

IN CONVERSATION WITH MS. JYOTI A. SINGH

Editor's Note: Ms Jyoti A Singh is an independent legal practitioner and appears before the High Court, Supreme Court and other tribunals. She has been engaged in the area of distressed space, dispute resolution and corporate advisory for two decades, and she appears before the courts and tribunals in and outside Mumbai for financial institutions, corporates and HNI clients from various business sectors.

Editorial Board (EB): *How would you like to introduce yourself to our readers? Can you narrate, in brief, your journey as a lawyer following your graduation? How did you find your calling in this specific area of law in which you practice?*

Jyoti A Singh (JS): My name is Jyoti. I would introduce myself as a law enthusiast: The reason being I don't know what I would be doing if not for the law.

Following my graduation back in 2000, I started my career right from the bottom at the lower court. This strengthened my basics and was a great experience. Then I moved to law firm practice from 2005, where I was mainly focused on litigation and arbitration with a focus on distressed assets, white-collar crime and contractual disputes. In 2019, I decided to go independent and started my office. My father, who is also a practising lawyer, is an inspiration for me.

The journey, which started in 2000, has been a very enriching experience, and everyday has been a stepping stone to success and learning something new.

EB: *How do you find the transition from practising at a firm to having your own independent chamber?*

JS: I cannot say that I have suddenly transitioned into an independent practitioner. I have been associated with law firms since 2005. Even there, I was independently running my practice area. It's only that I don't find other partners around me to brainstorm on various aspects of law,

However, the independent practice has been, in a way, enriching. Since it's my own office, I have the freedom to explore and reinvent myself.

EB: *What are some key skills which are very pertinent and which every lawyer needs to hone in order to succeed in Dispute Resolution?*

JS: If I have to list them, the list would reach the sky. However, I feel some of the key skills would be:

- a. Being sincere. It'll help you find your own path.
- b. There does not exist any shortcut: Hard work is the only way in this field. When I say hard work, it means "smart" hard work. Spending 10 hours on a particular brief is not hard work but would imply lethargy and inefficiency.
- c. Be humble in your approach: I always believe that learning is mutual in this field. For instance, the younger generation knows more about technology and how to use it to enhance legal research, whereas the older advocates have broad practical experience. Both should have an understanding and humility to learn from each other.
- d. Be ready to do any work: No work is small or of less value. Every small work you do imbibes some learning point in you.
- e. Be transparent when you're working: Even if it is a very simple question, it's important to know clearly what you are working on. If you don't know, then ask your seniors. It doesn't hurt to say you don't know something, and it really shows that you want to learn and excel.
- f. Always do your own legal research and don't blindly follow what others are saying or doing.
- g. Last but not least, something which I learnt was that never try to compete with others. We all have our own niche. Try to compete with yourself and try to be better than yourself every day. The sky is the limit.

EB: *Given that arbitration is an important mechanism to resolve disputes, what is your opinion on the court's power to restrain arbitration proceedings in the form of an anti-arbitration injunction?*

JS: There have been a lot of judgments like *Dr. Bina Modi v. Lalit Kumar Modi & Ors.* reported in 2020 SCC OnLine Del 1678, and other similar cases which have dealt with this issue. In my view, the sanctity of the A&C Act should be respected by the court, and it can be seen that courts have indeed respected the sanctity of the tribunals. Everybody understands that the reasons why people resort to arbitration include speedy resolution, party autonomy, cost-effectiveness, etc.

I believe that one cannot oust the court's jurisdiction. However, in the spirit of arbitration, the courts should be very restrictive in interfering and should preferably leave it to the tribunal to decide the jurisdiction and arbitrability of the matters. Although when there are exceptional circumstances such as the agreement being null and void, the court should interfere. I have noticed that Indian courts have taken cognizance of this fact and are understanding and adapting to it. On a practical note, I am happy to observe that the courts in India haven't been misusing the power they get by granting unnecessary anti-arbitration injunctions.

EB: *What do you feel about the value of concurring and dissenting opinions in arbitral*

proceedings?

JS: At an international level, dissenting opinion is called ‘opinion in a legal vacuum’. It doesn’t have any value. Even in Indian jurisprudence, it is never considered an award. Recently, in *Ssangyong Engineering vs National Highways Authority of India* reported in AIR 2019 SC 5041, in order to do complete justice between the parties, the Hon’ble Supreme Court invoked Article 142 of the Constitution of India and upheld the minority award. However, as per the law under A&C Act, the minority decision cannot hold any legal sanctity. Thus, in the absence of any statutory power to uphold minority decision, Hon’ble Supreme Court would need to come to the aid of parties in exceptional circumstances by invoking Article 142.

EB: *Today, there are too many technical and strategic arbitrator challenges. On one side, such challenges help to ensure the parties get a fair hearing, but on the other, it drags the proceeding. What is your perspective on arbitrator challenges the way they are made in the Indian context? Are there any pressing concerns upon which the statutes and courts are silent?*

JS: Specifically on any contextual issue, I don’t have any view. But the bigger challenge is that the matter gets lagged in courts because of such challenges. While a right to arbitrator challenge cannot be taken away from a party, there also needs to be a strict time frame prescribed when such challenges are put forth. If with such a mechanism, courts follow the sanctity of arbitration procedure, we can expect the courts to lay down consistent jurisprudence in this area. There are assignments given in courts where there is an arbitration judge who is also burdened with other assignments. Though the law is settled where the courts are clear that they should not interfere, some or other judgment comes that deviates from this position. It is important that a dedicated bench should be established to deal with such issues with speed, and the sanctity of arbitral procedure should be maintained.

EB: *With the Arbitration and Conciliation (Amendment) Ordinance, 2020, parties can now seek an unconditional stay on the arbitral award when on prima facie determination, the award or the contract itself is induced by fraud or corruption. What is your view are the practical implications of this amendment, considering that such a prima facie determination ought to be made by the arbitral tribunal itself?*

JS: The pressing concern which I observe is how will you determine fraud or corruption ‘prima facie’? You cannot. You need to go in-depth to prove the occurrence of such offences. The required burden for such offences is generally very high, hence cannot be established on a prima facie basis. So the practical challenge I see is, how would courts determine what ‘prima facie’ means

in this regard at the stage of granting a stay? Not defining this term would lead to instances where the accused would get an opportunity to slip this word everywhere as a challenge under section 34 of the A&C Act. As per the 2015 amendment to the A&C Act, a stay has to be conditional. Practically, we will have to see how the courts will infer and interpret the word 'prima facie'. Another question is what will happen in case the party challenging award did not raise the questions of fraud or corruption before the arbitral tribunal. I hope this doesn't take years to settle, although it has been seen that Supreme Court is acting quickly and bringing clarity and finality to ambiguous laws.

EB: *Many civil law countries have a remedy of adapting the contract, in the sense of revising certain terms in the face of extreme onus/ commercial hardship in fulfilling obligations by one party. In the wake of COVID-19 and its fallout on commerce, do you think that amending the Contract Act and providing for adaptation is a favourable path for India?*

JS: I feel that the Indian Contract Act is self-sufficient. There is no need to amend it. The concept of *force majeure*, which was highly debated when COVID-19 emerged, should have been included in contracts. I feel if parties are wise enough to agree on the occurrence of some exceptional circumstances while drafting the agreement *inter se* them, it'll take care of all such situations. Obviously, a pandemic cannot be foreseen, but it's not the situation where we are facing this for the first time. There have been instances where we were hit by such pandemics earlier. The problem is, when we are drafting our contracts, we don't really take care of such clauses. These are the kind of clauses that are slipped into the contract at the last minute without much thought. So, proper drafting is the key here. The takeaway here is that not all change can or must be sought in statutes but must be made in the practice of drafting the contracts as and when possible.

EB: *What do you think the future of arbitration in India looks like? And what changes or improvements have to be made in order for India to become a fore frontier in international arbitral proceedings?*

JS: I am very positive about the future of arbitration in India. Moving towards institutionalized arbitration is the key. The report of the High-Level Committee to Review the Institutionalization of the Arbitration Mechanism in India, chaired by Justice B. N. Srikrishna (Retd. Judge, Supreme Court of India), has key suggestions. Additionally, efforts can be made to have a separate Arbitration Bar. Foreign lawyers should be welcomed to jointly work on international arbitral proceedings.

It would be good if we could have a multi-tier dispute resolution process where every contract

says that if any dispute arises, it shall go *firstly* through mediation; *secondly* through conciliation; *thirdly* through arbitration. This has to be incorporated in the contracts themselves.

EB: *Do you think the multi-tier dispute resolution clause has to be made compulsory?*

JS: Courts have often asked parties to first try resolving matters within themselves. And when these are made compulsory, it saves a lot of legal costs. So, according to me, this process has to be followed. Not all disputes have to be dragged directly to courts or arbitration. There can be informal deliberations, negotiations, conciliations, etc., and if things do not go well, then the matter can be taken to arbitration or court.

EB: *For a person interested in pursuing arbitration/litigation as a career, what would be your suggestion as to how one should lay the groundwork to begin their career? What kind of groundwork did you do to set yourself up? Do you have any advice for the young graduates who are coming to the market in the post COVID Scenario?*

JS: So, in my first answer, when I said to be sincere, it should be observed in all aspects. You shouldn't just read the law but also follow the law. Further, you need to develop the habit of keeping yourself updated with legal developments. Reading is integral.

You can know your calling only when you work on the ground. So, intern in different areas, which will give you wide exposure and experience.

Don't be deterred by thinking that the job market is weak. Increasingly, lawyers are needed everywhere. So buck up and don't stay idle. Keep working and learning the ground. Keep in mind that no learning goes waste. I'll share a personal experience. One of my friends asked my help to research some law points. My team and I researched and sent the work to her. My team asked why we were doing this since it does not relate to our work. I just told them learning doesn't go waste. And surprisingly, we got a very similar work two months later wherein the research we did came to our rescue. So you never know when what might come in handy.