

Equal representation in international arbitration

Rashda Rana SC, 39 Essex Chambers

Barrister, Arbitrator & Mediator

Rashda is an international arbitration practitioner and arbitrator with 26 years' of broad ranging experience in transactional, litigation and ADR, across a variety of areas of law and jurisdictions. Rashda also teaches international commercial arbitration and has published widely on the subject. Rashda is an active member of a number of significant industry associations. She is the current President of the ArbitralWomen; former President of CIArb (Australia) and an experienced CEDR accredited mediator. She has been appointed in numerous international commercial arbitrations, both institutional and ad hoc.

For many years now, a key objective of many organisations, and the motivation behind a number of government initiatives, has been the promotion and improvement in the role and position of women in the dispute resolution community around the world. To date, those objectives have been pursued on a piece-meal basis, without following through on results or any meaningful analysis of their success or failure. Without the necessary concrete steps and consistent and regular assessment of their utility, programmes designed to improve the role of women in the law have often had the opposite effect. Women in the law generally, and in dispute resolution more particularly, continue to leave the profession and/or fail to reach their true potential as a result of gender inequality.

In order to meet this challenge, for some years now there have been in place various diversity awareness programs in many organisations. However, they do not seem to have resulted in more diverse organisations or institutions (including law firms). The problem that has more recently been identified is that most standard diversity programs weren't taking into account *all* of peoples' responses, all of the re-actions people have to information and stimuli being processed by the brain on an intuitive, unconscious level.

Improving diversity (hence achieving or striving for equality) now lies in recognizing and managing

hidden or implicit biases. These biases are our "mental shortcuts based on social norms and stereotypes". Over the last three decades, our understanding of unconscious bias has evolved considerably and is now well understood.

These developments in understanding unconscious bias indicate that, to some extent, the problem of continuing inequality lies in deep-rooted cultural perceptions and misperceptions. In every field of endeavour, unconscious bias is evident and perpetuated. A substantial amount of research has been published demonstrating the impact of unconscious bias in various arenas and how bias may be contributing to disparities in various industries.

Our brains are hard wired to rapidly categorise people instinctively, and we use the most obvious and visible categories to do this: age, body weight, physical attractiveness, skin colour, gender and disability. But we use many other less visible dimensions such as accent, social background, sexual orientation, nationality, religion, education, and even job title or organisational department. These categories automatically assign a whole suite of unconscious characteristics, good and bad, to anyone categorised as being from that group. They are automatic and unconscious biases, over which we have little control, and they influence everyone, no matter how unbiased we think we may be.

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So, your background, personal experiences, societal stereotypes and cultural context can have an impact on your decisions and actions without you realising. Implicit or unconscious bias happens by our brains making incredibly quick judgments and assessments of people and situations without us realising. We are unlikely to be aware of these views and opinions, or be aware of their full impact and implications.

Unconscious bias can also be caused by conditional learning. For example, if a person has a bad experience with someone they categorize as belonging to a particular group, they often associate that entire group with that bad experience. From a survival point of view, this mental grouping into good or bad helped the brain make quick decisions about what was safe or not safe and what was appropriate or not appropriate. It was a developed survival mechanism hard-wired into our brains — and this makes it far more difficult to eliminate or minimize than originally thought. Luckily, though, the mind and the unconscious within it are malleable and can, therefore, be changed or controlled.

There are a few common known unconscious biases that directly impact the workplace, what we do, how we work and how we live. They include:

1. **Affinity bias:** The tendency to warm to people like ourselves. This means that people tend to choose to work with someone of the same nationality, gender, race, and age. Because it feels more comfortable to be with people who appear similar to us, we intuitively create uniform groups. The problem is that uniform groups produce uniform ideas.
2. **Halo effect:** The tendency to think everything about a person is good because you like that person and to assume things you have not observed. The warm emotion we feel toward a person, place, or thing predisposes us to liking everything about that person, place, or thing. These good first impressions tend to positively colour later negative impressions and conversely, negative first impressions can negatively colour or persist despite later positive impressions.
3. **Perception bias:** The tendency to form stereotypes and assumptions about certain groups that make it impossible to make an objective judgement about

members of those groups. Implicit stereotypes (sometimes referred to as “subconscious bias”) refer to the association of groups of people with certain traits or activities. Without our being aware of it, these associations can powerfully influence decisions such as which candidate to hire. Bias is mostly applied where it is most visible: race, gender, age.

4. **Confirmation bias:** The tendency for people to seek information that confirms pre-existing beliefs or assumptions. To make sense of the world we create coherence from events. We make associations between events and regular occurrences. We assume regularity and dislike disorder. A common example is viewing or reading news articles which confirm what you already believe to be the case and challenging those which put a dissonant version to your existing views.
5. **Group think:** This bias occurs when people try too hard to fit into a particular group by mimicking others or holding back thoughts and opinions which contradict the group view. This causes them to lose part of their identities and causes organizations to lose out on creativity and innovation. Homogenous groups produce homogenous results: a diversified workforce drives greater innovation and business growth.

If people are aware of their hidden biases, they can monitor and attempt to ameliorate hidden attitudes before they are expressed through behaviour. This compensation can include attention to language, body language and to the stigmatization felt by target groups. Recognizing that the problem is in many others — as well as in ourselves — should motivate us all to try both to understand and to act.

In order to progress in society, in order to bring about the changes that are needed, we need to change our minds, deliberately and actively by being alert to and aware of our biases and acting to control them. When considering strategies to address unconscious bias one must consider both individual and institutional strategies. Institutions should:

- ♦ Develop concrete, objective indicators & outcomes for hiring, evaluation, and promotion to reduce standard stereotypes;

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- ♦ Develop standardized criteria to assess the impact of individual contributions in performance evaluations;
- ♦ Develop and utilize structured interviews and develop objective evaluation criteria for hiring;
- ♦ Provide unconscious bias training workshops for all constituents.

Individual strategies to address unconscious bias include:

- ♦ Promoting self-awareness: recognizing one's biases is the first step (by taking an Implicit Association Test);
- ♦ Understanding the nature of bias is also essential. The strategy of categorization that gives rise to unconscious bias is a normal aspect of human cognition. Understanding this important concept can help individuals approach their own biases in a more informed and open way;
- ♦ Opportunities to have discussions, with others (especially those from socially dissimilar groups) can also be helpful. Sharing your biases can help others feel more secure about exploring their own biases. It is important to have these conversations in a safe space-individuals must be open to alternative perspectives and viewpoints. This means developing the vocabulary for that discussion to take place;
- ♦ Facilitated discussions and training sessions promoting *bias literacy* utilizing the concepts and techniques have been proven effective in minimizing bias. Evidence suggests that providing unconscious bias training for faculty members reduces the impact of bias in the workplace.

There are many initiatives underway around the world to encourage the shift to equality, examples of this abound: the Equal Representation in Arbitration Pledge; the HeForShe Campaign, the GQual Campaign and various other UN Women Campaigns to address inequality in tribunals, the judiciary and in the law more generally. Many organisations *say* they are committed to equality and diversity with the following types of proclamation, heralded as some great badge of honour for the institution/organisation:

"The [Insert Organisation Name here] values diversity and is committed to equality of opportunity."

or

"We are committed to ensuring all selection processes are fair and that all applicants receive equal treatment."

However, saying that this is what you do or value, does not always translate into action. There is a great deal of lip service to the quotes above but how do we know that this is actually being implemented actively? If it is being done actively then why do the figures appear so woeful? The figures are not improving because women are not getting those roles, which are supposedly the subject of equality and diversity proclamations.

The tide seems to be shifting ever so slowly. Much more can and needs to be done. The global dispute resolution community needs to take steps to eradicate for the benefit of all, and in the name of justice, the inequality of treatment prevalent throughout the dispute resolution world. Changes are clearly needed in the legal profession and even small steps taken daily will eventually lead to the goal of equality/parity between men and women. It is a goal worth striving for since without equality women are unable to contribute to the work of the law as they should and society is failing to benefit from the full potential of all those who practice law.

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