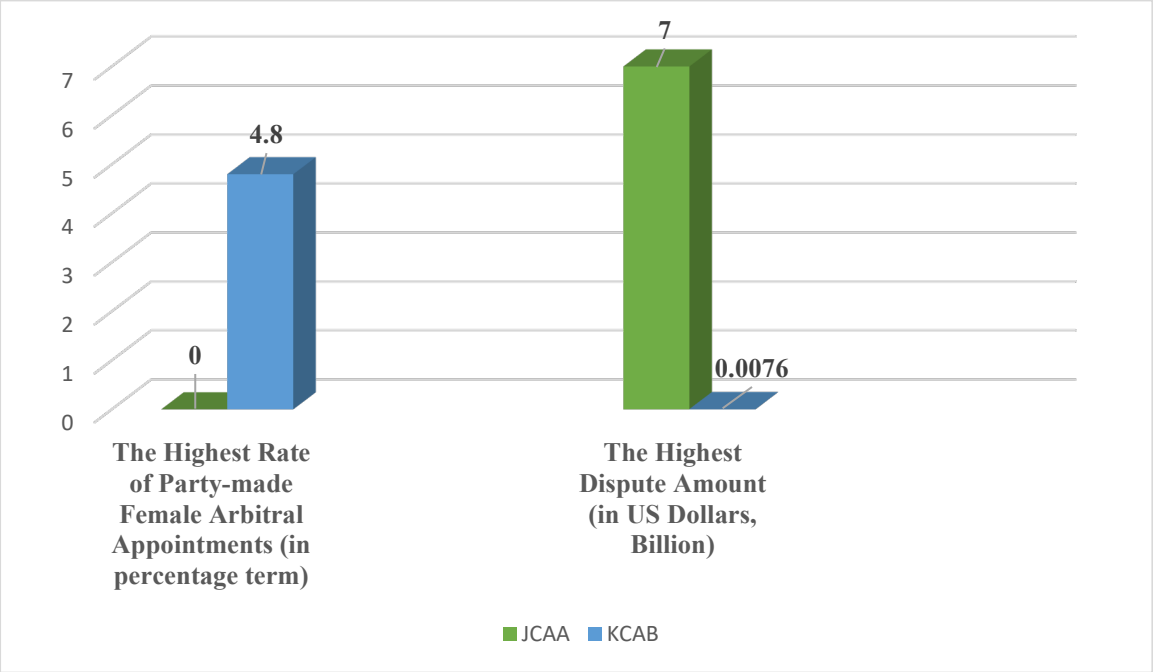
Figure 9. Female Arbitral Appointments by Parties and the Average Amount in Dispute at the HKIAC between 2017 and 2021



Source: Hong Kong International Arbitration Centre, "Statistics," 2017-2021, see (Oct 03, 2022) https://www.hkiac.org/about-us/statistics; ICCA (International Council for Commercial Arbitration), "Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings," Report No. 8, Published by the ICCA, Revised Second Edition, (2022), see p. 212

The figure above shows that in 2019, when the average amount of claims in disputes was lowest at the HKIAC within the five years between 2017 and 2021 (19.9 million US Dollars), the ratio of party-appointed female arbitrators was the highest at 13.9%. On the other hand, in 2018, when the average amount of claims in disputes was the highest within the five-year period (43.2 million US Dollars), the female arbitral appointments made by parties was the lowest, with a ratio of 8.7%. From these statistics, one may assume that the parties are more likely to appoint female arbitrators when the claim amount is not so high.

Figure 10. Highest Rate of Party-made Female Appointments and the Highest Dispute Amount at the JCAA and KCAB between 2017 and 2021



Source: JCAA, "Arbitration: Statistics," see (Oct 03, 2022) https://www.jcaa.or.jp/en/arbitration/statistics.html; KCAB, Annual Report, 2021, p. 11 and 18.; KCAB, Annual Report, 2020, p.15.; KCAB, Annual Report 2019, p. 17.; KCAB, Annual Report, 2018; KCAB, Annual Report, 2017. see the reports: KCAB, "Publications: Annual reports," (Oct 03, 2022) http://www.kcabinternational.or.kr/main.do

The figure above indicates that for the five years between 2017 and 2021, the JCAA had zero party-made female arbitral appointments, while the institution's highest dispute amount was USD 7 billion in that five year period.[284] In contrast, at the KCAB, according to its Annual Reports between 2017 and 2021, party-made female arbitral appointments were the highest in 2020, amounting to 4.8% of the overall appointments,[285] while the highest claim was US 7.6 million (KRW 9 billion) in 2021.[286] Thus, the above

[284] JCAA, "Arbitration: Statistics", see (Oct 11, 2022) https://www.jcaa.or.jp/en/arbitration/statistics.html
[285] KCAB, Annual Report, 2020, at 15., see the 2020 report: KCAB, "Publications: Annual reports," (Oct 03, 2022) http://www.kcabinternational.or.kr/main.do
[286] KCAB, Annual Report, 2021, at 11., see the 2021 report: KCAB, "Publications: Annual reports," (Oct 03, 2022) http://www.kcabinternational.or.kr/main.do

chart again shows that the arbitral institution which receives significantly high-value claims (the JCAA) has less or even zero female arbitral appointments, while the arbitral institution which receives few high-value cases (the KCAB) makes more party-made female appointments.

Based on Figures 9 and 10, which show the relationship between the amount in dispute and party-made female arbitral appointments, this study argues that there is a possible inverse correlation between the average amount of claims and the ratio of party-made female arbitral appointments. Moreover, MIAC statistics also support the correlation between the value of a claim and the percentage female representation in arbitral tribunals. At MIAC, the total amount of claims between 2017 and 2019 was USD 38.3 million (128.7 billion Mongolian *Tugrug*), and the average claim was approximately USD166,000 (between 2017 and 2019, the MIAC had a total of 231 cases).[287] The MIAC's average claim amount is the lowest among the four arbitral institutions in this study. However, it has the highest ratio of overall and party-made female arbitral appointments.[288] Therefore, this research claims that there is a conceivable inverse correlation between the average amount of claims and the ratio of party-made female arbitral appointments.

Some may purport that parties actively discriminate against women, appointing female arbitrators only in small-value claims and not appointing women when a large amount of money is involved. However, there is also a behavioral economics explanation: risk aversion increases with increasing value.[289] When the value increases, the risk aversion increases. As discussed in Chapter III, parties and counsels often select experienced arbitrators who happen to be male due to risk aversion. However, in small-claim disputes, parties and counsels are more flexible in appointing female arbitrators without enormous experience or "recognized power" within the arbitration community, unlike repeatedly appointed male arbitrators, since the risk aversion is low in these cases.

Also, the EUT, or Expected Utility Theory, can explain this phenomenon; as studied in Chapter III, Bernoulli's second thesis of the EUT notes that a risky prospect on levels of wealth ought to be evaluated by

[287] MIAC, "About Us, Statistics", (in Mongolian) see (Oct 11, 2022) http://www.arbitr.mn/index.php/about-us
[288] See Chapter I, Tables 1-5.
[289] George I. Christopoulos, Philippe N. Tobler, Peter Bossaerts, Raymond J. Dolan, and Wolfram Schultz, "Neural Correlates of Value, Risk, and Risk Aversion Contributing to Decision Making under Risk," The Journal of Neuroscience, Vol. 29, no. 40 (2009): 12574-12583. https://doi.org/10.1523/JNEUROSCI.2614-09.2009.

its expected utility of wealth—the more, the better. [290] In other words, the decision-maker chooses between risky or uncertain prospects by comparing their expected utility value. Thus, when the case's value is low, parties and counsels may tend to select from female arbitrators regardless of their lack of "symbolic capital" and experience.

[290] See Chapter III, Sub-section 3.1.1

6.1.2 Co-arbitrator appointments

The chairpersons (sometimes referred to as presiding arbitrators, president arbitrators, third arbitrators, or chairs) are commonly appointed by the co-arbitrators in most arbitral institutions, including those in East Asia. According to paragraph d, Article 8.1 of the HKIAC Administered Arbitration Rules (2018),[291] Article 25 of the JCAA Commercial Arbitration Rules (2021),[292] Article 11.2 of the KCAB International Arbitration Rules (2016),[293] and Article 10 of the MIAC Arbitration Rules (2017),[294] the co-arbitrators designate the presiding arbitrator. As Draetta (2016) highlights, it is the first opportunity for the two co-arbitrators to cooperate.[295] Nevertheless, selecting the presiding arbitrator is more than that; it is a strategically significant procedure for efficiently managing the arbitration and its outcome since the arbitrators choose the one who will manage the proceedings.

Greenberg et al. (2011) emphasize that the desirable qualities in a chair are different from those in a party-nominated co-arbitrator.[296] Indeed, there is a huge difference between acting as a co-arbitrator and a presiding arbitrator since the chair of the arbitral tribunal is the chief of the arbitration proceedings. For parties who have already chosen arbitration over litigation, it is their fundamental right to feel secure in the arbitration proceedings and ensure the proceeding is fair and trustworthy as an independent dispute resolution mechanism. If the parties sense a lack of skills in the presiding arbitrator, it is questionable whether they would consider the tribunal to be composed of reliable decision-makers who can provide them with the best services. Thus, it is crucial for presiding arbitrators to be skilled.

However, more than excellent knowledge of arbitration and speaking a number of languages is needed in order to be a good chairperson. The chairs' ability to effectively control the procedure through

[291] HKIAC, "Administered Arbitration Rules", (2018); see HKIAC, Arbitration Rules & Practice Notes, "Administered Arbitration Rules" (2018) see (Oct 13, 2022) https://www.hkiac.org/arbitration/rules-practice-notes/administered-arbitration-rules/hkiac-administered-2018-2
[292] JCAA, "Commercial Arbitration Rules", (2021); see JCAA, "Arbitration: Arbitration Rules", (2021) (Oct 13, 2022) https://www.jcaa.or.jp/en/arbitration/rules.html
[293] KCAB "International Arbitration Rules", (2016); see KCAB, "Rules and Law: KCAB International Arbitration Rules" (2016), see (Oct 13, 2022) http://www.kcabinternational.or.kr/main.do
[294] MIAC "Arbitration Rules", (2017); see MIAC, "Laws and Rules: Arbitration Rules", (2017) (in Mongolian) see (Oct 25, 2022) http://www.arbitr.mn/index.php/law-rule-menu/2019-10-14-05-29-06
[295] Ugo Draetta, "Cooperation among Arbitrators in International Arbitration," Indian Journal of Arbitration Law, Vol. 5, no. 1 (July 2016): 107-146, 112.
[296] Simon Greenberg, Christopher Kee, and J. Romesh Weeramantry, *International Commercial Arbitration*, (Cambridge University Press, 2011) 260.

projecting confidence and good impression management also play significant roles. The chairperson is the only person in the hearing room and in entire arbitration proceedings who controls the acts of all the participants. Generally, the chairperson is the one who represents and embodies the arbitral tribunal's power; thus, the presiding arbitrator needs to be able to show some control and power in the required situations and to make parties feel that they are in safe and fair hands.

Hence, arbitration scholars point out that chairpersons must have the ability to control the parties, manage the co-arbitrators and conduct the proceedings effectively.[297] Furthermore, Greenberg et al. (2011) emphasize that beyond understanding and analyzing both substantive and procedural legal issues and problems, the chairperson should be able to respond to possible obstructionist behavior from parties or even co-arbitrators.[298] In this sense, the presiding arbitrators must show some level of control and confidence in conducting the arbitration proceedings so that the parties' trust and confidence in the arbitration proceedings remain intact.

When the author was a tribunal secretary at MIAC in 2016, a female arbitrator in her forties was appointed as a presiding arbitrator in a three-member tribunal. The institution appointed her because the two party-appointed co-arbitrators could not reach a decision on choosing their chairperson. It was not her first appointment; she had had several appointments as a party-appointed arbitrator. Nonetheless, during the arbitration proceedings, particularly at the hearings, she looked nervous. On some occasions, the arbitrator confirmed what she needed to do through the co-arbitrator sitting next to her; moreover, she spoke in a low voice, so the parties sometimes asked her to repeat her statements. Though the parties did not challenge her nor make any negative comments, neither of these two co-arbitrators appointed her again as a presiding arbitrator in any case, despite the co-arbitrators' being appointed several times after the case.

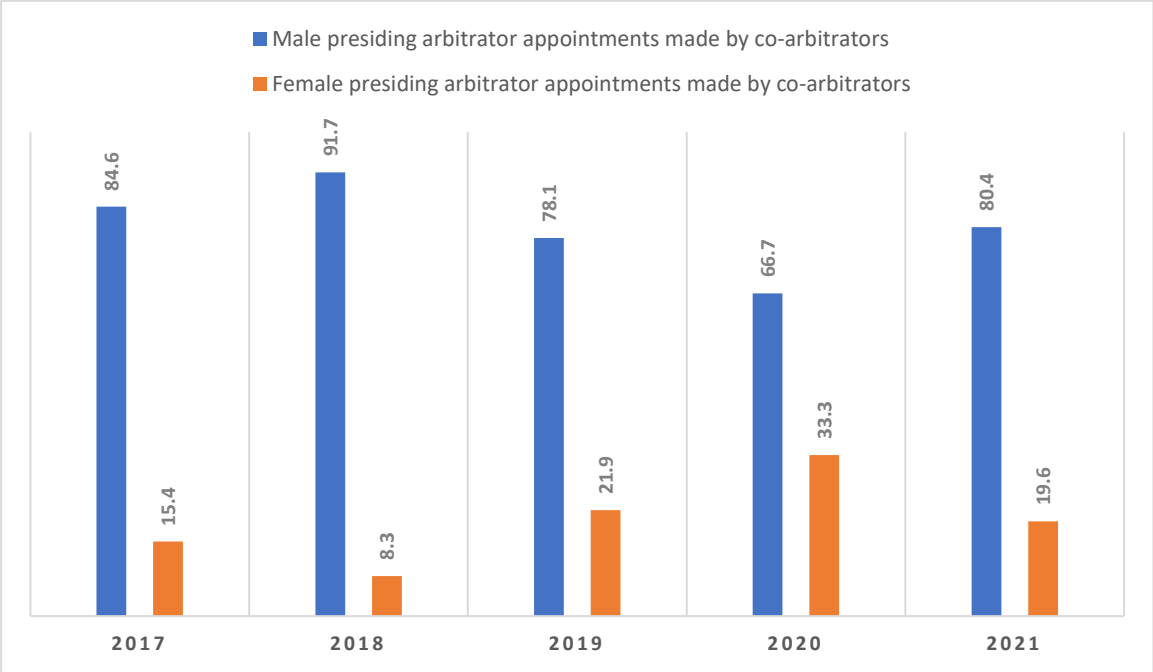
Thus, acting as a chairperson requires more abilities from the arbitrator than working as a co-arbitrator. For this reason, party-appointed co-arbitrators often appoint an experienced arbitrator as their

[297] T. Webster, "Selection of Arbitrators in a Nutshell," Journal of International Arbitration, Vol. 19, No. 3, (2002): 261, as cited in the Simon Greenberg, Christopher Kee, and J. Romesh Weeramantry, *International Commercial Arbitration*, (Cambridge University Press, 2011) 261.
[298] Simon Greenberg, Christopher Kee, and J. Romesh Weeramantry, *International Commercial Arbitration*, (Cambridge University Press, 2011) 261.

chairperson. However, the co-arbitrators' tendency to appoint an experienced arbitrator as a chairperson again leads to the repeated appointment of a few well-known and mainly male arbitrators.

Figure 11. Presiding arbitrator appointments made by co-arbitrators at

The HKIAC between 2017 and 2021



Source: Hong Kong International Arbitration Centre, "Statistics," 2017-2021, see (Oct 18, 2022) https://www.hkiac.org/about-us/statistics.

The chart above indicates that between 2017 and 2021, the minimum ratio of female chairpersons appointed by co-arbitrators was 8.3%, and the maximum was 33.3%. Significantly, the figure shows no continuous improvement in the number of female presiding arbitrators appointed by co-arbitrators. In 2017, the number of female arbitrators appointed by co-arbitrators was 15.4% of the overall arbitral appointments by co-arbitrators. The rate decreased by almost half in 2018, but in 2019, it increased significantly, with 21.9% of chairperson appointments being female. Again in 2020, the number increased, and the ratio reached 33.3%. In 2021, it decreased again; the female co-arbitrator appointments amounted to 19.6% of the total.

One may argue that there are correlations between the changes in the number of female chairpersons appointed by the co-arbitrators, and other factors, such as the average amount of claims, the number of cases, or the number of available female arbitrators listed on the panels. However, the statistical data on the average amount of disputes, the number of disputes, the number of listed female arbitrators on the panel, and the changes in the types of disputes, do not show any possible correlations with the number of female arbitral appointments by co-arbitrators.[299] Thus, this study assumes that the number of female chairpersons appointed by the co-arbitrators does not depend on the average dispute amount or other factors, such as the number of listed female arbitrators on the panels.

Nevertheless, this research suggests that the increase or decrease in the number of female presiding arbitrator appointments by co-arbitrators is likely to correlate with the number of experienced female arbitrators (or women arbitrators well-known in the arbitration community) that the co-arbitrators know. During an in-depth interview with a male arbitrator based in Tokyo who had several arbitral appointments at the JCAA, the arbitrator said he had never appointed a female arbitrator as his chairperson because he had never encountered a female arbitrator in his career in arbitration in Japan.[300] Similarly, during an in-depth interview with a male arbitrator at the MIAC, who is one of the famous names in the field in Mongolia, he said that he often prefers to have a chairperson whom he knows or encountered and made some good impression on him.[301]

Perhaps, when the co-arbitrators appoint their presiding arbitrator, they often attempt to choose from arbitrators they know or have encountered before since they are creating a team to resolve a dispute together, not selecting an arbitrator to resolve their disputes. Thus, this research assumes co-arbitrators tend to prefer a familiar face next to them in their tribunals, in addition to a presiding arbitrator with experience and solid arbitration management skills.

[299] See HKIAC, "Statistics", 2017-2021, see (Oct, 18, 2022) https://www.hkiac.org/about-us/statistics
[300] Interviewee: Arbitrator H, "Interview with a male arbitrator H," (In-person interview conducted in Tokyo), Interviewer: Munkhnaran Munkhtuvshin, July 24, 2022, For the confidentiality of the interviewee, the full name is not disclosed.
[301] Interviewee: Arbitrator Y, "Interview with male arbitrator Y, listed at MIAC," conducted via online video conference (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, November 14, 2021, For the confidentiality of the interviewee, the full name is not disclosed.

Therefore, as shown earlier in this section, co-arbitrators' main criteria for chairperson candidates are experience and acquaintanceship. Thus, co-arbitrators may often choose from experienced arbitrators they know or have encountered. Therefore, the mystery behind the unforeseen ups and downs in the number of female arbitral appointments by the co-arbitrators could be attributed to the number of experienced female arbitrators that the particular co-arbitrators know. Hence, the suggested theory is that if the party-appointed arbitrators know numerous experienced female arbitrators, there would be a much higher probability that they would appoint female chairpersons; on the contrary, if the co-arbitrators know an insufficient number of experienced female arbitrators, there are fewer chances that the co-arbitrators will appoint female chairpersons.

6.2 Female representation in sole arbitrator appointments

Often, sole arbitrator appointments open doors to the market for arbitrators to first-time female appointees. Thus, analyzing the female representation in sole arbitrator appointments perhaps has significant importance in developing effective remedies for increasing the female arbitral appointments in arbitral tribunals in East Asia. Hence, this part studies explicitly female representation in sole arbitrator appointments.

6.2.1 Sole arbitrators

According to the ICCA *Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings* (revised, 2022), globally, approximately one-third of sole arbitrators and emergency arbitrators appointed in 2020 and 2021 were women.[302] In many arbitral organizations, the sole arbitrator appointments are often made by the institutions, not by the courts (except in some cases), and the institutions usually have gender diversity policies and guidelines. Thus, the rate of female arbitral appointments in sole arbitrator tribunals is often higher than the ratio of female arbitral appointments in three-member tribunals by parties and co-arbitrators. East Asia is no exception; at the HKIAC, the KCAB, and the MIAC, female arbitrators receive appointments more in sole arbitrator tribunals, including expedited arbitration procedures, than as party-appointed arbitrators or as chairpersons.[303]

As shown earlier in this chapter, the parties and co-arbitrators tend to prefer experienced arbitrators with prior appointment histories, but only a few female arbitrators can meet these requirements. Therefore, women arbitrators need to get their first appointments to advance their careers in arbitration; otherwise, they will be no more than names on the panels, somewhat like unemployed new graduates who cannot find a job since employers often require job experience. For many female arbitrators, one common way to catch the very first appointment is by being appointed as the sole arbitrator.

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[302] ICCA (International Council for Commercial Arbitration), "Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings", Report No. 8, Published by the ICCA, Revised Second Edition, (2022), see 153-154.

[303] See Annual reports and Statistics on female representation at HKIAC, KCAB, JCAA, and MIAC between 2017 and 2021; at each institution, female arbitrators often get institutional appointments as sole arbitrators (sometimes as co-arbitrators). See Hong Kong International Arbitration Centre, "Statistics," 2017-2021, see (Oct 03, 2022) https://www.hkiac.org/about-us/statistics; JCAA, "Arbitration: Statistics", see (Oct 11, 2022) https://www.jcaa.or.jp/en/arbitration/statistics.html; KCAB, "Publications: Annual reports," 2017-2021 (Oct 03, 2022) http://www.kcabinternational.or.kr/main.do; and MIAC, "About Us, Statistics", (in Mongolian) see (Oct 11, 2022) http://www.arbitr.mn/index.php/about-us

In the ICCA, *Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings* (revised, 2022), many female arbitrators attested to the virtue of small, lower-value disputes for their career paths in arbitration. Many said that they had been paid less, in some cases working almost without payment. However, these first appointments on small claim disputes played a significant role in their career advancement.[304] Furthermore, significantly, six of the eight experienced female arbitrators with several appointments who participated in the in-depth interviews for this study had their first appointments as sole arbitrators.[305] Thus, getting an appointment as the sole arbitrator is crucial for many female arbitrators, mainly when they are young and lack experience. Therefore, two main questions arise: How can women be appointed as sole arbitrators? What qualities do the arbitral institutions consider when they appoint sole arbitrators?

Greenberg et al. (2011) describe the qualities of sole arbitrators as follows:

> A good sole arbitrator should, in addition to the qualities required of a chairperson, be exceptionally well organi[z]ed, self-motivated, able to work alone, and meticulously diligent. This is because he or she will have to scrutini[z]e and organi[z]e his or her own work, without the comfort of reminders and a sounding board in the form of co-arbitrators.[306]

Sole arbitrators should be well-organized, confident, and knowledgeable. Nonetheless, when the institutions review possible candidates for sole arbitrator appointments, they sometimes look at other factors besides these qualities. At large institutions like the HKIAC and the KCAB, they may research the backgrounds of possible candidates as single arbitrators thoroughly and choose a suitable sole arbitrator for the case. However, at small arbitral institutions like the JCAA and the MIAC, the organizations perhaps

[304] ICCA (International Council for Commercial Arbitration), "Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings", Report No. 8, Published by the ICCA, Revised Second Edition, (2022), see 153-154.
[305] During eight in-depth, private interviews with a total of eight experienced female arbitrators based in East Asia, six interviewees said they got their first appointments as sole arbitrators. Many of them were thankful for their institutions and the first experience since it played a significant role in their later career advancement. Seven of eight interviews were conducted via the zoom online conference method, and one interview was by phone. All eight interviews were conducted between September 15, 2021, and June 30, 2022.
[306] Simon Greenberg, Christopher Kee, and J. Romesh Weeramantry, *International Commercial Arbitration*, (Cambridge University Press, 2011) 262.

often appoint from arbitrators who are active and participate in their events and activities, or who have made good impressions at the administrative office.[307]

During an in-depth interview, a Japanese female arbitrator listed on the JCAA panel who got her first appointment as a sole arbitrator by institutional appointment said that this experience totally changed her career and played a significant role in her later career advancement.[308] A significant fact is that when she was appointed for the first time, she was an active arbitrator (which she still is) who often visited the office or exchanged correspondence with them, attended many international conferences, and even urged the JCAA to organize events. Another illustration is that a Mongolian female arbitrator who often donates books to the MIAC library and is active at the institution's events got her first appointment as a sole arbitrator by institutional appointment. Hence, this research suggests that women arbitrators' close correspondence with their administrative office and active participation in events or other activities of the arbitral institutions may increase their probability of receiving their first institutional appointments as sole arbitrators or as co-arbitrators, or even as chairpersons.

[307] During in-depth interviews with a Japanese female arbitrator and a Mongolian female arbitrator who got their first appointments as sole arbitrators appointed by the arbitral institutions, both arbitrators said that they have a close relationship with the institution and often actively participate in events organized by their arbitral institutions or they initiate and organize events and activities at their institution.

[308] Interviewee: Japanese female arbitrator Z, "Interview with Arbitrator Z," conducted via online video conferencing (Zoom interview), Interviewer: Munkhnaran Munkhtuvshin, October 11, 2021, For the confidentiality of the interviewee, the full name is not disclosed.

6.2.2 Expedited arbitration procedures and their significance for female arbitral appointments

Arbitral organizations often make many of the sole arbitrator appointments for expedited arbitration (sometimes called fast-track arbitration).[309] The significance of expedited arbitration lies in resolving small claim disputes within a short period of time at limited cost for the parties. Scholars such as Larusson (2017) argue that expedited arbitration is very beneficial for arbitration practice as a whole and it is an excellent way to attract small and medium scale entrepreneurs,[310] while others, such as Buhring-Uhle et al., stress that it is not very advantageous for arbitration practice since the expedited arbitration requires arbitrators to resolve the disputes within a short amount of time without considering whether the case is highly complicated or not, just by filtering the cases by the claim sizes.[311] Nevertheless, expedited arbitration procedures, with both their pros and cons, play a significant role in women arbitrators' career advancement since first-time female appointees often receive appointments in expedited arbitration cases, as described earlier in this chapter. Hence, mastering expedited arbitration procedure may become useful capital for women arbitrators.

Every institution has different rules for expedited arbitration. The regulations for expedited arbitration in each arbitral institution in this study vary. At the JCAA, if the claim in a dispute is less than JPY300,000,000 (around USD2 million) or the parties agree to submit the dispute to expedited arbitration procedures, the expedited arbitration takes place.[312] At the JCAA, the proceedings are on a document-only basis, except in cases where the arbitral tribunal considers it necessary to conduct a hearing after consultation with the parties. In the case of a hearing, videoconferencing or other appropriate methods are used in order

[309] See Annual reports and Statistics of HKIAC, KCAB, JCAA, and MIAC between 2017 and 2021; at each institution, most of the sole arbitrator appointments are made for expedited arbitration. See Hong Kong International Arbitration Centre, "Statistics," 2017-2021, see (Oct 03, 2022) https://www.hkiac.org/about-us/statistics; JCAA, "Arbitration: Statistics", see (Oct 11, 2022) https://www.jcaa.or.jp/en/arbitration/statistics.html; KCAB, "Publications: Annual reports," 2017-2021 (Oct 03, 2022) http://www.kcabinternational.or.kr/main.do; and MIAC, "About Us, Statistics", (in Mongolian) see (Oct 11, 2022) http://www.arbitr.mn/index.php/about-us

[310] Haflidi Kristjan Larusson, "Expedited Arbitration – Meeting the Needs of SMEs," Scandinavian Studies in Law, Vol. 63, (2017): 169-180

[311] Christian Buhring-Uhle, Lars Kirchhoff, Gabriele Scherer, *Arbitration and Mediation in International Business,* (Kluwer Law International BV, 2006), 86-88.

[312] See Paragraph 1 of Article 84, JCAA Commercial Arbitration Rules, (2021); JCAA, "Arbitration: Arbitration Rules", (2021) (Oct 13, 2022) https://www.jcaa.or.jp/en/arbitration/rules.html

to keep the arbitration period as short as possible.[313] The sole arbitrator issues an arbitral award within six months from the date the tribunal is constituted.[314]

However, at the HKIAC, if the amount of a dispute is under HK $25,000,000 (around USD 3 million), expedited arbitration takes place.[315] The proceedings are conducted by a sole arbitrator appointed by the HKIAC unless the arbitration agreement provides for three arbitrators and parties agree to the three-member tribunal. The method of procedure is a document-only approach. Still, if the arbitrator considers it appropriate, the tribunal can hold one or two hearings.[316]

Meanwhile, at the KCAB, the expedited procedures apply where the claim amount does not exceed KRW 500,000,000 (around USD 350,000).[317] The method of the arbitration proceedings is a limited number of hearings; [318] however, in cases in which the claim exceeds KRW 50,000,000 (around USD35,000), the dispute will be resolved based on documentary evidence only. Still, the tribunal can hold a hearing at the request of a party or on its own initiative.[319] The award will be made within six months from the date of the constitution of the arbitral tribunal, as it is in the JCAA.[320]

At MIAC, if the amount of the claim is under Mongolian *Tugrug* 5,000,000 (around USD 1,500), expedited arbitration procedures apply. [321] The kMIAC Arbitration Rules do not provide any time requirements for the expedited methods. Nevertheless, in practice, most of the expedited arbitration

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[313] See Article 87, JCAA Commercial Arbitration Rules, (2021); JCAA, "Arbitration: Arbitration Rules", (2021) (Oct 13, 2022) https://www.jcaa.or.jp/en/arbitration/rules.html

[314] See Paragraph 1 of Article 88, JCAA Commercial Arbitration Rules, (2021); JCAA, "Arbitration: Arbitration Rules", (2021) (Oct 13, 2022) https://www.jcaa.or.jp/en/arbitration/rules.html

[315] HKIAC, "Expedited HKIAC Arbitration", http://hkiac.org/arbitration/process/expedited-hkiac-arbitration; See Article 42.2 HKIAC, "Administered Arbitration Rules"; HKIAC, Arbitration Rules & Practice Notes, "Administered Arbitration Rules" (2018) see (Oct 13, 2022) https://www.hkiac.org/arbitration/rules-practice-notes/administered-arbitration-rules/hkiac-administered-2018-2#42

[316] See Article 42.2, HKIAC, "Administered Arbitration Rules" (2018); HKIAC, Arbitration Rules & Practice Notes, "Administered Arbitration Rules" (2018), see (Oct 13, 2022) https://www.hkiac.org/arbitration/rules-practice-notes/administered-arbitration-rules/hkiac-administered-2018-2#42

[317] See Article 43, KCAB, "International Arbitration Rules", (2016), see KCAB, "Rules and Law: KCAB International Arbitration Rules" (2016), see (Oct 13, 2022) http://www.kcabinternational.or.kr/main.do

[318] See Article 46, KCAB, "International Arbitration Rules", (2016), see KCAB, "Rules and Law: KCAB International Arbitration Rules" (2016), see (Oct 13, 2022) http://www.kcabinternational.or.kr/main.do

[319] See Article 47, KCAB, "International Arbitration Rules", (2016), see KCAB, "Rules and Law: KCAB International Arbitration Rules" (2016), see (Oct 13, 2022) http://www.kcabinternational.or.kr/main.do

[320] See Article 48, KCAB, "International Arbitration Rules", (2016), see KCAB, "Rules and Law: KCAB International Arbitration Rules" (2016), see (Oct 13, 2022) http://www.kcabinternational.or.kr/main.do

[321] See Article 29.2, MIAC, "Arbitration Rules", (2017), see MIAC, "Laws and Regulations: Arbitration Rules" (in the Mongolian language), http://www.arbitr.mn/index.php/law-rule-menu/2019-10-14-05-29-06/106-2019-10-14-07-47-10/file

procedures are held within two months. On one occasion, in 2017, the award was made within only 13 days from the day the sole arbitrator was appointed in an expedited arbitration case in which the author assisted as a tribunal secretary.

Ultimately, though the maximum amount in dispute for expedited arbitration differs at every arbitral institution, the one shared characteristic they all have is the short amount of time for decision-makers. Expedited arbitration procedures are excellent opportunities for female arbitrators to get their first appointments and advance their careers in arbitration. However, as described above, the expedited arbitration procedures require the sole arbitrators to be able to work alone for a limited time and have the essential abilities of being well-organized, self-motivated, diligent, and knowledgeable.

When a female arbitrator is appointed for the first time, but is alone on the tribunal, she may feel nervous. At the same time, she may feel confident as a first-time appointee since they are not exposed to the direct scrutiny of well-known names in the field; all the case management and control are in the sole arbitrators' hands. When the author was a tribunal secretary between 2016 and 2018, she worked on more than 20 expedited arbitration cases. In almost every case, the author faced a new arbitrator who got their first appointment as a sole expedited arbitrator.

Interestingly, each first-time sole arbitrator appointee has a different approach to handling the case; some are confident, some are nervous, but frequently the arbitrator who has good ability to work alone achieves good results and issues awards more quickly than others. Thus, this research suggests that mastering organization, self-motivation, and diligence without the collaboration of other colleagues, as well as being knowledgeable of the expedited procedure, are valuable skills for young female arbitrators' advancement.

6.3 Women emergency arbitrators

The procedure for handling applications for emergency measures is not the usual one; it requires the emergency arbitrator to possess excellent skills and a high level of knowledge since the arbitrator has to make an essential decision on granting interim measures on a newly introduced case, not to mention that the case has to be decided within a short period. The premise behind emergency measures is that before the constitution of the arbitral tribunals, if the parties need urgent interim measures, they can ask for them from the institution without waiting for the complete constitution of arbitral tribunals.[322] Usually, the institution has the authority to choose and appoint emergency arbitrators who would handle the applications for emergency measures. The first emergency arbitrator proceedings were in the 1990s. "In 1990, the ICC Commission on Arbitration promulgated a set of rules to establish a pre-arbitral referee procedure, based loosely on the referee procedure available before the French state courts." [323] These have become the emergency arbitrator regulations.

Regarding the regulations for emergency arbitrators in East Asia, according to Article 1 of Schedule 4 of the HKIAC Administered Arbitration Rules (2018), a party requiring emergency relief may apply for the appointment of an emergency arbitrator to the HKIAC before the constitution of the arbitral tribunal.[324] Article 4 of the Schedule states that the HKIAC appoints an emergency arbitrator within 24 hours after receipt of the application.[325] At KCAB, according to Article 1 of Index 3, "Emergency Measures by Emergency Arbitrator," annexed to the KCAB International Arbitration Rules (2016), a party seeking conservatory and interim measures before the constitution of the arbitral tribunal can apply in writing to the secretariat for the interim measures by an emergency arbitrator. The KCAB secretariat appoints a sole

[322] Marc J. Goldstein, "A Glance into History for the Emergency Arbitrator," Fordham International Law Journal, Vol. 40, no. 3 (April 2017): 779-798

[323] Jason Fry, "The Emergency Arbitrator - Flawed Fashion or Sensible Solution," Dispute Resolution International, Vol. 7, no. 2 (November 2013): 179-198, 181, see Articles 808 and 809 of the French Code of Civil Procedure, and Article 2.1 of the ICC Rules for Pre-Arbitral Referee Procedure (1990).

[324] Schedule 4, HKIAC, "Administered Arbitration Rules", see HKIAC, Arbitration Rules & Practice Notes, "Administered Arbitration Rules" (2018) see (Oct 13, 2022) https://www.hkiac.org/arbitration/rules-practice-notes/administered-arbitration-rules/hkiac-administered-2018-2#S4

[325] Schedule 4, HKIAC, "Administered Arbitration Rules", see HKIAC, Arbitration Rules & Practice Notes, "Administered Arbitration Rules" (2018) see (Oct 13, 2022) https://www.hkiac.org/arbitration/rules-practice-notes/administered-arbitration-rules/hkiac-administered-2018-2#S4

emergency arbitrator within two business days from its receipt of the application for emergency measures if the KCAB considers it appropriate to establish an emergency arbitrator.[326]

Meanwhile, at the JCAA, Paragraph 1, Article 75 of the JCAA Commercial Arbitration Rules (2021) provides that "Before the arbitral tribunal is constituted, or when any arbitrator has ceased to perform his or her duties, a party may apply in writing to the JCAA for interim measures by an emergency arbitrator." [327] Paragraph 1, Article 76 of the JCAA Commercial Arbitration Rules (2021) also states, "The JCAA shall appoint a sole emergency arbitrator." [328] The institution should appoint the emergency arbitrator within two business days from its receipt of the emergency measures application if it meets the requirements and the institution considers it appropriate to appoint an emergency arbitrator.[329] Nevertheless, as of 2022, MIAC had no regulations for emergency arbitrators. Though the MIAC Arbitration Rules (2017) provided regulations for expedited arbitration, neither the rules nor other documents at MIAC provide any regulations for emergency measures and arbitrators.[330]

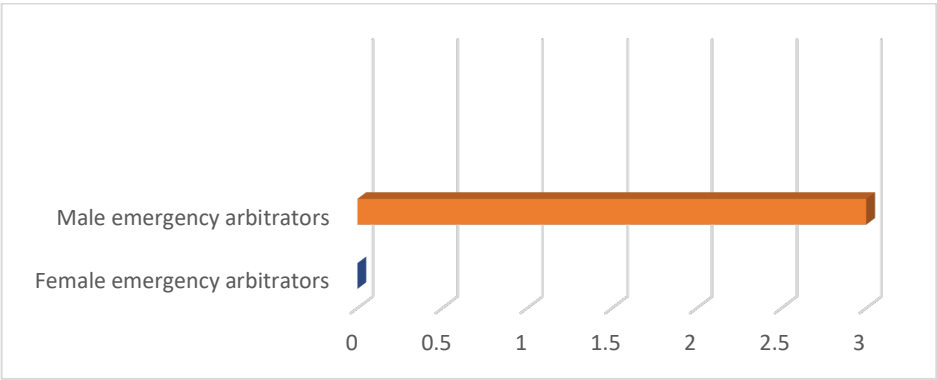
For arbitrators, particularly women who are in the process of advancing their careers in arbitration, being an emergency arbitrator is an excellent experience distinct from their traditional working practice since the arbitrator will only decide on the application for emergency measures. Nevertheless, the male monopoly is even more intense concerning emergency arbitrator appointments than arbitral tribunal member appointments.

[326] Paragraph 1 and 4 of Article 2, the Appendix 3 of KCAB "International Arbitration Rules", (2016), see KCAB, "Rules and Law: KCAB International Arbitration Rules" (2016), (Oct 13, 2022) http://www.kcabinternational.or.kr/main.do
[327] JCAA Commercial Arbitration Rules, (2021); see JCAA, "Arbitration: Arbitration Rules", (2021) (Oct 13, 2022) https://www.jcaa.or.jp/en/arbitration/rules.html
[328] JCAA Commercial Arbitration Rules, (2021); see JCAA, "Arbitration: Arbitration Rules", (2021) (Oct 13, 2022) https://www.jcaa.or.jp/en/arbitration/rules.html
[329] Paragraph 4, Article 76, JCAA Commercial Arbitration Rules, (2021); see JCAA, "Arbitration: Arbitration Rules", (2021) (Oct 13, 2022) https://www.jcaa.or.jp/en/arbitration/rules.html
[330] See MIAC, "Laws and Rules: Arbitration Rules", (2017) (in Mongolian) see (Oct 25, 2022) http://www.arbitr.mn/index.php/law-rule-menu/2019-10-14-05-29-06

Figure 12. Emergency arbitrators appointed at the HKIAC in 2021

Source: Hong Kong International Arbitration Centre, "Statistics," 2021, see (Oct 03, 2022) https://www.hkiac.org/about-us/statistics; ICCA (International Council for Commercial Arbitration), "Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings," Report No. 8, Published by the ICCA, Revised Second Edition, (2022), see p. 212

Figure 13. Emergency arbitrators appointed at the JCAA between 2019 and 2021



Source: JCAA, "Arbitration: Statistics," see (Oct 03, 2022) https://www.jcaa.or.jp/en/arbitration/statistics.html; and Statistics on the gender of arbitrators, Provided by the Administrative Office of JCAA, July 14, 2021

The figures above indicate that emergency arbitrator appointments at the HKIAC in 2021 and emergency arbitrator appointments at the JCAA between 2019 and 2021 had no female representation. There

could be many reasons for this lack of female appointments. However, one of the primary reasons is conceivably the lack of experienced women arbitrators. An experienced emergency arbitrator is preferred since deciding on the application for emergency measures requires many skills, including making decisions within a short period. As an illustration, according to Article 3 of Appendix 3 in the KCAB International Arbitration Rules, the emergency arbitrator needs to establish a procedural timetable for emergency measures within two business days of their appointment and hold a hearing in necessary cases. The emergency arbitrator should decide on an application for emergency measures within 15 days of their appointment.[331]

This time-restricted decision making and procedural activities represent a challenging mission for first-time appointees. Therefore, arbitral institutions may prefer more experienced arbitrators to handle the applications for emergency measures, and there are few women arbitrators who can satisfy requirements necessary. Hence, the institutions most often end up making male emergency arbitrator appointments at the end of the day.

[331] KCAB, "International Arbitration Rules", Appendix 3 (2016), see KCAB, "Rules and Law: KCAB International Arbitration Rules" (2016), see (Oct 13, 2022) http://www.kcabinternational.or.kr/main.do

Summary: Different scenarios, different genders: How does the amount of a claim and experience of an arbitrator impact female representation?

This chapter studied how different kinds of arbitration proceedings impact the number of female arbitral appointments. In three-member arbitral tribunals, parties and co-arbitrators rarely appoint female arbitrators. At the same time, parties and co-arbitrators make the majority of the overall arbitral appointments at East Asian arbitral institutions (the four arbitral organizations in this study: the HKIAC, JCAA, KCAB, and MIAC). Nevertheless, arbitral institutions tend to appoint more women than parties and co-arbitrators since they have institutional gender diversity policies or guidelines. However, at the same time, arbitral organizations tend to appoint fewer female emergency arbitrators, but more women arbitrators in expedited arbitration procedures.

Moreover, based on statistical data on the amount of claims and party-made female arbitral appointments at the arbitral institutions of this study, as well as the risk aversion concepts from behavioral economics, this dissertation suggests that party-made female arbitral appointments and the average amount of the claim at arbitral institutions are likely to have inverse correlations with each other. That is, when the amount of claims is high, party-made female arbitral appointments are likely to be low; when the average dispute claim amount is low, party-made female arbitral appointments are likely to be higher.

Furthermore, the research stresses that party-appointed co-arbitrators often appoint experienced arbitrators as their chairpersons since they have to choose someone to manage the entire arbitration proceedings. They often tend to appoint from arbitrators that they know or have encountered before. Thus, this study argues that the number of female presiding arbitrator appointments by co-arbitrators is likely to correlate with the number of experienced female arbitrators (or women arbitrators well-known in the arbitration community) that particular co-arbitrators know.

Nonetheless, the research does not claim co-arbitrators must stop appointing presiding arbitrators from experienced candidates. Currently, the market for arbitrators needs a supply of quality female arbitrators, particularly the experienced ones; it is understandable that co-arbitrators would want to avoid risking the quality of their services by appointing arbitrators, including females, who lack experience or are not known in arbitration communities. Hence, the dissertation suggests that women arbitrators must be

known and recognized by experienced or famous players in the field, not particularly for their appointment experience, but by their knowledge and other abilities. For many women arbitration practitioners, one good way to be seen is to attend conferences, present at arbitration-related events, and publish scholarly papers on recent discussions on arbitration. Otherwise, not only will the parties continue to make relatively few female arbitral appointments, but co-arbitrators will be unlikely to select them as well.

All these findings suggest that parties, co-arbitrators, and institutions often consider experience as a crucial criterion when selecting an arbitrator. But besides experience, good connections and effective self-representation are essential factors that increase the chances of female arbitrators getting their first appointments. Thus, the research explicitly stresses that one of the effective ways to increase female representation at arbitral tribunals is not just asking parties to appoint female arbitrators or empowering feminism in arbitration; it is women arbitrators becoming more visible and active in their interactions and correspondence with arbitral institutions and arbitration community members. Only in this way can women in arbitration catch their first appointment and secure their further career advancement in the field.

Chapter VII: Conclusion and Recommendations for Ensuring Gender Diversity in East Asian Arbitral Institutions

Female underrepresentation in arbitration in East Asia is not just a specific concern relating to global issues of gender inequality and lack of gender diversity in leadership and decision-making roles, but also a legal problem that violates party autonomy in arbitration. A significant aspect of party autonomy is having choices, and having a sufficient number of diverse options plays a substantial role in taking advantage of this privilege. Thus, when parties want to choose from female arbitrators and cannot find enough names of female candidates on the panel, they have only limited party autonomy. Moreover, the lack of gender diversity limits co-arbitrators' privileges to appoint their chairs independently.

In addition, ensuring gender diversity has many other benefits; there is a high probability that female arbitrators could be more focused on providing effective communication during the arbitration hearings and procedures and less stressed interacting with the female parties and counsels. Gender diversity often leads to effective group thinking; thus, the quality of the arbitration proceedings increases. Furthermore, arbitration is a unique legal field in which disputants choose their decision-makers. In that context, social psychological, and behavioral economic explanations may be helpful complementary tools in examining the complex factors affecting women. Hence, this dissertation explored the issue of female underrepresentation in arbitral tribunals in East Asian arbitral institutions through diverse conceptual frameworks.

Chapters III and VI presented various potential contributing factors informing the fact that parties and counsels, as well as co-arbitrators, choose fewer women arbitrators. In Chapter II, the dissertation examined arbitration practices historically from their inception in the various regions, including developments that encouraged male decision-making, as well as global movements and soft law initiatives for empowering women in arbitration that may lack effectiveness when applied to East Asian arbitration practice. Chapter IV investigated 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). Chapter V gave a social-psychological explanation of why it is hard for women to advance their careers in arbitration.

In other words, the dissertation studied the problem from its many sides, such as why parties, counsels, and co-arbitrators choose fewer female arbitrators, why there are fewer female arbitrators listed on the panels, why there is an insufficient number of successful female arbitrators with appointment histories, why the global soft law initiatives which are praised in the West may not be effective in East Asia, and why the arbitration community and the system developed to be unfriendly towards women while privileging masculinity. The dissertation found many answers to these questions with legal, sociological, psychological, and economic explanations.

While the arbitration laws and acts in each jurisdiction have constantly improved, men have continued to dominate arbitration practice and the market for arbitrators. One or two hundred years ago, in Hong Kong, the informal first arbitrators were British officers; in Mongolia, they were Qing magistrates; in Korea, the first arbitrators were respected intellectual elites (who were powerful males.) Although these days arbitration laws have changed and arbitral institutions have grown more powerful, the market for arbitrators in East Asia remains dominated by men. Regardless of the gender diversity policies of arbitral institutions and the committees for empowering women in arbitration established in the HKIAC, JCAA, KCAB, and MIAC, the number of female arbitral appointments is still relatively low.

Moreover, globally well-known soft law initiatives have some flaws in application and in securing benefits for women arbitrators in East Asia. The ERA Pledge is a very Caucasian institution consisting of many women practitioners, mainly from the USA and Europe. Thus, there is a high probability that the ERA Pledge cannot produce effective and practical projects in East Asia and cannot make significant contributions in the region. Meanwhile, Arbitrator Intelligence is criticized for creating issues and biases in arbitration rather than eliminating the information asymmetry regarding arbitrators' performances and opening the market for minority arbitrators. Arbitral Women tends to promote a radical feminist approach to female underrepresentation in arbitral tribunals and overlooks the significance of male engagement.

Additionally, as a transdisciplinary research, this dissertation used Expected Utility Theory to highlight how risk aversion and longing for the most desirable outcome lead to the repeated appointments of well-known, primarily male arbitrators. It also investigated the application of economist Akerlof's Market for Lemons theory and studied the literature in the field that focused on the concept's possible application

in selecting arbitrators, and shed light on how asymmetrical information about inexperienced women arbitrators leads to frequent appointments of famous male arbitrators.

Furthermore, this dissertation studied the notion of implicit bias in administrative staff and women arbitrators themselves to examine the problem. Most scholarly discussions and articles tend to only focus on implicit bias in parties' and counsels' or co-arbitrators' preferences in selecting arbitrators or presiding arbitrators. The implicit bias issues in administrative staff and women arbitrators themselves are often overlooked in the research on implicit bias in arbitration. Thus, this research explored the possible application of implicit bias in these two overlooked groups.

Moreover, the dissertation investigated motherhood-related cognitive bias issues and childcare support issues, sexism and sexist cultures at law firms, and complicated perceptions of ambition for women and how they obliquely affect female lawyers' entries into arbitration. These issues need to receive more attention from scholars and the arbitration community since they are common barriers for female arbitration practitioners to be recognized as successful professionals in their law firms.

In addition, the dissertation used a concept from social psychology known as impression management (IM), to comprehensively understand why it is extra hard for women to advance their careers in arbitration. Based on the in-depth interview results and other supporting studies, this dissertation argues that often from the very beginning of their careers, women in arbitration start their profession with IM styles that are not beneficial for their advancements (taking into account the current masculine arbitration tradition), such as protective IM styles and strong feminine-typed IM styles. Thus, eventually, some female arbitrators and arbitration practitioners become aware of the disadvantages of their initial IM styles and try to change their IM tactics to be recognized and endorsed by their law firms or arbitral institutions.

Therefore, the dissertation argued that in East Asia's current culture of arbitration, women find shelter in choosing gender-neutral or masculine IM styles. Nevertheless, contemporary women in arbitration are not simple followers of the masculine code, but also creators of the social norms and standards for the ideal female arbitrator for future women arbitrators. Thus, adopting too much masculinity is perhaps dangerous for the future well-being of female arbitration communities.

This dissertation also studied how different kinds of arbitration proceedings impact the number of female arbitral appointments. It found that arbitral institutions tend to appoint more women than parties and co-arbitrators since they have institutional gender diversity policies or guidelines. However, arbitral organizations tend to appoint fewer female emergency arbitrators in aggregate, but more women arbitrators in expedited arbitration procedures. Moreover, based on statistical data on the amount of claims and party-made female arbitral appointments at the arbitral institutions of this study, as well as the risk aversion concepts, and EUT from behavioral economics, this dissertation suggests that party-made female arbitral appointments and the average amount of the claim at arbitral institutions are likely to have inverse correlations with each other.

Furthermore, the research found that party-appointed co-arbitrators often appoint experienced arbitrators as their chairpersons since they have to choose someone to manage the entire arbitration proceedings. They often tend to appoint from arbitrators that they know or have encountered before. Thus, this study argues that the number of female presiding arbitrator appointments by co-arbitrators is likely to correlate with the number of experienced female arbitrators (or women arbitrators well-known in the arbitration community) that particular co-arbitrators know. These are the main discoveries of this research. Based on these findings, the author will provide answers to her research questions.

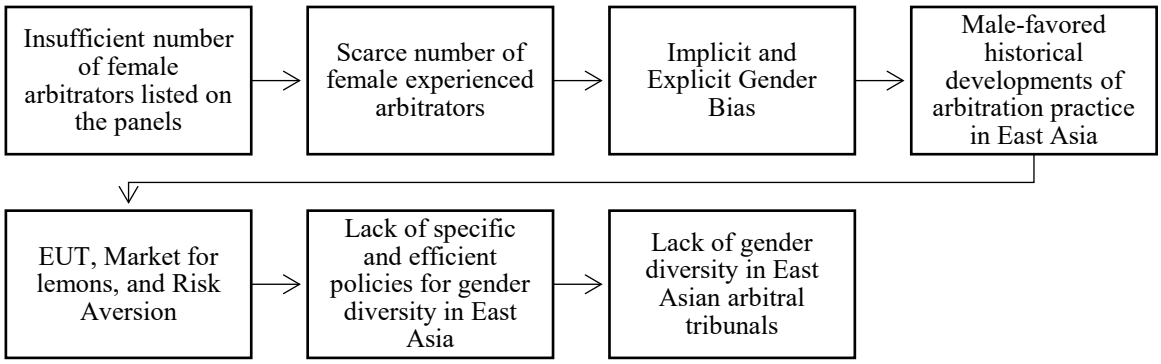
First, what events, beliefs, attitudes, and policies shape the problem of the lack of female representation at arbitral tribunals in East Asia? The problem of female underrepresentation at arbitral tribunals in East Asia is shaped by the following factors: the small number of female arbitrators listed on the panels, the low number of experienced female arbitrators, the tendency for parties, counsels, and co-arbitrators' to prefer experienced arbitrators due to risk aversion, and the lack of specific gender diversity policies designed for East Asian arbitration communities. As shown in Chapter I, the number of women arbitrators listed on the panels of East Asian arbitral institutions is insufficient. Only a few experienced female arbitrators have appointment histories in the region. However, as revealed in Chapter III, when parties, counsels, and co-arbitrators select their arbitrators, they often tend to choose from the experienced ones due to the Expected Utility Theory, Market for Lemons Theory, and risk aversion.

Thus, conceivably because of the insufficient number of experienced female arbitrators with previous appointment histories (in other words, famous female arbitrators or women arbitrators who have

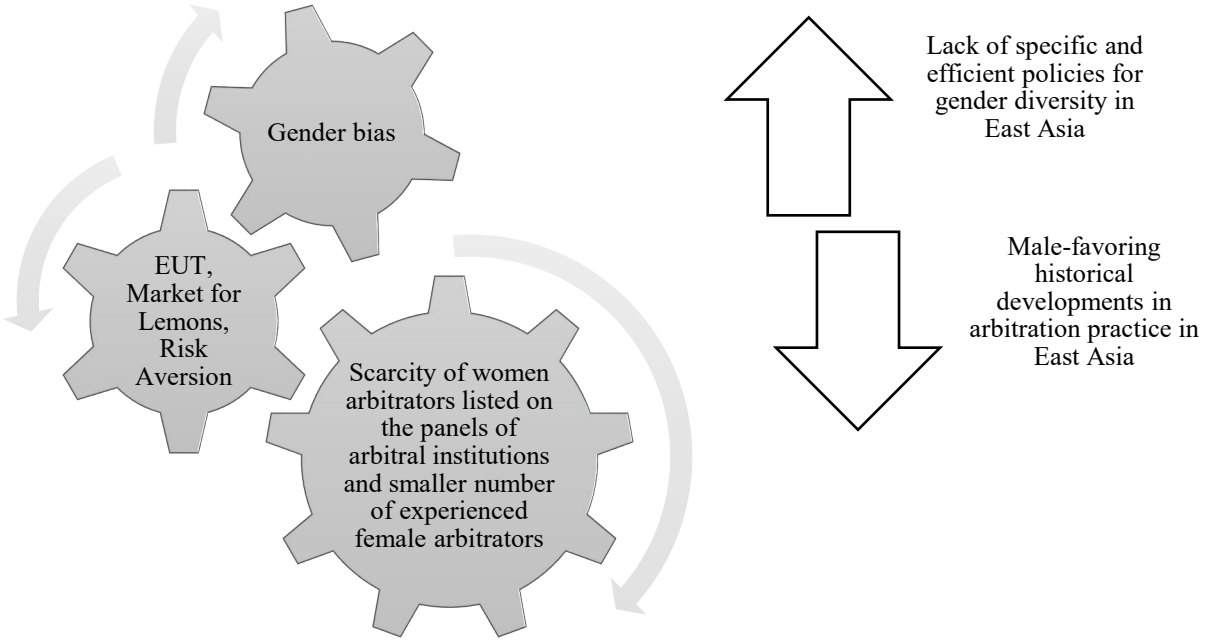
already established their own brand names), the appointers may often end up appointing male arbitrators. Along with the forementioned lack of policies for ensuring gender diversity designed specifically for East Asian arbitration communities, the insufficient number of experienced female arbitrators perhaps also contributes to the lack of female arbitral appointments in the region. Furthermore, other possible reasons such as implicit and explicit gender bias, as well as the masculine historical development of arbitration in East Asia, may contribute to the problem, as the dissertation asserted in Chapter II and III.

Regarding the second research question: how do these forces interact to result in the lack of gender diversity in arbitral appointments?

The reasons for the lack of female arbitral appointments in East Asia



Directly interacted forces **Indirectly interacted forces.**



The forces mentioned above, directly and indirectly, interact to result in the lack of gender diversity in arbitral appointments. The lack of female arbitral appointments can be viewed as an effect of a confluence of factors: insufficient number of women arbitrators listed on the panels, the low number of experienced female arbitrators with appointment histories, the parties' and co-arbitrators' process of selecting arbitrators based on Expected Utility Theory and Market for Lemons Theory, risk aversion, and both implicit and explicit gender bias. These forces directly interact with each other and perpetuate the problem. However, the forces of the male-favored historical developments of arbitration traditions in East Asia and the lack of peculiar and effective gender diversity policies designed for East Asian arbitration communities perhaps more indirectly interact with the other forces and may contribute to creating the lack of female arbitral appointments in the region.

Third, what are effective remedies for the under-representation of women in arbitral tribunals at East Asian arbitral institutions? Based on the analysis across the six chapters, including results of 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 and projects, not relying solely on globally recognized soft law 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 appointors and asking them to appoint more women.

The ERA Pledge, Arbitral Women, Arbitrator Intelligence, and other globally renowned soft law mechanisms and projects are not suitable for application in East Asia. These soft law initiatives 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. Moreover, Arbitrator Intelligence has almost no information about female arbitrators from East Asia.

Thus, this thesis suggests initiating similar projects like Arbitrator Intelligence in East Asia focusing only on disclosing information about regional arbitrators. Moreover, though Arbitral Women is a significant organization that reminds the world's arbitration communities that arbitration practice lacks female engagement and representation, Arbitral Women has almost no members from East Asia on their general and supporting boards (with only two members from East Asia among their hundreds of members), and the institution organizes very few events and projects for East Asia. Hence, the research suggests that the arbitration communities in East Asia promote similar organizations for empowering women in arbitration practice in the region.

This dissertation suggests that another effective way to empower female participation in arbitration is to increase the number of small and low-value disputes. As analyzed in Chapter VI, 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 amounts of claims and party-made female arbitral appointments at the arbitral institutions in East Asia, as well as the risk aversion concept and Expected Utility Theory from behavioral economics, the dissertation argues that 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 dissertation also suggests that the arbitration communities in East Asia change their approach to resolving the problem from focusing on the appointors 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.

About the fourth question, why is the number of female arbitrators listed on the panels of the East Asian arbitral institutions insufficient? (How does this phenomenon impact the problem?) The dissertation argues that there are three primary reasons for the insufficient number of female arbitrators listed on the panels of East Asian arbitral institutions: 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.

Female arbitration lawyers must be recognized at their law firm before entering into the market for arbitrators, so their law firms need to consider them reliable, talented lawyers who deserves to work on important arbitration cases. Moreover, often only by working on arbitration-related cases as a counsel, female lawyers can be recognized within the arbitration community and develop their interest in arbitration practice. Nevertheless, law firms usually allocate important arbitration cases to young female lawyers only if they prove themselves as intelligent and reliable lawyers, and their seniors and partners at their law firms recognize their talents. Thus, receiving recognition at a law firm level is crucial for female arbitration practitioners' entering the market for arbitrators and having a chance to be recognized in the arbitration community.

Nonetheless, finding their feet and receiving endorsement from their law firms are not easy for young female lawyers because of the toxic, sexist culture at law firms in East Asia discussed in Chapter III, along with motherhood-related career obstacles explained in Chapter IV, and impression management related difficulties described in Chapter V. Therefore, due to these many challenges, probably only a few female lawyers pursue and advance their careers in arbitration and can get listed on panels of arbitral institutions. As examined in Chapter I, this insufficient number of female arbitrators listed on panels contributes to the lack of female arbitral appointments since the supply of female arbitrators is inadequate.

Regarding the answers to the fifth (the last) research question, what are the common obstacles and difficulties women confront in their career path in arbitration? There are two types of everyday struggles

women commonly face in their career paths in arbitration: 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 their law firms or institutions as successful lawyers. Meanwhile, the second group of struggles women confront are more related to arbitration communities' recognizing them as professional arbitrators.

Concerning the first group of obstacles, the common challenges before entering the market are sexism, implicit and explicit gender bias, cognitive bias in performance evaluation at law firms, and motherhood-related challenges related to suiting the "anywhere anytime" performance evaluation models at these law firms (as investigated in Chapter IV). As for the second group, the everyday struggles women face 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.

Significantly, motherhood-related struggles occur less after female arbitration practitioners enter the market for arbitrators, conceivably due to the arbitrators' having some autonomy in creating their schedule. Unlike young associates at law firms who work under the "anytime, anywhere" performance evaluation model, established arbitrators have more freedom to control their schedules. In this sense, women face fewer motherhood challenges after entering the arbitration club. Nevertheless, after entering the market for arbitrators, East Asian female arbitrators still face obstacles related to motherhood, such as public criticism of having nannies or babysitters, and work-life balance difficulties, which often occur with female arbitrators who have perfectionist mothering styles.

The limitations of this study are that it is solely focused on only four arbitral institutions in East Asia: the Hong Kong International Arbitration Centre, the Japanese Commercial Arbitration Association, the Korean Commercial Arbitration Board, and the Mongolian International Arbitration Center, and there are an insufficient number of in-depth interviews with male arbitrators and arbitration practitioners. The research conducted a total of five in-depth interviews with male arbitrators and practitioners and tribunal secretaries, along with 17 in-depth interviews with female arbitrators and senior arbitration practitioners, and 24 survey responses from young female lawyers. Hence, the in-depth interview results and findings of this

dissertation are perhaps primarily based on female perspectives and viewpoints. Future studies of the problem based on more points of view from male arbitration communities are necessary.

However, the significance of this study lies in its crucial legal and social psychological findings, and its economic explanation of why women arbitrators and arbitration practitioners confront greater difficulties entering into the arbitration club than their male colleagues do. As well as another innovative part of this dissertation is that it suggested an inverse correlation between the average amount involved in disputes and the number of female arbitral appointments.

Some scholars argue that the gender diversity issues in the arbitration communities would change if party autonomy was challenged; still, except for the soft law initiatives, there are minimal options to influence parties' and counsels' as well as co-arbitrators' decisions on the selection of arbitrators. The author is against the idea that party autonomy should be challenged to ensure gender diversity in the arbitration community. As a large community that cannot function without the disputants who prefer arbitration to courts, the arbitration community should respect party autonomy and the parties' free selection of their arbitrators as long it meets the requirements of the law. However, the arbitration communities and arbitral institutions in East Asia need to focus more on increasing the number of female arbitrators listed on the panels and make more female institutional appointments in practical situations. Thus, the female arbitrators who lack an appointment history would be able to get their first-time appointments, which would conceivably open the doors to future cases for them.

The author would like to emphasize one remarkable point before closing this dissertation. It is not only women in arbitration practice who face difficulties related to sexism and motherhood, but women in other professions since in almost all areas, women are recent entrants to the male-dominated working culture. It is not enough to simply focus on sexism, gender-related discrimination issues, and implicit gender bias, then ask the males in positions of relative power to be more gender-sensitive in order to empower women. Both young and senior female arbitration practitioners and arbitrators should be more fearless and ambitious about advancing their career in arbitration.

In Chapters III and IV, the dissertation mentioned a Japanese female arbitrator, indeed a successful one with an appointment history, who said she still felt unwelcome and found it challenging to approach the

dinner table with “grand old men” and engage in conversation with them. In Chapter V, the dissertation studied how women arbitrators and arbitration practitioners change their impression management styles to be accepted in the male-dominated field of arbitration, including even trying to change the length of their hair and the color of their jackets. That chapter also mentioned a Korean arbitrator with a history of several appointments who still resolves to be tougher (more masculine) in every new year resolution. However, instead of focusing on adapting their self-representation styles and appearances, or postponing becoming mothers, women in arbitration should be fearless in presenting themselves as who they are. Female arbitrators and arbitration practitioners need to be unafraid to bring themselves to the table and say “This is me, I’m competent and accomplished, and you have to accept me for the professional and person that I am.”

Women trying hard to adapt to masculine practices of arbitration by changing themselves will not represent an authentic entry of women into the arbitration club; it will remain the entry of women into men’s suits. Every year, more and more women lawyers specialize in arbitration, and more and more female scholars start to study arbitration. Thus, for the future generation of female arbitration communities, women in arbitration should be more daring and eager and should not feel they need to change themselves to be accepted and recognized in the arbitration club. Consequently, future female arbitration lawyers and arbitrators can feel more at ease with being themselves and experience fewer struggles.

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List of Tables

List of Figures