

Kluwer Arbitration Blog

Inequity in the Citadel of Justice: A Case for Fair Play!

Payel Chatterjee, Pratibha Jain (Nishith Desai Associates) · Friday, August 21st, 2020

Nishith Desai Associates as part of its client continuing education program (“**NDA cCep**”) launched a two-part webinar series on “**Women in Dispute Resolution**”. The first session focused on perspectives of a Judge, an Arbitrator, In-house Counsel and law firm practitioners and dealt with the journey of each panelist. A sequel to this session, was recently hosted on July 31, 2020 titled “*Not a Manel: Pursuing Excellence in Dispute Resolution!*” in association with *ArbitralWomen, Equal Representation in Arbitration Pledge, She Breaks the Law, Her Forum and Kluwer Arbitration Blog*. This blog focusses on the discussions held during the session, personal stories shared by the panelists, need for change in mindset and continuity of dialogue.

The webinar had a stellar line-up comprised of **Sherina Petit** (*Partner and India – Head, Norton Rose Fulbright*), **Dr. Crina Baltag** (*Editor – Kluwer Arbitration Blog, Senior Lecturer – Stockholm University and Arbitrator*) **Karishma Vora** (*Barrister – 39 Essex Chambers*), **Janie Wong** (*Partner – Commercial Litigation, Addleshaw Goddard LLP*), **Dr. P.M. Devaiah** (*General Counsel and Vice Chairman – Everstone Partners*), **Pratibha Jain** (*Head – FRP, Nishith Desai Associates*) and **Gowree Gokhale** (*Head – TMT, Nishith Desai Associates*) along with myself moderating the session. The webinar received a lot of enthusiasm weeks before it was conducted thanks to the title and people across the globe appreciating the fact that *it is not a manel*. The central theme of the session focused on the need for gender diversity in dispute resolution. The webinar provided a unique platform for law firm practitioners, arbitrators, counsels and academicians to discuss issues faced by women practitioners and academicians across the globe.

Tackling conscious and unconscious bias

The discussion revolved around gender diversity in the legal profession, which has been a topic of much debate but still requiring momentum in several parts of the world. The moot question for the panelists was whether there was a need for gender diversity or gender equality in today’s times and steps taken by them to shatter the glass ceiling.

Ms. Sherina Petit quoted a few surveys conducted by McKinsey to highlight that law firms across the globe took steps to have more female partners but they have had limited effect. She also presented certain statistics showing that only 19% of equity partners across the globe are women and they are 29% less likely to reach that position. Further, she reported that Law Society of England survey also stated that the presence of perceived unconscious bias in the legal profession was the most commonly cited reason for women being unable to reach seniority, due to their

inability to have a traditional image of a business leader. I think Sherina beautifully summed it up saying “*To be somebody you don’t have to be like a man but more like a woman*”. Ms. Karishma Vora on the other hand felt that though her experiences were slightly different from Sherina, the under-current has been the same.

Dr. Crina Baltag like the other panelists, also *strongly felt the need to focus on hard work, determination and not have a mindset of bias to move forward*. She observed how diverse backgrounds, socio-cultural and economic differences contribute to the growing unconscious bias. She also drew a parallel with the similarities and differences that exist in legal academia when compared to law firms, with fewer women and the long hours put in by professors. Ms. Janie Wong was firmly of the view that the way forward was with determination and seizing the opportunities life presents itself with to build a successful career.

The session then moved forward with discussing the reasons for typecasting and the only man on the panel shared his views.

Mr. P.M. Devaiah felt typecasting is nothing but an alter ego of professionalism and is inevitable. It has both positive and negative connotations. Typecasting becomes an issue only if one says, “*Jack can do it better than Jill*”. The consequences and tremors of typecasting are different in rural and urban areas in India and differs culturally and socially across jurisdictions. He termed bias as ‘*cholesterol*’ which needs a social fix. Mr. Devaiah strongly felt that the solution to typecasting cannot be found in the corridors of courts – Supreme Court or House of Lords but needs to be implemented at the grass root level to bring about a change in the patriarchal society.

Empowered Women empower Women

“*The glass ceiling will go away when women help other women break through that ceiling.*”¹⁾ The second theme of the session focused on the measures being implemented to empower women at an individual, corporate/firm and institution level.

- Sherina Petit discussed about the initiatives taken by her including launching the Pledge in India two years back and started initiatives for women in arbitration fostering friendships, mentoring, work and non-work relationships. She concluded with a Serena Williams quote: “*The success of every woman should be an inspiration to the other. We should raise each other up, make sure you are courageous, extremely kind and above all humble.*”¹⁾ Her focus was on the changes introduced by arbitral institutions and organizations and steps that may be taken to improve gender diversity in arbitral appointments and proceedings.
- Pratibha Jain discussed about the changes in culture and biases that she witnessed while working in different organizations and across jurisdictions. She was candid in mentioning that other than being a role model for her daughter or her family where she was the first one to work, she didn’t feel much has been done for the cause. She attributed the same to women being overwhelmed as mothers or not getting enough time to network and brushing it aside to be done at a later stage in life. She hopes that the younger generation will be more open-minded and create networks for everyone to have discussions.
- Karishma being a Barrister and practicing in UK felt the need for empowerment even more for the younger generation including both men and women as she felt counsel practice is a different ballgame altogether. She highlighted that though the selection happens primarily based on style

of advocacy, in her 15-year career, she has not appeared even once before a Tribunal with a female member. Dr. Crina Baltag brought a very different perspective to the table. She mentioned in the context of law firms opening offices in eastern Europe, the demand was for young, enthusiastic and well qualified professionals rather than looking at gender. She felt having been part of the international arbitration community, she never felt any kind of pressure or lack of diversity. She broke the myth of some common perceptions about western European countries leading by example: (i) the first woman judge in Portugal was appointed only in 1974; (ii) the first female judge in High Court in Northern Ireland was appointed only in 2015 and (iii) the first female lecturer in Scotland was in 1990 leading to the universal reference point disappearing. She concluded on the importance of the recently released [Report](#) by the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments – a powerful example of moving things forward. Further, she also observed that over the years there has been an earthquake transition in the arbitration fraternity.

The panelists echoed that the institutions are in a better position to foster the change. Tracing the progress made thus far, the panelists acknowledged the contribution and initiatives taken by Lucy Greenwood to raise consciousness within the arbitration community which have been instrumental in effecting change.

- Taking a slightly different approach, Ms. Gowree Gokhale emphasized on the need for empathy to understand the background of different lawyers and stressed on the importance of upbringing and approach towards life. She felt that women expect too much from themselves. They should realise that they are not superwomen. She discussed some of her personal experiences which have shaped her thinking. While discussing about selection of female Counsels and Arbitrators, Ms. Janie Wong felt that historically women not being as visible on panels or their inability to promote themselves or support each other worked to their disadvantage. She felt while selecting counsels, the parameters should be technical skills, diligent and work product and not tied to one's gender.

Men have the most important role in achieving gender equality and promoting women empowerment initiatives. [Men as an ally](#) can be a role model in elevating women's access to employment. Mr. Devaiah shared that recently based on a head count conducted in his organization, he was pleasantly surprised that the ratio between men and women is 55% to 45%. He felt such statistics are an accomplishment in themselves.

Conclusion

Based on surveys and statistics published by various arbitral institutions and organizations, it is evident that there is a lack of gender diversity and despite several awareness programs, [a lot is yet to be achieved](#). The impact of unconscious bias on arbitrator choices has been the subject of recent debate and discussion, and has been described as *“one of the single most influential factors for the disparity between male and female representation on international tribunals.”* The power to effect change does not lie with one individual or organization or only with women; rather, [collective and concerted efforts](#) are required from all international arbitration stakeholders and participants to close the diversity gap. The top to bottom change is necessary to fill the leadership gap and to have our next-generation be more inclusive and diversified.

Conferences such as this allowed a free exchange of ideas which will hopefully go a long way in creating momentum and room for more focused discussions on these issues within the arbitral community. The speakers with diverse backgrounds during the session candidly shared their personal experiences, recognizing the existence of conscious and unconscious bias and the need to bring about meaningful change. Several initiatives taken by the speakers on the panel, organizations and arbitral institutions are encouraging and reflection of the positive outcomes. The webinar highlighted the need for unconscious bias training, support during work, regular analysis, mentoring, network, recruitment and selection of Arbitrators and practitioners using blind recruitment policy. The panelists departed with the hope that participants and professionals across the globe will be inspired and more aware about their roles and responsibilities and need to foster diversity. The timing of the webinar was very apt, coinciding with the launch of the Report by the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings and Asian International Arbitration Centre (“AIAC”) launching its inaugural Diversity in Arbitration Week (“DAW”) as part of its ADR Online: An AIAC Webinar Special Series in July 2020 providing the much-needed impetus to this cause. The link to the video recording of the discussion is [here](#).


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References

?1 Indira Nooyi, Board of Directors, Amazon, Former Chairman and CEO, Pepsico.

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