BETWEEN CONFIDENTIALITY AND ACCOUNTABILITY: REASSESSING TRANSPARENCY IN COMMERCIAL ARBITRATION

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ABSTRACT

As international commercial arbitration continues to expand, particularly in disputes involving public contracts, State owned enterprises and regulated industries, it faces a recurring challenge: how to balance the long-standing expectation of confidentiality with the growing call for transparency needed to maintain confidence in the arbitral system. Confidentiality has traditionally been treated as an implied feature of arbitration, valued for protecting sensitive business information and preserving commercial relationships. Yet, with arbitration now dealing with increasingly complex and high impact matters, courts, legislators and arbitral institutions have begun questioning whether too much secrecy may limit oversight, create uncertainty or weaken trust in the process.

This paper takes a comparative look at how different jurisdictions and arbitral institutions address this tension. It examines approaches in common law systems such as the UK, Singapore and the US, statutory models like those in India and Norway, and the evolving practices of institutions including the ICC, LCIA, SIAC, ICSID and the UNCITRAL Transparency framework. Key developments such as the duty of disclosure highlighted in Halliburton, the review standard shaped by decisions like Saw Pipes and the move toward greater openness under UNCITRAL and ICSID rules illustrate how the arbitral community is trying to strike a balance between procedural integrity and commercial privacy. Through these examples, the paper argues for a more calibrated model of transparency in commercial arbitration, one that protects sensitive information while promoting fairness, predictability and confidence in the process. It concludes by recommending practical reforms such as publishing anonymized awards in significant disputes, codifying disclosure obligations for arbitrators and harmonizing confidentiality exceptions across leading arbitral rules.

Keywords: arbitration, confidentiality, accountability, UNCITRAL, ICSID, Comparative Arbitration Law; Arbitral Legitimacy; Public Interest; Institutional Arbitration.

Introduction

Commercial arbitration has long been valued as a private, efficient and neutral way of resolving complex business disputes. Its appeal rests largely on the flexibility it offers and the expectation of confidentiality, which allows parties to protect sensitive commercial information and maintain important business relationships. As cross border commerce grows and governments participate more actively in commercial activity, arbitration is increasingly used to resolve disputes involving public contracts, procurement processes, infrastructure projects and natural resource agreements, all of which carry financial and regulatory implications that reach far beyond the parties themselves.

In this evolving environment, the traditional assumption of complete confidentiality faces new pressures. These pressures arise not from constitutional considerations but from the need to maintain procedural integrity, market confidence and the broader legitimacy of arbitration as a nonjudicial dispute resolution mechanism. When disputes involve State entities or public funds, excessive secrecy can raise questions about fairness, predictability and the reliability of arbitral outcomes, especially once awards come before national courts where openness is the norm. At the same time, too much transparency risks eroding the very qualities that make arbitration attractive, such as privacy, procedural flexibility and party autonomy.

As a result, modern commercial arbitration is in a period of adjustment, seeking to balance its private law character with growing expectations for a degree of openness. The challenge lies in finding an approach that preserves commercial efficiency and confidentiality while still ensuring that arbitration remains a credible, trustworthy and effective method for resolving the increasingly complex disputes of a globalized economy.

Research Problem

The central problem addressed in this study is the conflict between the traditional expectation of confidentiality in commercial arbitration and the growing demand for transparency required to maintain confidence in the arbitral system.

- **The Context**: Arbitration is expanding into disputes involving public contracts, state-owned enterprises, and regulated industries. These disputes carry financial and regulatory implications that extend beyond the private parties involved.

• **The Conflict**: While confidentiality protects sensitive business information and relationships, excessive secrecy in high-impact matters creates a "black box" that can limit oversight, conceal misconduct, and weaken public trust in the process.

• **The Gap**: There is a lack of consensus on how to balance these competing interests, with jurisdictions varying wildly from "implied confidentiality" (UK) to "non-confidentiality by default" (Norway).

Research Questions

This study seeks to answer the following questions:

1. How can commercial arbitration maintain its confidential nature while meeting the rising demand for transparency in disputes involving public interest or state participation?

2. How do comparative legal jurisdictions (specifically the UK, Singapore, US, India, and Norway) and arbitral institutions currently navigate the tension between secrecy and disclosure, and what insights can be drawn from their approaches?

Hypothesis

This research paper is based on the idea that complete secrecy in commercial arbitration is no longer realistic in cases that affect the public. It suggests that a balanced approach, where confidentiality remains the norm but some limited transparency is introduced such as anonymized awards or clearer disclosure by arbitrators, can make the process fairer, more consistent and more trustworthy. The hypothesis also assumes that while commercial arbitration should not copy the full transparency used in Investor State disputes, carefully selected elements from those models can help strengthen legitimacy without compromising privacy.

Objectives of the Study

• To examine the core concepts of confidentiality and transparency and how their roles in arbitration have evolved over time.

• To compare how major jurisdictions approach confidentiality, including implied duties, statutory rules and agreement-based models.

• To analyze the influence of key judicial decisions on defining the limits of secrecy and disclosure in arbitration.

• To assess whether transparency practices from Investor State Arbitration can inform reforms in commercial arbitration.

• To recommend practical policy measures, such as anonymized award databases and updated arbitrator disclosure obligations, to improve accountability while preserving essential privacy.

Scope of the Study

This study looks at international commercial arbitration, with a particular focus on cases that have wider public implications, such as disputes involving public infrastructure, natural resources or heavily regulated sectors. It draws on a comparative analysis of several major jurisdictions, including the UK, Singapore, the United States, India the ICC, LCIA, SIAC, Norway and Australia, to understand how each balances confidentiality and transparency. The study also reviews the rules of leading arbitral institutions such as ICSID and UNCITRAL to assess how they shape current practices in disclosure and privacy

Methodology

This study uses a doctrinal and comparative approach, examining key judicial decisions and statutory frameworks such as the UK Arbitration Act 1996 and the Norwegian Arbitration Act 2004, along with ICSID and UNCITRAL transparency rules. These sources are synthesized to argue for a balanced, qualified approach to confidentiality in arbitration, rather than an absolute model.

Literature Review

The debate surrounding confidentiality and transparency has become increasingly significant in contemporary arbitration scholarship. Traditionally, confidentiality has been regarded as a defining feature of commercial arbitration, protecting sensitive business information, preserving commercial relationships, and encouraging efficient dispute resolution. Scholars such as **Gary Born** and **Redfern and Hunter** identify confidentiality as one of arbitration's principal advantages, while recognising that its legal basis differs across jurisdictions and institutional rules[1].

In contrast, recent scholarship questions whether confidentiality should remain absolute in disputes involving public contracts, State-owned enterprises, or regulated industries. **S.I. Strong** argues that greater transparency is necessary to enhance procedural legitimacy and public confidence, whereas **Stavros Brekoulakis** advocates the publication of anonymised awards to improve consistency and predictability without undermining commercial privacy[2].

Comparative studies by **Julian D.M. Lew, Loukas Mistelis, and Stefan Kröll** demonstrate that jurisdictions adopt different approaches to confidentiality. While countries such as the United Kingdom and Singapore recognise implied duties of confidentiality, Norway treats confidentiality as a matter of express party agreement, highlighting the absence of a universally accepted model[3].

Recent literature has also explored the influence of Investor-State Dispute Settlement (ISDS) on commercial arbitration. **Emmanuel Gaillard** acknowledges the importance of transparency in disputes involving sovereign interests but cautions against applying ISDS-style disclosure requirements wholesale to commercial arbitration. Instead, scholars generally favour a balanced approach that combines confidentiality with limited disclosure mechanisms, such as anonymised awards and enhanced arbitrator disclosure obligations[4].

Although existing scholarship has extensively examined confidentiality and transparency, limited attention has been given to developing a comprehensive comparative framework that integrates domestic legal approaches, institutional rules, and evolving regulatory standards. This article addresses that gap by proposing a calibrated transparency framework that preserves commercial confidentiality while permitting carefully defined disclosure where public, regulatory, or institutional interests justify greater openness.

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[1] Gary B. Born, *International Commercial Arbitration* 2789–2815 (3d ed. Kluwer Law Int'l 2021); Nigel Blackaby, Constantine Partasides, Alan Redfern & Martin Hunter, *Redfern and Hunter on International Arbitration* ¶¶ 2.182–2.198 (7th ed. Oxford Univ. Press 2022).

[2] S.I. Strong, *Balancing Transparency and Confidentiality in International Commercial Arbitration: Theoretical and Practical Considerations*, 23 Am. Rev. Int'l Arb. 121, 123–38 (2012); Stavros Brekoulakis, *The Evolution of Public and Private in International Arbitration*, 30 Arb. Int'l 101, 112–20 (2014).

[3] Julian D.M. Lew, Loukas A. Mistelis & Stefan M. Kröll, *Comparative International Commercial Arbitration* 281–304 (Kluwer Law Int'l 2003).

[4] Emmanuel Gaillard & John Savage eds., *Fouchard, Gaillard, Goldman on International Commercial Arbitration* ¶¶ 1045–1058 (Kluwer Law Int'l 1999).

Conceptual foundations

Defining confidentiality and transparency in arbitration

Confidentiality refers to the restrictions on the disclosure of arbitral hearings, pleadings, evidence, and awards to third parties or the public. It may result from party agreements, institutional rules, implied terms, or statutory provisions. Confidentiality promotes commercial privacy, safeguards trade secrets, and encourages open settlement discussions.

Transparency is defined as public access to procedural records, hearings, arbitral reasoning, and awards. It is based on public-law principles such as open justice, accountability, and the right of the public to information, and it is frequently used in cases where arbitration affects the public domain (for example, disputes over public procurement, natural resources, or investor-state disputes).

Evolution of debate

Classical arbitration emerged as a private dispute-settlement mechanism for merchants, insulated from courts. Confidentiality was both a practical and normative hallmark. Over the 20th and early 21st centuries, arbitration expanded globally and into areas where public interest is salient state-owned enterprises, sovereign contracts, investment arbitration prompting institutional and normative changes. The emergence of investor, State arbitration and public procurement disputes has particularly catalyzed demands for transparency.

Interplay of Procedural Integrity and Arbitral Confidentiality

In modern commercial arbitration, particularly in complex disputes involving public private projects, regulated industries or high value commercial arrangements, confidentiality must be balanced with procedural integrity to maintain confidence in the arbitral process. Confidentiality remains an essential feature because it protects commercially sensitive information and the parties' business interests. However, excessive secrecy can limit understanding of how tribunals approach recurring contractual or industry specific issues. Limited and carefully managed transparency, such as the publication of anonymized awards, selective disclosure of procedural orders or clarity about arbitrator appointments, can strengthen consistency, predictability and trust in arbitral reasoning without compromising sensitive data. This balanced approach also ensures that arbitration remains compatible with mandatory regulatory obligations, including disclosures required under securities regulation, competition law or anti-corruption frameworks. When confidentiality and procedural integrity are aligned in this way, arbitration preserves its core advantages of privacy and flexibility while demonstrating fairness, reliability and commercial credibility, all of which are essential for its continued acceptance as the preferred method for resolving complex business disputes.

Arbitral legitimacy and the case for transparency

In commercial arbitration, the interest in greater transparency arises from the practical needs of the business community and the desire to maintain confidence in the arbitral process. As tribunals address increasingly complex commercial arrangements, long term contracts and disputes involving specialized industries, parties often seek clearer insight into how arbitral reasoning is developing across similar cases. When all aspects of arbitration remain confidential, it may become difficult for commercial actors to understand emerging trends or anticipate how tribunals might interpret comparable contractual provisions. Limited and carefully managed transparency, such as publishing anonymized awards or key procedural steps, can help foster consistency and predictability without exposing sensitive business information. This measured openness also supports the perception that arbitration is a fair, balanced and professionally grounded process capable of producing reliable outcomes. By providing just enough visibility to give parties confidence in the quality and coherence of arbitral decision making, transparency enhances the legitimacy of arbitration while still preserving the privacy and flexibility that make it attractive for resolving commercial disputes.

The commercial justification: protecting sensitive corporate data

Confidentiality in arbitration allows parties to safeguard private information through institutional rules or protective orders that shield trade secrets and sensitive business details. Proponents like Gary Born argue that such privacy reduces external pressure and prevents misuse of information by competitors, thereby promoting fair and efficient dispute resolution.

However, this very secrecy can be misused to conceal misconduct, regulatory breaches, or defective products hindering oversight and enabling unethical behavior to persist. This tension between protecting legitimate proprietary interests and preventing systemic harm underscores why a single universal rule on confidentiality remains impractical[5].

[5] Gary B. Born, *International Commercial Arbitration* (2d ed. 2014)

Implied Duties and Legislative Silence in UK and Singapore Arbitration Law

In many common law jurisdictions, arbitration laws are deliberately silent on confidentiality. The UK Arbitration Act 1996, for instance, excluded a general secrecy clause reflecting a conscious policy choice to let confidentiality evolve through case law rather than rigid statute. English courts thus treat it as an implied duty arising from the nature of arbitration itself, not from legislative command. The UK Law Commission's 2023 review reaffirmed this flexible approach, rejecting codification in favor of judicial development that can adapt to changing arbitral contexts[6]. Singapore follows a similar model: while its International Arbitration Act contains no express rule on confidentiality, courts and institutions like SIAC enforce it through established practice and procedural rules[7].

Outlining the Exception: Disclosure for Statutory Obligations, Enforcement, and Legal Rights

The implicit duty of confidentiality has consistently been acknowledged to have necessary limitations in common law systems. Generally speaking, these deviations fit into three major, frequently overlapping categories:

1. Party consent: disclosure is permissible if all parties expressly agree

2. Protection of Legal Interests: Disclosure is necessary to protect or pursue a party's legitimate interests, such as establishing a claim against a third party or seeking legal redress related to the subject matter of the arbitration.

3. Judicial/Regulatory Mandate: Disclosure is mandated by a court order or when judicial proceedings before a state court or other legal authority demand disclosure in order to enforce or contest an award. This also includes adhering to legal requirements, such as the disclosure of critical company information required by public securities legislation.

These exceptions acknowledge that confidentiality, while desirable for commercial reasons,

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[6] Mark Beeley & Lucy Preston, *The Law Commission's Final Report on its Review of the Arbitration Act 1996: Maintaining UK's Leading Reputation for Arbitration?*, Orrick (Oct. 3, 2023), https://www.orrick.com/en/Insights/2023/10/The-Law-Commissions-final-report-on-its-review-of-the-Arbitration-Act-1996.(last visited, Oct. 10 2025)

[7] Respondek, Andreas & Stefan Abels, *Confidentiality in Arbitration Proceedings*, The Singapore Law Gazette, Sept. 2025, https://lawgazette.com.sg/practice/practice-matters/confidentiality-in-arbitration-proceedings/.(last visited, Oct. 10 2025)

cannot obstruct a party's fundamental legal rights or supersede mandatory state regulations.

The Ambiguity of "Interests of Justice" and "Public Policy"

One of the trickiest areas in arbitration law is deciding when confidentiality should give way to disclosure. English courts have traditionally taken a cautious approach, allowing disclosure only in the "interests of justice." This usually applies in cases of fraud or serious wrongdoing, where secrecy would prevent the truth from coming out. The focus here is narrow protecting the fairness of the legal process rather than serving any wider public concern.

Australia's Approach: Prioritizing Public Interest Over Arbitral Confidentiality

Australia's High Court took a bolder stance in *Esso Australia Resources Ltd. v. Plowman*[8]. It held that confidentiality cannot override the public's right to know, especially when disputes involve public utilities or matters that affect consumers and public funds. This marks a real shift from protecting the justice system itself to protecting the people it serves. It recognizes that some corporate arbitrations are not just private disputes but issues with real social and economic impact that deserve public scrutiny.

Norway 's Approach: Making Arbitration Non-Confidentiality by default

The Norwegian Arbitration Act 2004 reverses the traditional presumption of confidentiality in arbitration by declaring proceedings and awards non-confidential unless parties expressly agree otherwise. This opt-in model treats confidentiality as optional rather than inherent, reducing the need for judicial exceptions and shifting the burden onto parties who seek secrecy. It presents a clear legislative solution that contrasts with the common law approach founded on implied confidentiality[9].

The US Approach: Confidentiality Governed by Agreement

In the United States, arbitration confidentiality is neither statutory nor implied by case law, relying largely on the parties' agreements or institutional rules (e.g., AAA). Conflicts with public law arise when proceedings reach US courts for enforcement or vacatur, as the principle

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[8] Esso Australia Resources Ltd. v. Plowman (1995) 183 C.L.R. 10 (Austl. H.C.).

[9] Nyegaard Mollestad, The Norwegian Arbitration Act 2004: Confidentiality Versus Public Access, 4(4) Scandinavian Stud. in L. 46 (2008), https://www.scup.com/doi/10.18261/ISSN0809-9510-2008-04-02 (last visited Oct. 10, 2025).

of open courts can override private confidentiality. While preliminary matters may remain secret, final dispositions often require disclosure to uphold judicial integrity and public policy, particularly in cases involving corporate misconduct or information relevant to securities laws[10].

UK's Approach: Systemic integrity and arbitration accountability

Maintaining arbitral integrity is a core public law concern. Under Section 33 of the English Arbitration Act 1996, all arbitrators including party-appointed members must act fairly and impartially. Allegations of apparent bias are assessed through the objective "fair-minded and informed observer" test, ensuring that arbitration is not only conducted fairly but also perceived as fair.

The UK Supreme Court's ruling in *Halliburton Co. v. Chubb Bermuda Insurance Ltd*[11]. highlighted this duty in practice. An arbitrator failed to disclose multiple appointments in related arbitrations involving a common party, raising concerns about objectivity. The Court confirmed that arbitrators must reveal any facts that could reasonably cast doubt on their impartiality, even if actual bias is absent. Disclosure must be carefully balanced against confidentiality, allowed only with explicit or customary consent

Following this, the Law Commission proposed codifying the disclosure duty in a new Section 23A, reinforcing systemic fairness while preserving commercial confidentiality. This ensures that integrity takes precedence without eroding the private nature of arbitration[12].

India's Approach: Recalibrating Confidentiality in the Public Interest

India's jurisprudence reflects a growing recognition that absolute confidentiality in arbitration cannot stand where disputes implicate public functions, state resources, or large-scale consumer interests. While Indian arbitration traditionally leans toward privacy, courts have increasingly emphasized that secrecy cannot become a shield for avoiding accountability especially in cases involving government entities, public sector undertakings, or regulatory

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[10] Christopher R. Drahozal, Confidentiality in Consumer and Employment Arbitration, 7 Y.B. Arb. & Mediation 28 (2015).

[11] Halliburton Co. v. Chubb Bermuda Insurance Ltd [2020] UKSC 48, [2021] A.C. 1098 (appeal taken from Eng.)

[12] Morgan Lewis, UK Law Commission Publishes Final Recommendations for Arbitration Act 1996 Reform, MORGAN LEWIS (Sept. 2023), https://www.morganlewis.com/pubs/2023/09/uk-law-commission-publishes-final-recommendations-for-arbitration-act-1996-reform (last visited Oct. 10, 2025).

concerns. Indian courts have clarified that when public money, public duties, or statutory obligations are involved, transparency becomes an essential democratic safeguard. In this sense, India's approach marks a shift from treating arbitration as an entirely private forum to acknowledging its quasi-public character in matters that touch collective welfare

A notable example is *Antrix Corporation Ltd. v. Devas Multimedia Pvt. Ltd.*, where the Supreme Court affirmed that disclosure may override arbitral confidentiality when broader public or regulatory interests are at stake. This signals a shift from viewing arbitration as purely private to recognizing its quasi-public character in matters affecting collective welfare.

India's evolving stance is also reflected in its broader regulatory landscape, including the **Digital Personal Data Protection Act, 2023**, which underscores that confidentiality today is not absolute but structured and purpose-based. This reinforces the idea that privacy in arbitration must coexist with accountability, especially where public institutions or collective interests are involved.

The investor-State Arbitration (ISA)Model: A Blueprint for Transparency?

Justifying Transparency in Investor-State Arbitration

Investor-State Dispute Settlement (ISDS), usually arising under Bilateral Investment Treaties, differs significantly from standard commercial arbitration because it pits private investors against sovereign states and often challenges government regulatory decisions. These disputes inherently touch on public interests ranging from environmental protection and natural resource management to major financial obligations that impact citizens.

Traditionally, ISDS proceedings were confidential, following the commercial arbitration model. Over time, however, this secrecy drew sharp criticism, with concerns about a "democratic deficit" in private tribunals making decisions on public policy matters behind closed doors. In response, global reforms have increasingly recognized that transparency is essential not just for legitimacy, but also to promote good governance, accountability, and public trust in the arbitration process.

UNCITRAL Transparency Rules and the Mauritius convention: Redefining transparency in ISDS

In response to concerns about the legitimacy of Investor-State Dispute Settlement (ISDS), the

UNCITRAL Rules on Transparency in Treaty-Based Investor-State Arbitration were adopted in 2014. These rules made public disclosure the default for treaty-based ISDS, giving the public access to key documents, party submissions, and final awards while still protecting sensitive business information and national security through limited redactions.

To extend these principles to thousands of existing investment treaties, the United Nations introduced the Mauritius Convention on Transparency. This multilateral framework allows states to voluntarily apply the UNCITRAL Transparency Rules to older treaties, creating a practical and globally coordinated mechanism for reform. Together, the UNCITRAL Rules and the Mauritius Convention set a strong precedent: when disputes involve sovereign actions and public funds, transparency is not optional but a fundamental procedural requirement. They also show that non-judicial dispute mechanisms can function legitimately and efficiently under a mandatory disclosure regime[13].

Integrating Transparency within ICSID's Institutional Framework

The International Centre for Settlement of Investment Disputes (ICSID) has embraced the global push for transparency. Its 2022 amendments to the Arbitration Rules now make the publication of awards, decisions, and orders the default, unless parties specifically agree otherwise.

At the same time, ICSID respects commercial sensitivities by allowing parties to redact proprietary or confidential information before publication. It also maintains up-to-date registers tracking procedural steps and tribunal members. This transformation from a confidential-by-default model to one prioritizing transparency addresses long-standing concerns about the democratic deficit in ISDS and offers a valuable precedent for high-stakes commercial arbitration worldwide[14].

Distinction with Purpose: Understanding the Boundaries of Commercial Arbitration

While the Investor-State Arbitration (ISA) model has set a high standard for transparency,

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[13] U.N. Information Serv., European Union Signs Mauritius Convention on Transparency, U.N. Press Release UNIS/L/359 (July 3, 2024), https://unis.unvienna.org/unis/pressrels/2024/unisl359.html (last visited Oct. 10, 2025).

[14] ICSID, ICSID Rules on Transparency, WORLD BANK (2022), https://icsid.worldbank.org/procedures/arbitration/convention/confidentiality-transparency/2022 (last visited Oct. 10, 2025).

many scholars caution against applying the same rules wholesale to International Commercial Arbitration (ICA). As Gary Born observes, ICA typically deals with contractual disputes that do not involve public funds or government regulation. Critics argue that mandatory disclosure could undermine arbitration's commercial appeal, which relies on confidentiality to protect sensitive information.

Yet, the line between ICA and ISA is increasingly blurred. Commercial arbitration now often addresses high-stakes matters like public infrastructure, large-scale energy projects, and environmental liabilities. In such cases, secrecy can prevent the legal community from scrutinizing awards, analyzing legal reasoning, and ensuring consistency, leading to arbitrary or unpredictable outcomes. Publishing precedents in these high-impact disputes introduces transparency, predictability, and accountability, serving a crucial public interest even within the commercial sphere.

Policy Recommendations:

1. Adopt a Calibrated Transparency Regime for High-Impact Commercial Arbitrations

Arbitral statutes and institutional rules should clearly differentiate between purely private commercial disputes and those commercial disputes that have broader public implications, such as cases involving PSUs, major infrastructure projects, regulated sectors, or the use of public funds. For this second category, a degree of limited and structured transparency should be mandatory. This can include publishing anonymized awards, disclose key procedural orders, and provide open information on how the tribunal was constituted, measures that enhance public accountability without undermining legitimate confidentiality interests.

2. Clearer Statutory Rules on Confidentiality and Its Limits

Countries like India and others that still rely on judge-made or implied confidentiality, such as the UK and Singapore would benefit from laying down a clear, statutory framework on when confidentiality applies and when it must give way. This could include a small, well-defined list of exceptions for situations involving public funds, regulatory obligations, allegations of fraud, or matters affecting public safety. These exceptions should also be aligned across major arbitral institutions and applied consistently when disputes move into court proceedings. Such clarity would prevent courts from creating ad hoc rules and give businesses the predictability they need while still protecting the public interest.

3. Beyond Bias: Modernizing Arbitrator Disclosure Duties

Arbitrator disclosure should go beyond the narrow question of bias. Drawing from the principles affirmed in Halliburton v. Chubb, jurisdictions ought to require arbitrators to reveal overlapping appointments, any relationships with state entities or frequent repeat parties, and any other circumstances that could reasonably affect their perceived neutrality. Strengthening disclosure in this way enhances fairness and trust in the process while still respecting the commercial confidentiality that parties expect from arbitration.

4. Create a Centralized Repository for Anonymized Awards in High-Value Disputes

There is a strong case for creating a centralized repository of anonymized awards in high-value or public-facing commercial disputes. Such a database, maintained by leading arbitral institutions like the ICC, LCIA, SIAC, or MCIA, could publish awards from sectors such as infrastructure, energy, natural resources, or cases involving state entities, while carefully redacting commercially sensitive information like trade secrets or pricing formulas. Alongside the awards, institutions could also share key procedural decisions and emerging reasoning patterns. A system like this would improve doctrinal consistency, reduce uncertainty for businesses, and ultimately strengthen the legitimacy of commercial arbitration as a predictable and transparent dispute-resolution mechanism.

5. Introduce a Regulatory Disclosure Interface for Arbitral Proceedings

In disputes arising from heavily regulated sectors such as competition law, securities, telecom, or data protection arbitral confidentiality cannot be allowed to eclipse statutory disclosure duties or the need for regulators to assess systemic risk, whether related to market integrity, corruption, or environmental harm. To avoid the kind of institutional conflict seen in Antrix v. Devas, jurisdictions should establish a clear disclosure interface between arbitral institutions and regulatory bodies. Such an inter-agency protocol would spell out when and how information must be shared with regulators while still protecting genuinely confidential commercial material, ensuring that arbitration supports rather than undermines regulatory oversight.

6. Integrate Data Protection Safeguards Under the DPDP Act, 2023

Arbitral processes should incorporate clear data-governance safeguards by ensuring purpose-limited data use, restricting access to only necessary personal information, mandating secure storage and timely deletion of arbitral records, and providing clear rules for cross-border data transfers. This enables greater transparency without compromising personal data rights.

7. Encourage Hybrid Transparency Models Inspired by UNCITRAL and ICSID

Drawing from the transparency practices used in ISDS, high-value commercial arbitrations can adopt a balanced, hybrid model that includes publishing procedural timelines, maintaining open-access registers of tribunal appointments, and allowing optional public hearings where significant public interests are involved. This approach strengthens legitimacy and predictability while avoiding the burdens of full ISDS-style transparency.

Conclusion

The conflict between transparency and confidentiality in corporate arbitration reflects a growing public law challenge as private dispute resolution increasingly affects public interests. Across jurisdictions, confidentiality is shifting from an absolute right to a qualified privilege, limited by principles of integrity and accountability. The UK's Halliburton decision and codified disclosure duties strengthen systemic fairness, while international models like ICSID show that transparency can coexist with efficiency. India, however, reveals the pitfalls of excessive judicial interference and restrictive confidentiality rules. Going forward, arbitration's legitimacy depends on embracing proactive transparency such as publishing redacted awards and codifying ethical duties balancing corporate privacy with public accountability and upholding the rule of law.