

Kluwer Arbitration Blog

Growing Gender Diversity in International Arbitration: A Half Truth?

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Introduction

In the past few years, there has been a visible focus on ensuring diversity, especially in terms of gender, in international arbitration (**IA**). This engagement has, arguably, assumed the most prominent or tangible form in respect of arbitrator appointments, which has been previously discussed [here](#) and [here](#). One of the most significant steps taken for achieving this goal is the [Equal Representation in Arbitration Pledge \(ERA Pledge\)](#), which was adopted in 2016 and currently has more than 4,700 signatories. However, despite these efforts, commentators have identified a [diversity paradox](#), which is the “*apparent inability to translate [the concerns with respect to lack of diversity in IA] into actual appointments in individual cases*”.

In this context, this post analyses whether the recent statistics published by various arbitral institutions on arbitrator appointments actually narrate a success story for gender diversity in IA. Specifically, this post analyses gender diversity in IA from an intersectional lens, accounting for geographic and ethnic diversity, along with making a case for sustainable participation at all levels of seniority.

2020 statistics

The International Chamber of Commerce (**ICC**) published its [dispute resolution statistics](#) for 2020 in August 2021. While [commemorating the five year mark](#) of the ERA Pledge, ICC highlighted that “*the number of confirmations and appointments of women arbitrators in ICC case continues to steadily rise – increasing from 312 in 2019 to 355 in 2020, representing today over 23% of all confirmations or appointments up from 21.1% in 2019*”. While commenting on geographical and gender diversity, the ICC statistics state that 2020 saw “*1,520 appointments and confirmations...with arbitrators coming from 92 countries and comprising 23.4% women arbitrators appointed or confirmed*”. In terms of nationalities, the highest percentage of arbitrators came from the UK (14.5%), followed by the US (10%), Switzerland (8.9%), and France (6.6%). More than half of the arbitrators on ICC tribunals in 2020 (52.3%) were from North and West Europe.

The London Court of International Arbitration's (LCIA) casework report for 2020 also notes that *"the overall percentage of female arbitrators appointments reach[ed] a high of 33% in arbitrations pursuant to the LCIA Rules, a growth from 29% in 2019"*. In terms of nationalities, the report stated that, *"37% of appointments comprised appointments of arbitrators from 40 different countries, with the next highest numbers of arbitrators [after British arbitrators] being from Canada, the United States, Ireland, Germany, and Mexico"*.

The caseload statistics for 2020 published by the Singapore International Arbitration Centre (SIAC) notes that *"[o]f the 143 arbitrators appointed by SIAC, 46 (or 32.2%) were female"*.

The annual report published by the Hong Kong International Arbitration Centre (HKIAC) in 2021 states that *"[o]f the 149 appointments made by HKIAC in 2020, 34 (22.8%) were of female arbitrators"*. The percentage of female arbitrators appointed by parties in HKIAC arbitrations was much lower at 11.1%.

At the outset, while these statistics indicate a gradual rise in gender diversity in arbitrator appointments, the absolute numbers of women arbitrators are still substantially lower than their male counterparts. Further, geographic diversity amongst arbitrators still seems to be relatively limited, with European (especially English) arbitrators being appointed most frequently in IA tribunals. This is also consistent with the findings of the recent survey by White & Case and Queen Mary (a different aspect of this survey is discussed [here](#)) which found that *"[m]ore than half of respondents agree that progress has been made in terms of gender diversity on arbitral tribunals over the past three years. However, less than a third of respondents believe there has been progress in respect of geographic, age, cultural and, particularly, ethnic diversity"*.

The picture only becomes grimmer when one considers the possibility of repeat appointments for a set pool of experienced arbitrators – an issue which has been identified as one of the challenges to diversity in arbitral tribunals in [past studies](#). Worse even, when viewed from the perspective of intersectional identities or that of sustainable participation at all levels, the existing data appears inadequate to reflect the nuanced realities of diversity in IA, i.e., the intersectional lens of diversity, which is explored in detail below.

Intersectional identities

The intersectional lens, which is *"a prism for seeing the way in which various forms of inequality often operate together and exacerbate each other"*, can be particularly relevant for understanding diversity in IA. For instance, when considered in isolation, there might be an increase in both gender and geographical diversities internationally. However, when taken as a whole, the proportion of women arbitrators from Asian or African countries in IAs is likely to be significantly lower than those from Europe or America.

Taking the example of India, out of the 30 Indian arbitrators who have been appointed in various ICC tribunals (based on the publicly available data on ICC's website, which includes information for ICC cases registered as of 1 January 2016), only one (3.33%) is a woman. In the ICC India Arbitration Group, which includes the selection committee for arbitrators (responsible for nominating arbitrators upon the request of the ICC Court), there is only one woman (out of 25 members in total). Similarly, out of the 36 Indian arbitrators who are included on SIAC's panel of arbitrators, only three (8.33%) are women, and out of the 11 Indian arbitrators on HKIAC's panel,

only one (9.09%) is a woman (who is also a part of SIAC's panel). Therefore, as far as these three institutions are concerned, in total, names of only four women Indian arbitrators are publicly available, as opposed to the names of about 90 odd Indian men. This is despite the fact that these institutions administer a significant volume of arbitrations involving Indian parties. This situation may not be peculiar to India and may hold true for many other countries.

Such intersectional analysis becomes relevant for understanding actual diversity because in many countries with a nascent IA practice, the real opportunities available to women practitioners can only be fully appreciated by accounting for their identities as women from their countries of origin. This is because, more often than not, practitioners from these countries are only appointed as arbitrators in arbitrations where at least one of the parties is from that country. Again, taking the example of India, as per the ICC 2020 statistics, 79 (3.15%) Indian parties participated in ICC arbitrations. On the other hand, only 20 (1.32%) Indian arbitrators were appointed to ICC tribunals. Tellingly, as per the SIAC 2020 statistics, while 690 (63.89%) Indian parties participated in SIAC arbitrations, only 14 (4.86%) Indian arbitrators were appointed to SIAC tribunals. The relatively higher number/percentage of Indian arbitrating parties as compared to the number/percentage of Indian arbitrators, coupled with the general preference for arbitrators from western countries, suggests that Indian arbitrators on ICC or SIAC tribunals were probably only appointed in arbitrations involving Indian parties. Therefore, in turn, the near absence of Indian women arbitrators in IAs is on account of issues linked to both, gender diversity and geographical diversity.

Sustainable participation at all levels

As discussed in an [earlier post](#), to appreciate the issue of diversity in IA, along with addressing the lack of women's representation in leadership roles (such as arbitrator appointments), it is crucial to address issues relating to sustainable participation at all levels. This is because sustainable participation, which involves issues relating to opportunities available to young women to practice and gain experience, and the availability of means to stay in such opportunities, is bound to impact leadership in the long run.

Pertinently, the [2020 Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings](#) identified the unavailability of sufficiently qualified and well-known practitioners from diverse backgrounds as one major barrier to achieving greater diversity in IA. This was also confirmed in the [White & Case survey](#), wherein participants indicated that at the end it is *“always the demands of the case that determine choice of arbitrators”*. Therefore, in order to ensure diversity in arbitrator appointments (and in IA generally), it is crucial to create sufficient opportunities for women from diverse backgrounds to gain relevant experience and visibility.

In recent years, while there has been a consistent [push](#) to ensure diversity in leadership in IA, issues linked to sustainable participation of women have probably attracted less traction. In our view, trying to address the lack of diversity solely through interventions with respect to leadership roles is more likely to aggravate the diversity paradox as opposed to solving it. Therefore, while [proposals](#) for setting a new norm/standard that *“all panels should include at least one woman or other diverse practitioner and panels that do not are Defective Panels”*, or efforts solely directed towards leadership issues, would have some immediate impact, in the long run, they have to be

coupled with efforts for ensuring sustainable participation to guarantee a holistic improvement in diversity. In the absence of inclusion and capacity-building initiatives catering to women at all levels and across all geographies, the leadership pool is likely to be limited to a small number of established practitioners (even if women).

Currently, in absence of much data (especially country-specific data) on practitioners at all levels of seniority, it would be difficult to comment on the state of diversity in IA generally. Having said this, it is probably safe to conclude that issues with respect to gender diversity are only half understood when solely viewed from the perspective of leadership.

Possible ways forward?

Ways to improve intersectional diversity and sustainable participation in IA, which could, in turn, improve diversity as a whole, could include the following active efforts from all actors in IA, such as arbitral institutions, law firms, chambers, etc.:

1. Publishing detailed data regarding diversity (gender, geographical and ethnic) in IA across different levels of seniority.
2. Viewing diversity from a more intersectional lens that accounts for overlapping identities and therefore, publishing diversity data accounting for such identities.
3. Including more women from various races, seniorities, nationalities, ethnicities etc., as speakers in panel discussions, conferences etc., which could improve the visibility of women practitioners.
4. Initiating conversations with industry bodies and other potential clientele on the need for diversity and the problems with homogeneity in the lawyers advising them.

These are undoubtedly broad suggestions that require a much more nuanced analysis of different legal systems, existing wage gaps, and the potential roles of the various actors involved in IA. Having said this, it is undeniable that it is high time that all stakeholders of IA understand and discuss diversity holistically and address various inequalities collectively, as opposed to addressing them in a piece-meal manner. Further, it is a collective responsibility to sustain the conversation and debate on this topic until IA truly becomes non -“*pale, stale and male*”.

We thank Mr. Rishab Gupta (Shardul Amarchand Mangaldas & Co) for his inputs.

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