

SPECIAL ISSUE ARTICLE

The invisible stigmatisation of female practitioners in international arbitration

Umika Sharma*

PhD Researcher (NUS Graduate Research Scholar), National University of Singapore, Singapore

*Corresponding author. E-mail: umika.sharma@u.nus.edu

Abstract

The paper is a study of the gender-based stigmatisation process of elite professionals in an international legal field. It uses commercial arbitration as an example of an international profession and adds to the prevalent understanding of gender inequality by developing a framework called ‘invisible stigmatisation’. The main theoretical framework is supported by twenty-two semi-structured interviews conducted across five international arbitration jurisdictions and two original datasets. These data have helped to contextualise the nuances of gender-based stigmatisation in prestigious arbitral appointments and at the echelons of international arbitration law firms. The paper establishes that the stigmatising experiences drive elite female professionals and their gender-equality consciousness. These experiences also lead to them devise innovative strategies to minimise the effects of gender inequality on their professional lives.

Keywords: international arbitration; gender; diversity; legal professions; empirical research; international law

1 Introduction

Twenty-seven years ago, women in international arbitration, an elite and prestigious field of law, came together to establish an organisation with the objective of ensuring gender equality. They founded a global network of dispute-resolution practitioners who advocated for the increased visibility and representation of female professionals in this field of law.¹ Over the following decades, more practitioners banded together to establish initiatives highlighting the need for increased gender representation in international arbitration. It is how the ERA Pledge, which advocated for fair gender representation in arbitrator appointments, came into existence.² A recent cross-institutional report on gender diversity³ kick-started another round of discussions on gender equality and diversity in international arbitration. All major arbitral institutions, including the Singapore International Arbitration Centre (SIAC), the London Court of International Arbitration (LCIA) and the International Chamber of Commerce (ICC),⁴ have also been releasing gender-diversity statistics.⁵

¹ArbitralWomen is an international non-governmental organisation that has existed informally since 1993, actively since 2000 and officially as a nonprofit organisation since 2005 (<https://www.arbitralwomen.org/aw-outline/>).

²The arbitration community drew up a pledge to act (the Equal Representation in Arbitration Pledge or the ERA Pledge) in recognition of the underrepresentation of women on international arbitral tribunals. As per their website, 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 goal of full parity (<http://www.arbitrationpledge.com/about-the-pledge>). It has 4,211 individual and organisational signatories (as of January 2021).

³Report of the Cross-Institutional Task Force on Gender Diversity in Arbitral Appointments and Proceedings, 2020 released by the International Chamber of Commercial Arbitration.

⁴I have chosen to narrow down my discussion to these three institutions based on the three main sites that I have studied for this paper.

⁵The SIAC and ICC have been releasing gender-diversity statistics since 2015 and the LCIA has been releasing them since 2012.

Table 1. The pyramid of female practitioners in international arbitration ($n = 2,229$)

Global Arbitration Review Top 30 in 2019 (International Arbitration Counsel Dataset)					
Jurisdictions	Total number of practitioners	Percentage of male partners	Percentage of female partners	Percentage of male non-partners ^a	Percentage of female non-partners
Singapore	213	72.09%	27.90%	57.93%	42.85%
London	1,475	75.16%	24.83%	46.58%	53.41%
Paris	541	74.83%	25.16%	46.89%	53.10%

^aThe non-partner categories included associates, senior associates, international counsels, trainees and all other terms that the firms had used to refer to non-partners.

Hence, gender diversity already has a prominent place in conversations on diversity in international arbitration. Building upon the ongoing conversation, I have argued that the gender stigma experienced by female practitioners has had a direct consequence on their gender-equality consciousness and how they frame their advocacy for better gender representation. I also noticed a tension between the ideals for gender diversity that the practitioners in this field aspire to and a lack of female practitioners in senior positions. The presence of women in international arbitration, although slowly improving, is still low. A little over 17 per cent of appointed arbitrators at the ICC between 2016 and 2020 were women, mostly from the Western hemisphere.⁶ The numbers are equally low in partnership positions in international arbitration practices⁷ across top jurisdictions like Singapore, London and Paris.⁸ The proportion of female partners in top Singapore international arbitration practices stands at 27 per cent, but many firms do not have even a single female partner.⁹ The number further drops to 24 per cent in international arbitration practices based in London and Paris. The low number of female partners in the International Arbitration Counsel Dataset and the Arbitrator Appointment Dataset, in [Tables 1](#) and [2](#), establish women's underrepresentation in leadership positions in international arbitration. The counsel dataset shows that, while a good number of women enter the profession, not many reach the top – the top being prestigious arbitrator appointments and partnership positions, both of which generally intersect.¹⁰ This is consistent with the legal industry's widely available data across jurisdictions (Michelson, 2013). It also brings out the dichotomy between the intense focus on gender diversity by international law firms and their lack of female leaders. It seems that gender plays a more significant role than previously understood in a female international arbitration professional's career.

Therefore, this paper is an empirical inquiry into how the gender of a practitioner operates in an equality-conscious and international field of law. I try to understand this by developing a framework that I call 'invisible stigmatisation'. This framework explores the subtle impact of gender on the professional lives of female practitioners in international arbitration. I use data from twenty-two semi-structured interviews to bring out the nuances of how female practitioners perceive and navigate gender-based stigmatisation.¹¹ I have also developed a data-driven analysis from original datasets to show how the pyramid of gender diversity has persisted in international arbitration.¹² To further

⁶ICC Arbitrator Appointment Dataset ([Table 2](#)) details that, of the 17 per cent female appointments, 66 per cent went to arbitrators with Western nationalities. I have also included multiple nationalities in this count.

⁷Refer to [Tables 1](#) and [2](#) for more details.

⁸I have selected these three jurisdictions because of their reputation as global hubs of international arbitration. The White & Case and Queen Mary University of London, '2018 International Arbitration Survey: The Evolution of International Arbitration' also considers these jurisdictions as the top three arbitration jurisdictions.

⁹The original 'International Arbitration Counsels in Singapore' (included in [Table 1](#)) dataset of lawyers in Singapore collected for this paper reveals that six out of the twenty firms included in the dataset have no female partners.

¹⁰[Table 1](#) details the percentage of female non-partners across three jurisdictions.

¹¹[Table 3](#) details the background and professional details of the interviewees.

¹²[Table 1](#).

Table 2. ICC Arbitrator Appointment Dataset ($n = 2,984$)

Total no. of appointments	Percentage of female appointees		Percentage of male appointees	
2,984	17%		83%	
	Western ^a	Non-Western	Western	Non-Western
	66%	34%	52%	31%

^aThe dataset provided the nationality of the appointed arbitrators. Using that as my starting point, I divided the data points into two categories for which I adopted a geographic classification of Western and non-Western countries. The Western category included Western Europe, the US and Canada, and the non-Western category included all other regions.

understand this subtle and invisible stigmatisation, the paper explores two main questions. First, how has the gender-based stigmatisation of female professionals in international arbitration affected their professional ascent? Second, has this stigmatisation had an impact on how they frame their gender-diversity advocacy?

Through the invisible-stigmatisation framework, I have argued that even after achieving a high status in an elite and international field, female practitioners continue to face obstacles that affect their ascent to international arbitration's highest echelons. I also show that this gender-based stigmatisation is subtle and invisible. It is subtle to such an extent that it makes even the individuals experiencing it doubt its actual effects on their professional lives. Nevertheless, experiencing this kind of gender stigmatisation has had deep impacts on how female practitioners come together to advocate for better gender representation. The leading gender-diversity initiatives in international arbitration stood out as a powerful example of how experiencing stigma can motivate professionals to look at gender inequality as a social justice issue that becomes an integral part of their professional identities.

2 Gender as an invisible stigmatising identity in international arbitration

International arbitration is a mode of dispute resolution in which the parties choose their decision-makers. A decision by an arbitrator or a panel of arbitrators is final and there are no appeals except on limited grounds. Therefore, arbitrators are often the final decision-makers in such disputes. It is also a field of law not inhibited by the typical requirements of national jurisdictions or qualifications. An individual can work in an international arbitration firm's office as long as they hold a legal qualification. National borders are also not a hindrance to finding work in this field. While lawyers generally need to be qualified in a jurisdiction to work there, it is not a strict prerequisite in international arbitration. Many lawyers are not qualified in the jurisdictions they work in. For instance, many lawyers in arbitration firms in Singapore are not qualified in Singapore. Many are not registered as a foreign lawyer, although some are.¹³ It is unlike most national jurisdictions where local-level bar associations closely guard the inflow of lawyers. Furthermore, international arbitration users and practitioners are sophisticated and diverse, which adds to the field's international nature. The interplay of jurisdictions and laws that practitioners deal with is an excellent example of its complexity.¹⁴

Moreover, the way gender plays out in international arbitration where there are no cultural or jurisdictional limits on which lawyers can or cannot practise is markedly different from how it plays out in national jurisdictions. International arbitration practitioners often come from different nationalities, are qualified across many jurisdictions and do not need to adhere to a set standard of ethical rules in

¹³The original 'International Arbitration Counsels in Singapore' (included in Table 1) dataset of lawyer's profiles in Singapore analysed for this work reveals that around 41 per cent of lawyers in international arbitration teams in Singapore are not qualified to practise in Singapore. They either have non-Singaporean qualifications or are registered foreign lawyers or both.

¹⁴It is routine for international arbitration practitioners to deal with multiple layers of legal issues around conflict of laws, multiple national laws related to the arbitration agreement, the laws of the country whose courts have jurisdiction over the arbitration and so on.

international arbitration because there are none specific to them (Rogers, 2014). International travel by the lawyers for attending proceedings or constant interaction with multiple cultures in the same hearing is also not the norm in most national jurisdictions. However, it is almost inevitable in international arbitration proceedings. For instance, a Singaporean or a UK courtroom will generally have judges, lawyers and often clients who share a culture and nationality. On the other hand, international arbitrators, lawyers and even parties¹⁵ can belong to different cultural, legal and national backgrounds in a single hearing. Because of the work's international nature, the lawyer population is generally not stable and moves across firms and their various offices. For example, all interviewees had international arbitration experience in two or more jurisdictions. Therefore, while related to many jurisdictions, international arbitration is not firmly rooted in any single jurisdiction and has developed its unique structural framework. I have later argued that such institutional and structural frameworks directly impact how gender as a stigmatising identity operates.

Moreover, the interaction of gender and legal professionals in international law has received limited empirical attention in the literature. Most of the research on gender in international law has been on judges in international courts (Chappell, 2010; Grossman, 2016a; Dawuni and Kuenyehia, 2017), international adjudication (Grossman, 2016b) or arbitrators in investment treaty arbitration (Puig, 2014; Franck *et al.*, 2015; Langford *et al.*, 2017). However, so far, there has been scant research on legal professionals working as counsel and representatives beyond international courts and the impact of gender on their professional lives. The current scholarship on gender in international arbitration also limits the focus on the gender of investment treaty arbitrators (Puig, 2014; Franck *et al.*, 2015; Langford *et al.*, 2017). Therefore, an advanced understanding of gender-based stigmatisation that female practitioners experience in the wider international arbitration community is under-theorised. As international arbitration is an exception to a general lack of boundaries in studying international legal professionals, it can be the ideal starting point to elevate ideas around gender in international law. Global law firms have independent international arbitration teams, and some of these teams have hundreds of lawyers across multiple major jurisdictions like Singapore, London and Paris, as Table 1 shows. Hence, talking to international arbitration practitioners has helped me to develop this paper as a case-study for possibly more significant trends within international legal professions.

There are also data supporting the exacerbation of gender inequality on international courts compared to national courts (Grossman, 2016a) and it seems that international arbitration is following a parallel trend. My paper is similar in scope, as it also brings out a lack of female presence in an international field through data-driven analysis. However, I also expand the analysis to include female practitioners' stigmatising experiences and how they play out in their professional context. The female interviewees' perceptions and narratives paint a picture of a subtle form of gender-based stigmatisation in international arbitration. This invisible form of gender stigmatisation is also different from the dominant research on stigmatisation, in which stigma is generally associated with spoiled identities (Goffman, 1963). Instead, I adopt a multidisciplinary interpretation of stigma (Ainlay *et al.*, 1986), where I primarily see it from the lens of gender inequality and discrimination in the legal profession (Fuchs Epstein, 1981; Kay and Gorman, 2008).

In international arbitration, the literature on gender diversity has also been consistently expanding. It was in 2012 that, for the first time, data on gender diversity were systematically collected to bring out the lack of female practitioners in arbitrator appointments in commercial arbitration (Greenwood and Baker, 2012; 2015; Greenwood, 2017). However, these data-driven analyses did not look at the gender diversity of international arbitration counsels and solely concentrated on the arbitrators. Arguably, the gender make-up of individuals in partnership positions in top international arbitration firms directly impacts arbitrator appointments. This paper tries to build that crucial bridge and paint a richer picture

¹⁵For instance, at the SIAC, parties from fifty-nine nationalities and substantive laws of twenty countries were applied in international arbitrations in 2019 and, at the LCIA, parties from 138 different countries used the institution and laws of forty countries were applied, whereas at the ICC, parties came from 147 countries and independent territories and arbitrators came from eighty-nine jurisdictions.

of the extent of gender-based stigmatisation that begins in international law firms and then flows over to the arbitrator appointments. International arbitration scholars and practitioners have also been busy discussing the various possible reasons behind a lack of women in the top brass. It ranges from a lack of party appointments (Lemaire, 2015; Coleman, 2016), unconscious bias and pipeline leaks (Greenwood and Baker, 2012), the opaqueness of selection procedures (Grossman, 2016b) and, finally, to not fulfilling the image of an ideal arbitrator (Oger-Gross, 2015). However, the existing scholarship has missed out on developing a contextual understanding of how gender and professional identities intersect and operate. Furthermore, a ‘pale, male and stale’ arbitrator generally fulfils an ideal arbitrator’s stereotypical image in international arbitration (Oger-Gross, 2015) and female practitioners are adapting their careers to navigate such a stereotype and are also openly challenging it. Thus, an advanced understanding of the evolving nature of gender diversity in international arbitration is not yet a part of the discussion.

I also try to reconcile these female practitioners’ socially and politically elite positioning with their gender-based stigmatisation. My work distinguishes itself from other works on stigmatisation by focusing on a successful group of legal professionals who are elite and considered powerful as lawyers (Flood, 1996). I have found that, despite the successful context of their legal practices, these women experience stigma that affects their professional identities. Such experiences of a gender-based stigmatised identity have motivated them to advocate for better gender equality in international arbitration, which I specifically focus on under section 5 in the paper. I have also argued that the higher the practitioner climbs the ladder of cultural and political power, the subtler their stigmatisation and discrimination get (Link and Phelan, 2001, p. 367). It also gets tougher to see how the gender stigmatisation of these practitioners operates in elite professional fields. Not surprisingly, many of the interviewees were resistant to the idea of experiencing gender-based stigmatisation. That is why I call this gender-based stigmatisation invisible because it operates on a subtle level and is thus much harder to see and frame.

Female practitioners in this field see themselves as an elite class of legal practitioners. They have broken into a law field known for being competitive and with high entry barriers (Dezalay and Garth, 1996). The interviewees might even consider gender-based stigma a negative or extreme term for their experiences. While there have been advances in international arbitration when it comes to the gender diversity of the practitioners, the notion that 17 per cent of female arbitrator appointments and an average of 25 per cent of female partners in top arbitration firms across multiple jurisdictions constitutes gender equality might be premature. The empirical data also boldly bring out the subtle and invisible process of the stigmatisation of female practitioners. Such a manifestation of gender stigmatisation might have deep roots in the cultural and institutional context (Ainlay *et al.*, 1986, p. 30) of international arbitration.

Thus, I adopt a dynamic understanding of this invisible gender-based stigmatisation. In the broader literature, the framing around invisibility generally deals with certain actors and their identity-based invisibility in political systems (Hildebrandt and Chua, 2017). It can also manifest as economic or political invisibility of marginalised groups of individuals (Currier, 2012). However, I vary this invisibility lens by focusing not on the actors, but instead on their experiences that lead to this invisible stigmatisation. The individuals that I focus on are highly visible professionals in an elite field of law and are not invisible in any sense. Thus, shifting the focus to elite professionals and the manifestation of their gender stigmatisation moves the discussion to the process of invisibility and not the actors who experience it. This, I believe, is the main contribution of my work to the larger literature on gender inequality.

Moreover, I base my analysis on a complex interplay of discrimination and harassment and many institutional barriers to female practitioners climbing the ranks in law firms and to top arbitral appointments. These female professionals are privileged, well educated and positioned high, both socially and financially, in the hierarchy of the legal professions. On the surface, they do not seem to be suitable candidates for a stigmatisation narrative. However, as my analysis shows, the shared experiences that a whole range of female practitioners, irrespective of their seniority, nationality, racial, ethnic or cultural identity, have experienced give strength to an invisible gender-based stigmatisation

narrative. Therefore, studying this form of stigmatisation can elevate ideas around the stigmatisation of an elite group of female professionals. The fact is that their high professional and social status does not insulate them from their gender-based stigmatisation. It also expands the boundaries of the stigmatisation process beyond the traditionally disadvantaged individuals on the margins of society (Link and Phelan, 2001).

3 Contextualising the empirical focus

I chose to combine quantitative and qualitative data methodologies to capture this complex issue. Hence, while the quantitative data provide numerical evidence of the stigmatisation that I allude to, the qualitative data help to weave the story of the gender-based stigma that female practitioners experience in international arbitration firms. This two-layered analysis enabled me to develop the main narrative thread of this paper.

My first lens was the quantitative data analysis that included two original datasets. Broadly, I developed two data streams. The first dataset was to gauge arbitrator diversity and the second dataset was to understand counsel diversity in international arbitration. The first dataset concentrated on the gender diversity of arbitrators appointed by the ICC. I developed this dataset using publicly available information under the aegis of the ICC, the world's most dominant international arbitration institution.¹⁶ Details of almost 3,000 arbitrator appointments by the ICC were available on their website.¹⁷ This information included their full names and nationalities. I used this basic information to find the online profiles of the arbitrators and collected their gender information.¹⁸ I identified their gender by their picture or the gender pronoun used on their online profiles. Admittedly, it was an imperfect way to collect such information, but it was also infeasible to either individually contact the arbitrators for this information or ask the ICC to disclose it.

The second dataset used the yearly Global Arbitration Review (GAR) Top 30 list – a list of prominent international arbitration firms across jurisdictions.¹⁹ I used the list to decide the scope of the data collection and to collect the gender information of the practitioners from their firm and LinkedIn profiles in the same manner as previously discussed. In Singapore, only nineteen firms from the GAR list were present. In London, twenty-nine firms and in Paris, twenty-eight firms from the list were present. This dataset totalled 2,229 individuals. It is possible that some of these counsels (at the Partner and Senior Associate levels) also receive arbitral appointments. However, this information is not publicly available due to the confidential nature of most arbitrations. Tables 1 and 2 detail the sample size and the main findings.

The quantitative data provided contextual support to the argument that female practitioners are underrepresented in international arbitration. Additionally, I conducted twenty-two semi-structured interviews that ranged from thirty to ninety minutes. Two of these interviews were done in-person in Singapore but, because of Covid-19 and social-distancing restrictions, I did the rest of the interviews online between March and November 2020. The professional background of the interviewees also considerably varied, as detailed in Table 3. The interviewees came from eleven different nationalities and spoke over a dozen languages amongst themselves. Sixteen interviewees had experience in both

¹⁶As per the White & Case and Queen Mary University of London, '2018 International Arbitration Survey: The Evolution of International Arbitration' (2018) report, the top three arbitral institutions are the ICC, LCIA and SIAC. In 2018, the ICC had 842 new cases, whereas the SIAC and LCIA had 402 and 317 new cases, respectively. Thus, the number of cases at the ICC is more than twice those at the other top two institutions.

¹⁷The dataset starts from January 2016 and ends in March 2020.

¹⁸Online profiles included firm profiles, LinkedIn, institutional profiles and academic profiles.

¹⁹In the international arbitration field, the GAR Top 30 is considered prestigious and reliable. The criterion used by GAR includes a few things. First, the GAR 30 ranks firms primarily on the number of arbitral hearings conducted over a two-year period. Factors contributing to a high score include the amount in dispute in those cases and the number of arbitrator appointments received by firm members. It also takes into consideration the number of individuals who appear in GAR's sister publication, 'Who's Who Legal: Arbitration – a guide to the leading practitioners in the field as selected by their peers'. In 2019, they also considered junior individuals identified by Who's Who Legal as 'Future Leaders' as a measure of which firms are home to the next generation of young talent.

investment and commercial arbitration and had multiple degrees, including master's and doctorates. [Table 3](#) provides more details of the sample.

Table 3. Details of the interviewee data ($n = 22$)

Total	Female	Male
22	16	6
Job profile	Partner	Independent practitioner
	5	5
Non-partner		
12		
Jurisdictions	Nationalities	Multi-jurisdictional experience/ qualifications
Singapore, London, Frankfurt, New York and Geneva	11	16

I used snowball sampling to select the interviewees, starting with my professional contacts. The sample extended to a total of five jurisdictions, as detailed in [Table 3](#). The interviewees were all international arbitration practitioners, with most of their work centring on disputes and related litigations. I used deliberative and purposive snowball sampling. As this paper focuses on the female perspective, I deliberately oversampled female practitioners in this male-dominated field.

I was also mindful that, unlike national jurisdictions, where detailed records of qualified lawyers are maintained, there are no such central directories of lawyers that list all international arbitration practitioners. Therefore, tracking down female practitioners who had left the field would have been challenging. To overcome this obstacle, I purposively included four female practitioners who had changed firms or their job profiles to accommodate their evolving professional needs. These interviewees explicitly talked about changing their career paths, and it is possible that more interviewees adopted similar strategies but did not mention it. Hence, even though the sample does not include any practitioners who left international arbitration, it does consider different ways in which female practitioners reimagined and restructured their careers because of the gender-based stigmatisation that they were experiencing.

I divided the interview questions into three broad categories. The first category focused on the professional backgrounds and experiences of the interviewees. The focus then shifted to a general discussion on diversity in international arbitration, including gender diversity. The interview then moved to individual experiences, including specific discussions on gender and its impact on the interviewees' professional identities. The discussion often shifted towards exploring specific strategies that the practitioners were using to navigate their professional lives. When I was developing the interview protocol, I leaned towards using a gender framework and understanding its impact on the potential interviewees' professional lives but had not yet identified the stigmatisation lens. Therefore, stigmatisation was never explicitly brought up through the questions. After a few rounds of coding and analysis, I decided on using the gender-based stigmatisation lens, as it was developing into a central theme. I am also keeping all my interviewees anonymous because of the interconnectedness of international arbitration professionals worldwide. It might be hard to maintain anonymity if I reveal more than their gender and professional position, so that is all that I have chosen to disclose in the footnotes.

4 Understanding the invisible stigmatisation through visible experiences

As the arbitrator and counsel dataset evolved and turned into a gender pyramid, I started thinking about the tension between the data-supported lack of gender diversity and the international arbitration

community's increased and constant focus on gender equality. I wondered about the possible motivations behind the gender-diversity movement within international arbitration. Did professional motivations like increasing visibility drive it, as one senior arbitrator²⁰ suggested? However, in the same vein, the arbitrator presented a different and less sceptical viewpoint. He pointed out that gender-diversity initiatives, like the ERA Pledge, were driven by already successful and well-known female practitioners. These differing and opposing arrays of viewpoints drove me to investigate the motivations behind the diversity advocacy that had gained traction in the field. I was interested in understanding the professional experiences of female practitioners in a field of law where there was an intense focus on gender diversity. As this theme further evolved, I started seeing parallels with the broader literature on gender stratification and discrimination in the legal profession (Fuchs Epstein, 1981; Fuchs Epstein *et al.*, 1995; Kay and Hagan, 1995).

I noticed that a female arbitrator faced two-pronged stigmatisation, the first being the cultural gender stereotyping that limits their professional prospects based on their gender identity. Second, there was the added disadvantage of them not fulfilling the masculine image of an ideal arbitrator. The international arbitration community seemed to have many such gendered assumptions about an ideal arbitrator that might directly impact a female arbitrator's professional prospects. There also existed a tension between meritocracy and gender diversity. International arbitration is a field of law that favours meritocracy, is risk-averse and focuses a lot on an arbitrator's suitability for a dispute. There is also the added dimension of opaque methods for arbitral appointments. I saw that both factors could be leading to double penalisation for female practitioners, first where they get penalised because of their gender identity by being excluded from professional opportunities. Furthermore, even after crossing these gendered barriers to be included for professional consideration, they come up against the higher barrier of not meeting the stereotypically masculine image of an ideal arbitrator, often a senior male from the West.²¹ Hence, a further penalisation of diminished professional opportunities happens here even after they cross the first barrier of being considered for appointments.

However, in trying to bring out the strategies that these women were using to navigate a field of law that was struggling with building a stable female leadership, I discovered the stigmatising narratives that these practitioners were sharing while talking about these strategies. Such narratives then helped me to build the invisible-stigmatisation framework of these female practitioners. Therefore, in this section, I have focused on the various manifestations of this stigmatisation. I first noticed it in its subtle form when some interviewees were hesitant to categorise their experiences explicitly as gendered. For instance, a senior practitioner believed that being a woman in international arbitration is now an advantage.²² She described it as a benefit to be a female arbitrator. She felt that as 'a female in international arbitration, with all the push [to appoint more female arbitrators], and with the Pledge, we [female practitioners] benefit from it'. She further elaborated that she felt that her generation of female arbitrators were better placed than their predecessors and faced fewer challenges. For her, it was advantageous to be a female arbitrator in an environment in which there is a greater push for gender parity and, consequently, better opportunities.

Another disagreed with the suggestion that her career slowed down because of her motherhood decisions. She called it a 'blip' in her career trajectory and something that she successfully negotiated her way out of,²³ thus resisting a direct link to this being a gendered experience. Some interviewees even discussed gender diversity making considerable advances in international arbitration compared to when they began their careers. One said:

'So, it becomes more and more diverse in terms of gender; within the past, I want to say two [or] three years that I am coming across more female arbitrators and female co-counsel and counsel

²⁰Interviewee 21 (Male, Independent Practitioner).

²¹The arbitrator dataset detailed in Table 1 shows a dominance of Western male arbitrators.

²²Interviewee 8 (Female, Partner).

²³Interviewee 5 (Female, Partner).

on the other side. That [has] changed. But it is recent, [and] I would say, other than that, it was very male-dominated.²⁴

It seemed that the recent advances in gender equality in the field and the relatively increased presence of female practitioners had an impact on how gender and its effects on the careers of female practitioners are now viewed. It could also simply be the product of them seeing themselves as elite professionals and, therefore, assuming themselves to be insulated from the effects of gender. All this feeds into the subtlety and invisibility of the stigmatising process. Now, I will move on to bringing out the relatively visible manifestations of this stigmatisation.

4.1 Institutional and cultural influences of international arbitration

International arbitration is considered a 'glamorous lifestyle' by many practitioners, as described by one of the interviewees.²⁵ It has a cross-border appeal and regular international conferences all over the world are the norm. It is considered a melting pot of different laws, cultures, lawyers and arbitrators trained across multiple jurisdictions to resolve a dispute for the parties. Such interactions and professional set-ups make it a truly international field of law. Today, it is one of those few international law fields that, despite being procedural, is taught across many top universities. As an interviewee observed, international arbitration master's degrees and exclusive international arbitration teams of lawyers at law firms are a recent phenomenon.²⁶ As a detailed discussion into structural and institutional causes behind gender stigmatisation in international arbitration is beyond the scope of this paper, I will briefly narrow my focus to a few related themes. I begin with the professional demands of an international arbitration career and the barriers they create explicitly for female practitioners. One senior practitioner talked about the issues that she faced as a young mother who had to travel for her job. She elaborated on the time that she had to spend away from her young children whom she missed, on the other side of the world, in an environment where long hours and going out to clubs were an implied expectation of the job.

'I was flown out to [country name] at 24 hours' notice. I had two daughters at the time. Two and one years old. I was flown up there with the understanding that I was going ... for two weeks, and I was there for nine [and] as the only woman, not only on my team but on the other side's team.'

International travel for cases and conferences is an inherent part of any practitioner's career in this field. However, what is missing is an understanding of how such requirements tend to specifically affect female careers more than those of their male contemporaries. Research has already established that women have a higher share of household and caring responsibilities (Bond and Sales, 2001). Add pre-Covid-19 international travel as a job requirement and you have a potent mix of structural and institutional barriers that create gendered structures in a profession designed for practitioners who have someone taking care of their children at home (Acker, 1990). Apart from extensive international travel, practitioners also engage in cross-cultural interactions that might come with their separate gender stereotypes (Best and Puzio, 2019). As one practitioner illustrated:

'If you're in a country that has culturally always or historically *always* looked at women as primarily homemakers and then you add that to a mix, a company or a firm that's entirely run by men, I think that is a lethal combination, right? Because then you have a situation where you have a woman, and you historically have not really dealt with women in the team, and there are no women in positions of power who are rooting for you and creating the right kind of dynamic for your growth, regardless of your personal commitment.'²⁷

²⁴Interviewee 20 (Female, Senior Associate).

²⁵Interviewee 21 (Male, Independent Practitioner).

²⁶Interviewee 14 (Male, Partner).

²⁷Interviewee 16 (Female, Associate).

Moreover, interacting with clients who might have stereotypical views about gender roles could be one of the many ways in which cross-cultural interactions can have specific gendered repercussions. A practitioner discussed an instance in which one of their clients was uncomfortable with the idea of appointing a female arbitrator, which they speculated was a consequence of the client's cultural background.²⁸ A senior practitioner discussed one such instance in which she observed:

‘Actually, it has been said to me by one solicitor who [was] from [region name]. He rang me up and said, “We would love to appoint you, and I will probably put your name for it, but frankly speaking, the client does not really like women, or [will not appoint] women, so you will not get the appointment.” So ... I have at least one example, and I know I would not have got an appointment because I was a woman. ... my conclusion is that clients still want a Q.C. badge, or they still want the old bloke a little bit.’²⁹

The trifecta of opaque modes of arbitrator appointment, risk averseness in such appointments and the gendered barriers to establishing strong networks in a male-dominated field came out the clearest through a practitioner's comments as she talked about her unsuccessful attempts at getting appointments for female arbitrators:

‘I have not been lucky with my recommendation so far because, the partners, at least where I work now, are well-connected, and they usually choose someone they know [and] with whom they have [had] a long experience. ... but it is usually in [the partner's] inner circle. ... They say, I know this guy and this guy might be good [and the arbitrator might be] legally fit and suitable. Others are not so legally suitable but have a personality. ... the partners always chose someone they know, and where they know what to expect.’³⁰

Therefore, deeply ingrained institutional, structural and cultural factors impact female careers in international arbitration against a backdrop of a lack of female partners in top arbitration practices and a lack of female arbitrators.

4.2 Discrimination, harassment and isolation

Many of the interviewees shared stories of harassment and discrimination. A practitioner talked about dealing with a male partner who undermined her at every step and actively tried to sabotage her career because he did not like the idea of her contradicting his opinions.³¹ She considered this kind of behaviour as explicitly gendered. She also talked about her lonely journey to the top of an international arbitration team as a partner. Another senior practitioner contextualised her experience as:

‘Well, I can only speak about my own experience, but at [firm name], the women were just not considered for promotion. Period. And actively discriminated against. As I said, a very laddish atmosphere. ... you were not part of the “in” crowd.’

Another senior practitioner shared her experience of being harassed by a male client early on in her career and how she considered it a rebuke for practising in a male-dominated field. Throughout the interview, she kept referring to this instance that happened over thirty years ago and how it profoundly impacted her career. She hinted at many similar instances that she had experienced over her thirty-five-year-long career.³²

²⁸Interviewee 10 (Male, Associate).

²⁹Interviewee 17 (Female, Independent Practitioner).

³⁰Interviewee 20 (Female, Senior Associate).

³¹Interviewee 3 (Female, Partner).

³²Interviewee 2 (Female, Partner).

Apart from all the stories of discrimination and harassment, because of their gender identities, the interviewees also talked about feeling isolated as female practitioners. A senior practitioner spoke about being the only female partner in her firm's international arbitration team. She felt that there were many instances in which she subconsciously tried to hide her 'femaleness' to fit in more and not attract attention to herself. She credited her seniority for her finally being comfortable enough to own up to being a female practitioner in a male-dominated environment.³³ One practitioner remarked how, as the only female partner at her firm, she is often forced to keep her thoughts to herself when her male colleagues make explicitly gendered comments during meetings. She talked about one such instance in which:

'Someone complained, "oh gosh, once so and so comes back from maternity leave, she is never got her mind focussed for the first six months". And, I remember sitting there thinking I actually do not agree with that, and I *actually* find that slightly offensive, but I did not say anything. But when you are the only woman in a whole room of men, people will say more macho things than they would if there were more women around.'³⁴

A junior female practitioner's comments on how a lack of female leadership affected her work environment were among the best examples of how female practitioners experienced isolation because of their gender identity. She noted that:

'I think it also impacts the way you behave in the team because for a very long time, especially when I joined, I was used to these white men leading the meetings and the women would always be silent or in the background. ... I felt like the men would take centre stage. I am not a very outspoken person by nature, so I would not be, contributing to the team meetings on my own anyway. So, you need that slight push but when you see other women also being silent you kind of rationalise internally and think it is fine that others are also not speaking. Maybe on an unconscious level but you get okay with that situation. And I think the lack of senior female role models really affects the way I perceive the team.'³⁵

All the interviewees remarked how they noticed the pyramid of female professionals in international arbitration – how, as young practitioners, their colleagues were almost always gender-balanced. This observation was made by practitioners at the senior level as well. All the senior female practitioners pointed out that there were more women around when they started their careers. It was only when they started climbing the ranks – it seems to be around the Senior Associate level in international arbitration – that they begin noticing the low number of women. This experience resonated with the counsel datasets in this research and the general statistical analyses of gender diversity in the legal profession³⁶ (Kay and Gorman, 2008). Irrespective of gender, all interviewees admitted to rarely working with female arbitrators. Even if they did work with female arbitrators, they noted that it was always the same few arbitrators, highlighting a small pool of elite female arbitrators. None of the interviewees mentioned working with a three-member female tribunal, while three-member male tribunals were the norm:

'Now, are there as many [female] arbitrators as male arbitrators in the field? Absolutely not. *Absolutely not.* I mean, I see all [male] panels, more than I would want to and also, there is

³³Interviewee 6 (Female, Partner).

³⁴Interviewee 5 (Female, Partner).

³⁵Interviewee 13 (Female, Associate).

³⁶As an example, the Solicitors Regulation Authority in the UK pegs the number of female solicitors at 49 per cent in the UK (<https://www.sra.org.uk/sra/equality-diversity/key-findings/diverse-legal-profession/#:~:text=Gender,the%20UK%20workforce%20are%20women>). But the number falls to 33 per cent at the Partner level, thus building a pyramid of gender diversity. A similar pattern can be observed in the US where, at the bottom of the pyramid, 48 per cent of lawyers are female and only 26 per cent of women are at the most senior levels (<https://www.mckinsey.com/~media/McKinsey/Featured%20Insights/Gender%20Equality/Women%20in%20law%20firms/Women-in-law-firms-final-103017.pdf>).

another thing which is an annoyance is that the women who are appointed as arbitrators are often the ones who are reappointed. So, there is not as much diversity within the [female] pool of arbitrators, if I may say [so]. ... yes, there are [female] arbitrators. I think there are many of them that are brilliant, and I see them and I [have] talked to them. Whether they are appointed as arbitrators is a different story.³⁷

What stood out the most was the ambiguity around whether gender had a role to play in these practitioner's experiences. Apart from evident resistance to the idea that gender had implications on their professional lives, many practitioners shared gendered interactions while also negating the impact of their gender identities. A salient example was of a junior practitioner³⁸ who talked about gender and its impact on her interactions with clients. First, she talked about not seeing her gender identity as a barrier to how clients perceived her. However, she relayed an occasion on which gender became a salient factor in an interaction with a client. She described the instance as:

'So on the last day, we were all celebrating the end of the hearing and we went out for dinner, and then the plan continued to drinks I felt that one of the clients was being a bit, I would not say inappropriate, but as a woman, you know, and at that point, I felt that it was just easier for me to call it a night and go back as opposed to confronting the situation.'

Similarly, many senior practitioners who were also arbitrators were reluctant to consider gender as a factor hindering their arbitrator experiences. Though they were hesitant to characterise an arbitrator's qualities into stereotypically masculine or feminine attributes, they recognised that it might be common to create such categories for the 'ideal' arbitrator and how female arbitrators might be falling short of meeting such expectations:

'I do not know if you want to call them more "male" qualities. But definitely, as soon as everybody walked into the hearing room, I had to be super professional. *Super firm*. Show [that] I am not the kind of person that takes any nonsense as an arbitrator. I do not know if its necessarily being more masculine [and] all of those things. But being quite tough. I guess showing that I am not a pushover. One might argue [that] not showing the "weaker" feminine qualities. But I don't think that's the way to look at it.'

Such discussions were an important example of the invisible-stigmatisation framework. While many practitioners were hesitant to compartmentalise an arbitrator's skills into masculine and feminine traits, they acknowledged that these could easily be stereotyped as such. Therefore, seeing the impact of gender on the way in which female arbitrators are perceived seemed straightforward. However, there was less clarity regarding the impact of gender identities on female careers. Instead, these female practitioners' elite position was assumed to have provided them with insulation from gendered expectations, which I now show is not necessarily accurate.

4.3 The motherhood penalty and role conflict as professional women

In its simplest form, the motherhood penalty is the wage gap between women who are mothers, non-mothers and men (Waldfogel, 1997). Research has established that discrimination against mothers results in employers considering them less competent and less committed to their jobs (Benard *et al.*, 2007; Benard and Correll, 2010). Their hiring prospects also take a hit (Correll *et al.*, 2007). Therefore, I wanted to understand the professional consequences of motherhood for female practitioners in this field of law. I was also interested in seeing how far their elite status in the professional hierarchy might protect them from the discrimination that mothers in professional settings generally endure. Moreover, empirical data posit that 'privilege has its price' in the form of a more considerable

³⁷Interviewee 9 (Female, Senior Associate).

³⁸Interviewee 16 (Female, Associate).

proportionate motherhood penalty for highly skilled (England *et al.*, 2016, p. 1181) and therefore elite women. In line with this, many senior practitioners shared moving accounts of bias and discrimination against them when they became mothers. A senior practitioner's account of being sidelined for partnership because of her motherhood decisions was the clearest example of this:

'Instead, they try to claim that there was a performance issue with my work and bear in mind, I have never been anything other than top rank. It was just a fabrication and it was what absolutely crushed me. Because say you work for 10 years, nobody has ever said anything. And, suddenly, they are saying, "Oh, no, we're going to put you up [for partnership] but just not this year because we're not convinced". That was demonstratively not true. ... even little things like, you come back after six months, and nobody walked in to say, "How are you, sit here", "Welcome back, how are you settling in?", or there is no email around the department saying, "[name]'s back". These tiny little things.'

It was not just the senior practitioners who saw the effects of discrimination due to motherhood. A junior practitioner's observations of motherhood impacting her colleague's career progression were a strong instance of even non-mothers seeing the professional implications of the motherhood penalty. It also seemed that motherhood brought up many gendered assumptions even for a well-qualified and elite set of practitioners. Furthermore, these assumptions flow from the top in an environment where male practitioners generally tend to be leaders:

'It is always the women taking this leave, and then the senior men in the team say that it is very hard to integrate senior female lawyers back into the team after they have been away for [several] months. And some of them come back for six months, and then they have a second child, and they are gone again for [few] months. So, the seniors say that it is a challenge for them to get people back into the team and to have them leading certain workstreams. I do not think that is entirely true; I think they need to be more proactive in encouraging women to come back and then encouraging [them] to take on senior leadership roles.'³⁹

Again, many practitioners were unwilling to link up the impact of motherhood on their gender identity. They were keener to accept the impact of motherhood on women's careers as a given and not something that was explicitly gender-driven. It reinforced a subtle stigmatisation process that has led many practitioners to believe that motherhood-related discrimination and the professional consequences of choosing to be a mother are neatly separable from their gender identities as female practitioners.

In international arbitration, mothers also experience role conflict (Stryker and Macke, 1978) between their professional roles and their motherhood responsibilities more than their male contemporaries do. None of the male interviewees discussed taking long paternity leaves or considering fatherhood as something that might have adverse consequences on their international arbitration careers. Instead, fatherhood can benefit male professionals (Correll *et al.*, 2007), whereas a female practitioner's experience of role conflict, post motherhood, was an illuminating instance of how it plays out in a professional's life:

'I had taken a year out for maternity leave and then returned part-time and just found that the entire working environment made it exceedingly difficult to handle both and to succeed at either. You have to just accept that you are going to be mediocre in both aspects of your life.'⁴⁰

On the other hand, most female interviewees, even those who were not mothers, extensively discussed their views on motherhood and how they perceived it to affect their professional prospects. One

³⁹Interviewee 13 (Female, Associate).

⁴⁰Interviewee 22 (Female, Associate).

practitioner's observation on stigmatisation operating as a complex interplay of biases against mothers managing their different roles, as elite international lawyers and mothers, was the perfect example of how their professional commitment often gets questioned:

'So in a way, she was just taking two hours off, and then reworking in the evenings and doing her hours and working really hard. ... I think there's a stigma if you leave early, for women, because [colleagues say], "Oh, you went to pick up the kids. So, you are not working, or you are not doing anything".'⁴¹

Many interviewees also attributed their decision to move out of certain law firms and sometimes law firms altogether to role conflict.⁴² A few also talked about being afraid of taking up flexible working arrangements, even though they were provided for by the firm. They considered it a potentially damaging career move, as they had seen their colleagues suffer professional consequences post motherhood. There is also support for this view in the broader literature on the legal profession (Thornton, 2016).

It seems that female practitioners were at the receiving end of discrimination as soon as they chose to become mothers. Additionally, their decision to take up flexible working arrangements or continuing full-time might have varying degrees of influence on their professional ascent. In international arbitration, the stigmatisation that motherhood brings with it gets exacerbated by structural and institutional frameworks in male-dominated workplaces, as I have already discussed.

The double stigmatisation of female practitioners and its various manifestations motivated me to explore the ways in which they have devised strategies to overcome this invisible and gendered barrier that they face in their professional lives. I was interested in understanding how they were minimising the effects of losing out on professional opportunities and how it fits in with their advocacy for gender equality.

5 From stigmatisation to strategies: female practitioners in international arbitration are breaking ground

While gender-based stigmatisation was invisible in international arbitration, female practitioners' strategies to minimise the effects of their gender identities on their careers were more visible. These strategies were interesting ways for female practitioners to reconcile their professional elitism with their gender identities while maintaining their advocacy for gender equality. Therefore, under this section, I explore the many strategies that female practitioners employ to mitigate the effects of their stigmatised and marginalised gender identities. These strategies fall under two broad categories: pushing back against institutional structures and barriers; and reconciling gendered identities to professional goals. These strategies also serve as a good case-study for challenging the lack of gender diversity in a professional field by the very actors who are most subject to it. It also seems that female practitioners have leveraged their elite position to shake up the existing professional and cultural boundaries in international arbitration. It has helped them to contextualise the gender stigma that they experience into a driving force behind their gender-equality advocacy.

5.1 Advocating for gender equality

The ERA Pledge, spearheaded by top female practitioners and firms in international arbitration, was an interesting example of translating gender-diversity ideals into practice on an industry level. The Pledge signatories had undertaken to improve the number of female arbitrators to achieve equal representation by including more female arbitrators on their appointment shortlists. While there was scepticism over the effectiveness of doing this, what seems to have happened is that, now, practitioners consciously think

⁴¹Interviewee 9 (Female, Senior Associate).

⁴²There were four female practitioners who discussed changing their career paths and restructuring their practices to accommodate role conflicts.

of female arbitrators for potential appointments. This conscious push to think of more female arbitrators as potential appointees could be an effective way to normalise appointing more female arbitrators, where the primary method of arbitrator appointments is still opaque:

‘There is a conscious effort to ensure that every recommendation that we make will have, if not an equal representation, an adequate representation of women Now how much of that translates into actual appointments is difficult to gauge, and maybe it so happens that the [appointments] end up being male. I do not know if there are statistics in that regard. But [we] are, definitely making the representation.’⁴³

There have also been many collective efforts to advocate for better gender diversity. Recently, ArbitralWomen and many of its members started calling out all-male webinars and refused to promote events that did not have any women as panellists. Practitioners have also called out webinar ‘manels’ and have argued for their extinction (Greenwood and Jhangiani, 2020). There have also been other efforts calling out international investment arbitration panels for not including enough women (Simpson, 2020). The interviewees’ general perception was that these efforts yielded results in a limited context by bringing the gender-equality issue to everyone’s attention.

The senior practitioners consistently brought up working towards building platforms for future generations of female professionals. Because of their seniority, they consider themselves well placed for creating platforms exclusively for junior female practitioners. It was driven by their experience of a lack of guidance and mentorship when they entered the profession. For instance, an interviewee talked about ‘Mute Off Thursdays’, an initiative designed for senior female associates to interact with their senior female colleagues in international arbitration.⁴⁴ Another spoke about specifically promoting female-centric conference panels over her professional networks.⁴⁵ Building these platforms was seen as a gap-filling initiative by the senior practitioners, as they did not have access to a vast network of female professionals early on in their careers. These initiatives have also developed out of a need to create spaces designed for and by female international arbitration practitioners.

5.2 *Becoming role models and helping junior female practitioners*

A senior practitioner succinctly put the importance of role models as ‘you can’t be what you can’t see’.⁴⁶ She talked about how lonely it was to climb the ranks, look around and not see more women. Currently, she is the only female partner in her firm’s international arbitration team. Many more senior practitioners expressed similar sentiments, as they were also lone women in male-dominated work environments. It was this feeling of isolation that prompted them to take their role as senior practitioners seriously. They shared that they barely had any women to look up to when they were climbing the ranks. Today, when they are at the top, they take that position seriously because they know that junior women are looking up to them for motivation. This was where being role models tied up neatly with their efforts to create better female representation in international arbitration. These senior female professionals consider it essential to work towards this goal because they are now well placed to push for parity. Many senior practitioners reflected on other female practitioners doing the same for them. They credited other senior female practitioners for encouraging them and giving them professional opportunities.⁴⁷

Meanwhile, the junior female practitioners often contrasted their work environments with no senior female practitioners with firms where there were female role models. It seemed to substantially impact how they saw their career paths, motivation to work and long-term prospects with the firm:

⁴³Interviewee 10 (Male, Associate).

⁴⁴MacGrath (2020).

⁴⁵Interviewee 6 (Female, Independent Practitioner).

⁴⁶Interviewee 5 (Female, Partner).

⁴⁷Interviewee 3 (Female, Partner) talked extensively about the encouragement that she received from senior female practitioners when she moved to a new jurisdiction.

‘We see the numbers of women dwindle at senior levels. They are obviously leaving to go to different professions or leaving [legal practice] all together. And maybe a lack of role models does encourage women to leave. Whereas if there were positive role models, who showed how it was possible to stay in the profession and perhaps be authentic to themselves and have a balance I am sure that would make a difference. I think role models are really, *really* important.’

It seems that gendered experiences were the primary motivation behind female practitioners rallying together and shaking up the existing gendered institutions within international arbitration.

5.3 Sidestepping ‘golfing and bars’

The gendered environments within international arbitration and the inability to engage with clients in specific environments where gender was a barrier came up consistently across the interviews. Golfing was an example of an activity that could be a gender barrier. Female practitioners talked about being unable to engage in golfing or late-night drinking or visiting certain establishments, as these could be uncomfortable situations for them. Thus, they had to find ways to cross such gender barriers. A junior interviewee sketched out one such strategy:

‘for instance, [when] you have an invitation to go for drinks or dinner just choose lunch instead. I know it [sounds] silly but a person is less likely to get wasted at lunch and try and make an inappropriate pass as opposed to doing that at dinner. Or if you feel that a client is showing too much interest or trying to have only private conversations with you about the case, then try and include more of your team members so as to not to give the wrong message to the client.’⁴⁸

Most female practitioners in international arbitration talked about focusing on increasing professional visibility to overcome these gendered barriers. One strategy was speaking at international arbitration conferences. Most of the practitioners interviewed were regular speakers at conferences and now webinars. Many discussed how important it was to increase female visibility at these prestigious conferences attended by potential clients and colleagues who have a say over arbitral appointments. Furthermore, these conferences are considered fertile grounds to showcase your specialisation as a practitioner.

Even though the practitioners believed that visibility needs to be built irrespective of gender in international arbitration, the prominent role of visibility building specifically to cross the gendered networking barrier cannot be ignored. The male interviewees also supported the idea of building visibility in the international arbitration community, and there were not many gender-specific differences on this point. However, to an extent, it seemed like the female practitioners considered visibility building as their primary tool to gain clients in a male-dominated field where being part of a small circle of practitioners, most of whom are male, is a necessity. Their stigmatisation for not fulfilling the expectations associated with an ideal arbitrator seemed to have made them more reliant on visibility building over their male colleagues. It was also their attempt to overcome the difficulties associated with male-centric networking in a male-dominated professional field. Therefore, visibility building for female professionals was an important strategy that helped them to navigate their careers and the gendered barriers that they face in their professional lives.

5.4 Gently pushing back against institutions and structures

The gender-diversity initiatives in international arbitration are designed to challenge the institutional and cultural factors that influence female practitioners’ careers. They also seem to be a direct challenge to the masculine image of an ideal arbitrator. Initiatives like the ERA Pledge are geared towards

⁴⁸Interviewee 16 (Female, Associate).

breaking the mould of who could be an ideal arbitrator by making practitioners think about a wider pool of potential arbitrators. There seem to be two simultaneous challenges to these institutional structures. One is the very public, open and collective push to create better gender parity in arbitrator appointments, for instance, the ERA Pledge. The second is an individual-driven and hidden push within law-firm structures. The interviewees talked about their respective efforts to change things. Many of these sentiments were driven by their experiences, but social justice motivations were also a dominant idea. As a practitioner put it:

‘I am a big believer in positive discrimination, and I think ... it is an unequal world, and I hate it when people just talk about it; you have to do something. So, it is a trend but it’s going to take a long time to manifest [into gender equality].’

Apart from engaging in gender-equality initiatives as individuals, female practitioners also talked about gently pushing back against firm policies. A senior practitioner called going part-time for a few years the best decision of her life because it allowed her to balance her motherhood responsibilities and her job that she was passionate about.⁴⁹ She recalled that there was a pushback from the firm when she asked for such an arrangement. She also talked about her part-time arrangement setting a precedent at her firm and how that has resulted in her junior colleagues availing of similar arrangements and successfully coming back to work post motherhood. Another senior practitioner talked about her specific strategy to reconcile her part-time practice with minimum disruption to her overall role in the firm.⁵⁰ She discussed how she attended client meetings while on maternity leave and made sure that her team never left her out of the loop. Therefore, many female practitioners are consistently renegotiating the boundaries of institutional structures and practice fields by leveraging their elite professional position.

6 Conclusion: the dichotomous relationship of gender equality and stigmatisation

The invisible stigmatisation of female practitioners in international arbitration brings forth a different understanding of how gender inequality as a process can manifest across social institutions. Understanding the tension between advocating for gender equality and experiencing invisible inequality can be a handy tool to develop frameworks around the interaction of gender and professional identities in international legal professions. The invisible stigmatising force that exists and hinders female practitioners’ ascent in elite legal professions also reveals how gender inequality evolves in various forms in diversity-conscious workplaces and fields. While bringing out this stigmatisation that female practitioners experience in international arbitration, I have highlighted how structural and institutional frameworks are at play and deserve closer scrutiny.

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References

- Acker J (1990) Hierarchies, jobs, bodies: a theory of gendered organisations. *Gender and Society* 4, 139–158.
 Ainaly SC, Becker G and Coleman LM (eds) (1986) *The Dilemma of Difference: A Multidisciplinary View of Stigma*. New York: Plenum Press.

⁴⁹Interviewee 5 (Female, Partner).

⁵⁰Interviewee 3 (Female, Partner).

- Benard S and Correll SJ** (2010) Normative discrimination and the motherhood penalty. *Gender and Society* **24**, 616–646.
- Benard S, Paik I and Correll SJ** (2007) Cognitive bias and the motherhood penalty. *Hastings Law Journal* **59**, 359–1388.
- Best DL and Puzio AR** (2019) Gender and culture. In Matsumoto D and Hwang HC (eds), *The Handbook of Culture and Psychology*. Oxford: Oxford Scholarship Online, pp. 1–32.
- Bond S and Sales J** (2001) Household work in the U.K.: an analysis of the British household panel survey 1994. *Work, Employment & Society* **15**, 233–250.
- Chappell L** (2010) Gender and judging at the International Criminal Court. *Politics and Gender* **6**, 484–495.
- Coleman C** (2016) How international is international investment dispute resolution? Exploring party incentives to expand ICSID arbitrator demographics. *Transnational Law & Contemporary Problems* **26**, 121–147.
- Correll SJ, Benard S and Paik I** (2007) Getting a job: is there a motherhood penalty? *American Journal of Sociology* **112**, 1297–1338.
- Currier A** (2012) *Out in Africa: LGBT Organizing in Namibia and South Africa*. Minneapolis, MN: University of Minnesota Press.
- Dawuni JJ and Kuenyehia A** (eds) (2017) *International Courts and the African Woman Judge: Unveiled Narratives*. London: Routledge.
- Dezalay Y and Garth B** (1996) *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*. Chicago: University of Chicago Press.
- England P et al.** (2016) Do highly paid, highly skilled women experience the largest motherhood penalty? *American Sociological Review* **81**, 1161–1189.
- Flood J** (1996) Megalawyering in the global order: the cultural, social and economic transformation of global legal practice. *International Journal of the Legal Profession* **3**, 169–214.
- Franck SD et al.** (2015) The diversity challenge: exploring the ‘invisible college’ of international arbitration. *Columbia Journal of Transnational Law* **53**, 429–506.
- Fuchs Epstein C** (1981) *Women in Law*. New York: Basic Books, Inc., Publishers.
- Fuchs Epstein C et al.** (1995) Glass ceilings and open doors: women’s advancement in the legal profession. *Fordham Law Review* **64**, 306–450.
- Goffman E** (1963) *Stigma: Notes on the Management of Spoiled Identity*. Englewood Cliffs, NJ: Prentice-Hall, Inc.
- Greenwood L** (2017) Tipping the balance – diversity and inclusion in international arbitration. *Arbitration International* **33**, 99–108.
- Greenwood L and Baker CM** (2012) Getting a better balance on international arbitration tribunals. *Arbitration International* **28**, 653–668.
- Greenwood L and Baker CM** (2015) Is the balance getting better? An update on the issue of gender diversity in international arbitration. *Arbitration International* **31**, 413–423.
- Greenwood L and Jhangiani S** (2020) Women’s voices matter: the case for the extinction of manels. *Kluwer Arbitration Blog*. Available at: <http://arbitrationblog.kluwerarbitration.com/2020/09/22/womens-voices-matter-the-case-for-the-extinction-of-manels/> (accessed 8 October 2020).
- Grossman N** (2016a) Achieving sex-representative international court benches. *American Journal of International Law* **110**, 82–95.
- Grossman N** (2016b) Shattering the glass ceiling in international adjudication. *Virginia Journal of International Law* **56**, 339–406.
- Hildebrandt T and Chua LJ** (2017) Negotiating in/visibility: the political economy of lesbian activism and rights advocacy. *Development and Change* **48**, 639–662.
- Kay F and Gorman E** (2008) Women in the legal profession. *Annual Review of Law and Social Science* **4**, 299–332.
- Kay F and Hagan J** (1995) *Gender in Practice: A Study of Lawyer’s Lives*. Oxford: Oxford University Press.
- Langford M, Behn D and Lie RH** (2017) The revolving door in international investment arbitration. *Journal of International Economic Law* **20**, 301–331.
- Lemaire GC** (2015) Achieving gender diversity for future generations in appointments to international commercial arbitration tribunals – a focus on Scotland. *Transnational Dispute Management* published online July 2016, www.transnational-dispute-management.com/article.asp?key=2233 (accessed 14 June 2021).
- Link BG and Phelan JC** (2001) Conceptualizing stigma. *Annual Review of Sociology* **27**, 363–385.
- MacGrath D** (2020) The launch of Mute Off Thursdays: virtual networking and knowledge-exchange for women in arbitration. *ArbitralWomen*. Available at: <https://www.arbitralwomen.org/the-launch-of-mute-off-thursdays-virtual-networking-and-knowledge-exchange-for-women-in-arbitration/> (accessed 14 June 2021).
- Michelson E** (2013) Women in the legal profession, 1970–2010: a study of the global supply of lawyers. *Indiana Journal of Global Legal Studies* **20**, 1071–1137.
- Oger-Gross E** (2015) Gravititas: persuasion and legitimacy. *Transnational Dispute Management* published online July 2016, www.transnational-dispute-management.com/article.asp?key=2233 (accessed 14 June 2021).
- Puig S** (2014) Social capital in the arbitration market. *European Journal of International Law* **25**, 387–424.

- Queen Mary University of London and White & Case** (2018) *International Arbitration Survey: The Evolution of International Arbitration*. London: QMUL. Available at <http://www.arbitration.qmul.ac.uk/research/2018/> (accessed 9 June 2020).
- Rogers C** (2014) *Ethics in International Arbitration*. Oxford: Oxford University Press.
- Simpson DK** (2020) *Dr. Katherine Simpson Makes Submission on Under-appointment of Women to the CETA List of Arbitrators*, 33 *Bedford Row*. Available at: <https://www.33bedfordrow.co.uk/insights/articles/dr-katherine-simpson-makes-submission-on-under-appointment-of-women-to-the-ceta-list-of-arbitrators> (accessed 25 May 2020).
- Stryker S and Macke AS** (1978) Status inconsistency and role conflict. *Annual Review of Sociology* 4, 57–90.
- Thornton M** (2016) Work/life or work/work? Corporate legal practice in the twenty-first century. *International Journal of the Legal Profession* 23, 13–39.
- Waldfoegel J** (1997) The effect of children on women's wages. *American Sociological Review* 62, 209–217.