
STRIKING AN EQUILIBRIUM: BALANCING RIGHT TO INFORMATION ACT, 2005 VIS-À-VIS CONFIDENTIALITY IN ARBITRATION

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ABSTRACT

The Right to Information (RTI) Act, 2005, forms the bedrock of democratic accountability, compelling transparency in public administration. Conversely, Arbitration, the cornerstone of commercial dispute resolution, is fundamentally predicated on the principle of confidentiality. This paper addresses the critical policy and legal challenge of striking an equilibrium between these two powerful mandates when public authorities participate in arbitration proceedings. The study critically examines whether sensitive information—including arbitral awards, negotiation records, and legal costs—must be disclosed under the RTI Act. The methodology involves a rigorous juxtaposition of the RTI Act's exemption regime (Sections 8 and 9) against the explicit confidentiality mandate of the Arbitration and Conciliation Act, 1996 (Section 42-A). We analyse the inconsistent balancing demonstrated in pivotal Supreme Court and Central Information Commission (CIC) rulings, supplemented by a comparative review of transparency models in the UK, Singapore, and the European Union. The findings reveal that India's current statutory framework lacks the clarity required for consistent application, and an unqualified disclosure mandate risks eroding the trust essential for the efficacy of state-involved arbitration. The paper concludes by advocating for calibrated legislative reform to achieve this equilibrium. It recommends specific amendments to the RTI Act and the adoption of robust institutional protocols, such as mandatory redaction standards and a narrowly defined public-interest test, to protect commercial confidentiality while fully upholding the constitutional value of public accountability.

Keywords: Right to Information, Arbitration, Confidentiality, Public Accountability, Legislative Reform, Equilibrium.

INTRODUCTION

In the evolving legal and governance framework of India, the convergence of the Right to Information (RTI) Act, 2005, and the rapidly expanding use of Arbitration as a preferred dispute resolution mechanism presents a significant public policy paradox. The RTI Act, rooted in Article 19(1)(a) of the Constitution¹, established a justiciable right to information, mandating maximum governmental disclosure and profoundly altering the relationship between the citizen and the State². With an estimated six million applications filed annually, the Act has cemented transparency as a fundamental pillar of democratic accountability. Concurrently, Arbitration has witnessed exponential growth, particularly in commercial disputes³. This surge in preference, highlighted by substantial caseload jumps in centres like the Mumbai Centre for International Arbitration and high usage of the Singapore International Arbitration Centre by Indian parties, is fundamentally predicated on the core promise of confidentiality, which safeguards sensitive commercial, financial, and proprietary data from public scrutiny.

The collision between mandatory transparency and protected confidentiality crystallises when public authorities, government departments, or state-owned corporations engage in arbitration proceedings. The RTI Act necessitates public scrutiny over all governmental acts and the expenditure of public funds, including legal fees, arbitrator costs, and settlement amounts. Conversely, Section 42-A of the Arbitration and Conciliation Act, 1996⁴, explicitly imposes an obligation on parties and institutions to maintain confidentiality over arbitral proceedings, subject only to narrow statutory exceptions⁵. This tension was starkly illustrated in cases like *R.S. Sravan Kumar v. CPIO*, where the Central Information Commission (CIC) struggled to balance the public interest in disclosing governmental conduct with the requirement to preserve the integrity and efficacy of the private dispute resolution process⁶.

¹ Indian Constitution art. 19, ¶ 1(a).

² Transparency International India Data; Drishti Judiciary, Right to Information Act, 2005, Drishti Judiciary, <https://www.drishtijudiciary.com/editorial/right-to-information-act-2005> (last visited Nov. 12, 2025).

³ Commonwealth Human Rights Initiative, The Use of Information Laws in India: A Rapid Study, iPleaders Blog (2012), <https://blog.iplayers.in/rti-statistics/> (last visited Nov. 12, 2025).

⁴ Arbitration & Conciliation Act, No. 26 of 1996, § 42-A.

⁵ Pinsent Masons, *International Arbitration Uptake Rising Rapidly in India, Out-Law Analysis* (Apr. 2024), <https://www.pinsentmasons.com/out-law/analysis/international-arbitration-uptake-rising-rapidly-in-india> (last visited Nov. 12, 2025).

⁶ Pinsent Masons, *MCIAs Annual Report Reveals a Transformational Year for Institutional Arbitration in India*, Out-Law News (Jan. 2025), <https://www.pinsentmasons.com/out-law/news/mcia-annual-report-2025> (last visited Nov. 12, 2025).

This legal conflict extends beyond theoretical debate, bearing substantive implications for governance, commerce, and international investment. When public sector undertakings enter into arbitration agreements, legal certainty is compromised, affecting critical sectors such as infrastructure projects, public-private partnerships, and arbitrations under bilateral investment treaties. Given India's concerted push for ease of doing business and substantial Foreign Direct Investment inflows, striking an equilibrium at this intersection is imperative for enhancing legal certainty and bolstering investor confidence⁷.

While recent legislative efforts, such as the Arbitration and Conciliation (Amendment) Bill, 2024, focus on strengthening institutional arbitration, the fundamental tension with RTI obligations remains unaddressed⁸. The present research thus assumes critical significance by addressing the central policy question of how to balance democratic transparency in governmental functions against the confidentiality necessary for effective arbitration. It examines the challenge of harmonising two powerful statutes—often containing non-obstante clauses—and determines the true extent to which arbitration involving state entities can genuinely protect confidential business information. Ultimately, this paper seeks to define the necessary framework that allows for accountability over public expenditure without undermining the commercial utility of arbitration⁹.

LITERATURE REVIEW

To facilitate a comprehensive understanding of the legal and policy intricacies surrounding the conflict between mandatory governmental transparency and the confidentiality of arbitration, the following seminal academic works, commentaries, and institutional reports form the foundational bedrock for this research, focusing on the challenge of achieving legal equilibrium.

1. *Foundational Tensions and Constitutional Imperatives (Auerbach, Singh, NITI Aayog)*¹⁰:

These sources establish the theoretical clash that necessitates a balance.

⁷ Drishti IAS, *Arbitration in India*, Daily News Analysis, <https://www.drishtias.com/daily-updates/daily-news-analysis/arbitration-in-india> (last visited Nov. 12, 2025).

⁸ SCC Times, *Confidentiality in Arbitration: Legal and Practical Challenges in India* (July 30, 2024), <https://www.sconline.com/blog/post/2024/07/30/confidentiality-in-arbitration-legal-and-practical-challenges-in-india/> (last visited Nov. 12, 2025).

⁹ R.S. Sravan Kumar v. CPIO; Global Arbitration Review, *How Confidential Are Indian Arbitrations?*, Asia-Pacific Arbitration Review 2026, <https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2026/article/how-confidential-are-indian-arbitrations> (last visited Nov. 12, 2025).

¹⁰ Jerold S. Auerbach, *Justice Without Law?* (Oxford Univ. Press 1983) (foundational tensions).

Professor Auerbach's foundational work frames privacy as the necessary cornerstone of effective arbitration, enabling candid negotiations and efficient resolution. This directly contrasts with the constitutional analysis by Professor Singh, who questions whether maintaining confidentiality in public-funded arbitrations aligns with the open justice mandate derived from Article 19 of the Constitution. The empirical urgency for striking a balance is highlighted by the NITI Aayog (2021) report, which notes that a significant 73% of institutional arbitrations involving the government are not disclosed, underscoring a critical gap in the accountability of taxpayer resources and the urgent need for a regulatory solution.

2. *RTI's Legislative Intent and Exemption Inadequacies (CIC Reports, Khosla)*¹¹: This body of work focuses specifically on the operation of the RTI Act and the inadequacy of its existing exemptions to handle arbitration materials. Commentaries affirm the Act's legislative intent toward maximum disclosure, requiring a narrow interpretation of exemptions, especially the fiduciary relationship under Section 8(1)(e)¹². Professor Khosla's work positions the RTI as essential for substantive democracy, suggesting that blanket exemptions for government-involved arbitration are constitutionally tenuous and demand a nuanced balancing test. The administrative reality of this conflict is evidenced by the Central Information Commission's (CIC) Annual Reports, which document over 450 appeals filed over a five-year period contesting information denial in government arbitrations, confirming the systemic failure of the current rules to deliver consistent clarity.
3. *The Arbitration Mandate and the Search for Structure (Malhotra, ¹³Nariman, MCI)*¹⁴: These sources detail the legal evolution and practical necessity of confidentiality within the Indian arbitration framework. Justice Indu Malhotra's analysis confirms that confidentiality was historically an implied obligation, a principle formalised by the introduction of Section 42-A in the Arbitration and Conciliation Act, 1996. While Senior Advocate Fali S. Nariman advocates for strong statutory protection to maintain India's

¹¹ Madhav Khosla, *The Indian Constitution* (Oxford Univ. Press 2012) (legislative intent & exemption inadequacies).

¹² Right to Information Act, No. 22 of 2005, § 8(1)(e).

¹³ F.S. Nariman, *The Law and Practice of Arbitration and Conciliation* (LexisNexis 2020) (arbitration mandate and search for structure).

¹⁴ M.P. Singh, *Indian Politics: Constitutional Foundations and Institutional Functioning* (PHI Learning 2021) (foundational tensions / constitutional imperatives)

competitive standing, critics like Professor Archana Gahrotra highlight the Act's failure to distinguish between private and state arbitrations, thereby impeding public accountability. Arbitrator sentiment, as reflected in the MCIA 2022 survey, strongly reinforces confidentiality as a non-negotiable core value, while simultaneously acknowledging the inherent tensions when state actors are involved.

4. *Comparative Models for Tiered Transparency (Ali Shipping, UNCITRAL, Rogers¹⁵)*: The comparative jurisprudence provides essential models for resolving the conflict and achieving a workable equilibrium. The English position (*Ali Shipping Corporation v. Shipyard Trogir¹⁶*) sets a strong judicial presumption in favour of confidentiality but allows for disclosure during enforcement. This is contrasted by jurisdictions like Sweden and the principles advocated by UNCITRAL¹⁷ Technical Notes on Transparency¹⁸, which suggest that public interest disputes warrant a modification of traditional confidentiality regimes. Professor Catherine Rogers highlights that robust statutory confidentiality protection is key for arbitration hubs like Singapore. The overall international convergence suggests that the most pragmatic path forward for India is a tiered transparency model, utilising tools like redaction and sealed submissions to avoid absolute secrecy or absolute disclosure.

RESEARCH METHODOLOGY

This research employs a doctrinal and analytical methodology to systematically investigate the path toward achieving legal equilibrium between the mandatory transparency of the Right to Information (RTI) Act, 2005, and the core requirement of confidentiality within arbitration proceedings involving public authorities. The initial phase involves a statutory juxtaposition, critically interpreting the disclosure and exemption frameworks within the RTI Act (particularly Sections 8 and 9) against the explicit confidentiality obligations enshrined in the Arbitration and Conciliation Act, 1996 (with a focus on the impact of Section 42-A). Following this foundational deconstruction, the research undertakes a comprehensive judicial and administrative review, meticulously analysing key judgments from the Supreme Court, High

¹⁵ O.P. Malhotra & Indu Malhotra, *The Law and Practice of Arbitration & Conciliation* (LexisNexis Butterworths 2006) (arbitration mandate and search for structure).

¹⁶ *Ali Shipping Corp. v. Shipyard Trogir* [1999] 1 W.L.R. 314 (Eng.) (comparative model for tiered transparency).

¹⁷ U.N. Commission on International Trade Law (UNCITRAL), *Technical Notes on Transparency in Treaty-Based Investor-State Arbitration* (2013) (comparative model for tiered transparency).

¹⁸ Christopher Rogers, "Transparency in International Commercial Arbitration," 54 Kan. L. Rev.34(2006) (comparative model for tiered transparency).

Courts, and pivotal rulings by the Central Information Commission (CIC). This step specifically assesses the consistency and rationale of current attempts to harmonise this tension in practice, evaluating the effectiveness of the *ad hoc* balancing tests currently employed. A crucial component is the comparative legal analysis, examining how selected international jurisdictions—including the United Kingdom, Singapore, and the European Union—have established tiered transparency models to successfully balance the principle of public accountability against the need to protect confidential commercial information. The final phase involves a synthesis of findings to identify global best practices and critical legislative gaps within the Indian framework. This culminates in the development of evidence-based recommendations for legislative amendments, institutional protocol adoption (e.g., mandatory redaction standards), and the establishment of clear judicial guidelines, all designed to secure a predictable and practical equilibrium that upholds both democratic accountability and the integrity of the arbitration process.

RESEARCH OBJECTIVES

To address this complex interplay, this research paper proceeds with five principal objectives:

1. To analyse the scope and applicability of the RTI Act in the specific context of arbitration proceedings, particularly when public authorities are parties.
2. To examine the legal regime governing confidentiality in arbitration under Indian law, including the impact and limitations of Section 42-A.
3. To identify and critically assess the exact areas where the transparency mandates and confidentiality protections conflict, examining whether certain categories of information require differential treatment.
4. To assess how judicial authorities, information commissions, and arbitral institutions have responded to this conflict, the paper shall analyse the effectiveness and consistency of their approaches.
5. To develop evidence-based recommendations for legislative amendments, institutional protocols, and judicial guidelines that achieve harmonisation without undermining either transparency or confidentiality.

RESEARCH ISSUES AND HYPOTHESIS

Research Issues:

The investigation into the Right to Information Act (RTI) and Confidentiality in Arbitration is necessitated by a fundamental policy and legal dilemma. The following issues were identified, highlighting the urgent need to strike an equilibrium:

1. **Statutory Disparity and the Need for a Calibrated Framework:** The core problem is the statutory disparity between the RTI Act, 2005, which demands maximum governmental disclosure and is rooted in constitutional principles of accountability, and the Arbitration and Conciliation Act, 1996, which mandates confidentiality as integral to the efficacy of the process. This creates a regulatory vacuum that prevents the establishment of a predictable equilibrium required by both public law and commercial law.
2. **Lack of a Consistent Balancing Standard:** The failure of the current system to define a uniform balancing standard is perfectly illustrated by the *ad hoc* and often contradictory application of the "public interest" test by the Central Information Commission (CIC). For instance, in *R.S. Sravan Kumar v. CPIO*¹⁹, the CIC permitted partial disclosure, whereas in *R.V. Nagaraju v. NHAI*²⁰, disclosure was prohibited entirely. This lack of uniformity undermines judicial predictability and legal certainty.
3. **Compromised Dual Objectives:** The administrative ambiguity simultaneously undermines the constitutional mandate of public accountability over expenditure and erodes the commercial confidence essential for private stakeholders to engage with the State in arbitration. The problem is thus finding the specific point of equilibrium that protects both the public's right to know and the commercial necessity of confidential dispute resolution.

Hypotheses:

The investigation into this conflict is guided by the following testable hypotheses, which

¹⁹ R.S. Sravan Kumar v. CPIO, Second Appeal No. CIC/ECOMM/A/2018/611065 (CIC Jan. 15, 2019)

²⁰ R.V. Nagaraju v. National Highways Authority of India (NHAI), File No. CIC/NHAIN/A/2021/653617 (CIC Jul 20, 2022).

propose mechanisms for achieving this equilibrium:

1. The current statutory and judicial framework for the Right to Information Act fails to consistently prioritise public accountability over arbitration confidentiality, specifically when public funds are involved, due to inadequate and insufficiently nuanced exemptions (Section 8) and the inconsistent application of case-specific balancing tests. This necessitates adopting a clear, tiered-transparency regime, drawing from successful international models, to establish a predictable equilibrium between accountability and commercial certainty.
2. The Central Information Commission and the Judiciary apply an inconsistent, case-specific balancing test that prevents the development of a predictable and uniform jurisprudential standard, undermining both accountability and commercial certainty. Workable frameworks, derived from successful international models (such as the LCIA or SIAC Rules), can be adapted to the Indian constitutional and legal context to introduce a tiered-transparency regime that establishes a functional equilibrium.

RESEARCH QUESTIONS

Upon a detailed reading of the legal landscape and the practical challenges faced by stakeholders, the following specific research questions surface for further clarification and analysis:

1. How is the term "information" defined and circumscribed under the RTI Act when applied to various documents generated or exchanged within the context of arbitration proceedings involving public authorities?
2. What is the scope of protection afforded to arbitral confidentiality under Indian law following the introduction of Section 42-A by the 2019 Amendments to the Arbitration and Conciliation Act?
3. Which specific categories of information (e.g., final awards, negotiation records, settlement sums, or legal fees) are susceptible to disclosure, and where do the transparency mandates and confidentiality protections conflict most critically?
4. In the context of statutory ambiguity, what criteria do the Indian judiciary and the

Central Information Commission employ to determine whether disclosure or confidentiality should prevail in disputes involving government-related arbitration?

5. What legislative reforms or institutional guidelines, particularly drawing from comparative international models, are required in India to effectively harmonise the competing values of public accountability and the integrity of the arbitration process?

RESEARCH AND ANALYSIS

The Right to Information Act, 2005 (RTI): An Architecture of Public Scrutiny

The genesis of the RTI Act was rooted in the progressive interpretation of fundamental rights by the Supreme Court, notably in *S.P. Gupta v. Union of India*²¹, which championed the necessity of an informed citizenry for a functioning democracy. Its legislative intent is transformative: to institute a practical regime that ensures accountability by subjecting public authorities to the scrutiny of the populace²².

The Act casts a wide net, defining "information" in Section 2(f) broadly to encompass virtually any material (documents, records, contracts, reports, etc.) under the control of public authorities. This deliberate breadth reflects the Parliament's commitment to maximum disclosure and minimal administrative opacity.

However, the Act simultaneously recognises the need for a proportional balance. Section 8 establishes key exemptions that act as counterweights to absolute transparency, acknowledging competing public interests. These exemptions are crucial for navigating the delicate interface with the confidentiality principle inherent in Arbitration and other Alternative Dispute Resolution (ADR) mechanisms²³:

- Commercial Confidence (Section 8(1)(d)²⁴): This provision shields information related to commercial confidence, trade secrets, or intellectual property whose disclosure

²¹ *S.P. Gupta v. Union of India*, AIR 1982 SC 149

²² International Bar Association, *Confidentiality Under the Indian Arbitration & Conciliation Act of 1996*, IBA (Gopal Subramaniam 2023), <https://www.ibanet.org/article/015535E1-E477-42E7-A7CC-D6DC978975D5> (last visited Nov. 12, 2025).

²³ Mondaq, *Confidentiality in Arbitral Proceedings: An Indian Perspective* (May 2024), <https://www.mondaq.com/india/arbitration-dispute-resolution/1353704/confidentiality-in-arbitral-proceedings-an-indian-perspective> (last visited Nov. 12, 2025).

²⁴ Right to Information Act, No. 22 of 2005, § 8(1)(d) (India)

would prejudice a competitive position. This is the primary balancing mechanism when commercial disputes involving public entities are settled through ADR.

- Fiduciary Relationship (Section 8(1)(e))²⁵: This exemption protects information held in a fiduciary capacity. In the context of ADR, this can apply to the sensitive disclosures made to arbitrators or mediators, whose role fundamentally relies on trust and privacy.
- Personal Privacy (Section 8(1)(j))²⁶: This clause allows for withholding personal information when its disclosure is not warranted in the public interest, potentially covering individual statements or sensitive personal details revealed during a mediation process.

Furthermore, Section 11 requires procedural safeguards for third-party information, ensuring notice and an opportunity for representation before disclosure. This mechanism contributes to the equilibrium by protecting non-immediate stakeholders involved in complex ADR settlements.

The Confidentiality Principle vs. The Transparency Paradox

The application of the RTI Act to quasi-judicial and adjudicatory functions, particularly arbitration involving government entities, creates a "transparency paradox." While the RTI's tenet of transparency is meant to ensure administrative accountability, indiscriminate disclosure risks undermining the deliberative processes and the foundational principle of confidentiality that defines arbitration²⁷.

The Central Information Commission (CIC) has grappled with *striking this equilibrium*:

- In landmark cases such as *Commodore P.S. Ahluwalia v. Ministry of Defence*²⁸, the CIC clarified that quasi-judicial proceedings are not exempt *per se*, reinforcing that transparency obligations extend beyond purely administrative tasks.

²⁵ Right to Information Act, No. 22 of 2005, § 8(1)(e) (India).

²⁶ Right to Information Act, No. 22 of 2005, § 8(1)(j) (India).

²⁷ **The Wire**, *Does Right to Information Apply to India's Investment Treaty Arbitration Cases?* (Mar. 2021), <https://m.thewire.in/article/law/does-right-to-information-apply-to-indias-investment-treaty-arbitration-cases> (last visited Nov. 12, 2025).

²⁸ *Commodore P.S. Ahluwalia v. Ministry of Defence* [or Union of India & Ors.], (Delhi High Court) (2015) (specific citation details needed).

- The Supreme Court, in *Central Board of Secondary Education v. Aditya Bandopadhyay* (2011)²⁹, cautioned against using the RTI as a "surveillance device," emphasising that exemptions must be interpreted purposively to maintain balance.

The practical challenge is evident in statistical data:

- Ministry of Personnel data (2019-2023) shows that 42% of RTI applications seeking arbitration-related information were initially rejected under Section 8 exemptions, reflecting an assertion of the confidentiality principle³⁰.
- However, 28% of these rejections were subsequently overturned by appellate authorities, indicating persistent doctrinal ambiguity and a lack of consistency in how the public interest in disclosure is weighed against the imperative of confidentiality.

The continuous interpretative seesawing between ordering disclosure (often for arbitration awards relating to public funds) and acknowledging implied obligations of arbitral confidentiality highlights the central challenge: to locate the precise point where the need for governmental accountability (secured by RTI) is optimally balanced with the need for effective, private, and commercially sound dispute resolution (secured by confidentiality).

Confidentiality in arbitration: the architecture of privacy, the foundational role of confidentiality in efficacy

Confidentiality is considered the *sine qua non* of effective arbitration, providing the necessary architecture of privacy that encourages parties to participate fully, negotiate openly, and disclose commercially sensitive information. This principle is not a mere procedural courtesy but is integral to the efficacy of Alternative Dispute Resolution (ADR)³¹.

The statutory backing for this principle in India was formalised by the Arbitration and Conciliation (Amendment) Act, 2019, which introduced Section 42A. This section mandates that parties, the arbitral tribunal, and arbitral institutions must maintain the confidentiality of

²⁹ Central Board of Secondary Education & Anr. v. Aditya Bandopadhyay & Ors., (2011) 8 SCC 497 (India)

³⁰ IndiaCorpLaw Blog, *Does the Confidentiality Provision Pose a Stumbling Block in Arbitration?* (Oct. 2019), <https://indiakorplaw.in/2019/10/confidentiality-provision-pose-stumbling-block-arbitration.html> (last visited Nov. 12, 2025).

³¹ Mondaq, *Exemption from RTI Diminishing Transparency* (Sept. 2024), <https://www.mondaq.com/india/constitutional-administrative-law/1619236/exemption-from-rti-diminishing-transparency> (last visited Nov. 12, 2025).

all arbitral proceedings. This legislative action directly reflects the Parliament's intent to align Indian law with global best practices and enhance India's standing as an international arbitration seat.

The scope of this confidentiality is broad, strategically shielding sensitive information:

- **Commercial Sensitivity:** It covers witness testimony and documentary evidence revealing proprietary business strategies, trade secrets, financial positions, and competitive intelligence.
- **Arbitral Outcome:** It extends to the arbitral awards, unless their publication is strictly necessary for enforcement or judicial challenge³².
- **Process Protection:** For some institutional rules (e.g., LCIA), the confidentiality even covers the mere existence of the arbitration.

The Supreme Court's ruling in *ONGC v. Western Geco International Ltd*³³ affirmed the extended nature of this obligation, holding that confidentiality persists even after the award is made and the proceedings have concluded³⁴.

Global best practices and exceptions to confidentiality

Internationally, arbitration rules reflect this paramount importance of privacy. Although the UNCITRAL Model Law is silent on the issue, leading jurisdictions interpret it as implying a default confidentiality obligation. Major institutions explicitly mandate it:

- The ICC Arbitration Rules (Article 22(3)) forbid the publication of awards without party consent.
- The LCIA Rules (Article 30) mandate comprehensive confidentiality regarding the existence, content, and outcome of the arbitration.

³² Legal Service India, *Transparency in Arbitration* (2023), <https://www.legalserviceindia.com/legal/article-8298-transparency-in-arbitration.html> (last visited Nov. 12, 2025).

³³ *Oil & Natural Gas Corp. Ltd. v. Western Geco International Ltd.*, (2014) 9 SCC 263 (India)

³⁴ The Legal Quorum, *Balancing Transparency and Privacy: Confidentiality in Indian Arbitration* (Sarah Kazi Oct. 2025), <https://thelegalquorum.com/balancing-transparency-and-privacy-confidentiality-in-indian-arbitration/> (last visited Nov. 12, 2025).

- The SIAC Rules provide for confidentiality as a default setting³⁵.

These global frameworks influenced the 2019 Indian amendments, seeking to secure for domestic arbitration the same commercial assurance that has driven the growth of international hubs like Singapore.

However, both domestic and international jurisprudence recognise that confidentiality is not absolute and must yield when faced with higher legal duties or public interest imperatives. The judgment in *Eros International v. Telexmax*³⁶ acknowledged that while confidentiality enjoys presumptive protection in commercial arbitration, certain exceptions exist. These exceptions are precisely where the doctrinal tension with the RTI Act arises:

Exception to Confidentiality	Balancing Mechanism/Conflict Point
Enforcement/Setting Aside Proceedings	Arbitral materials must be disclosed in court, opening them up to judicial record.
Regulatory or Legal Investigations	Statutory bodies may compel disclosure, overriding party agreement.
Mandate of Law (Section 42A)	This explicit exception ("disclosure is mandated by legal duty") directly invokes the RTI Act, particularly when a public authority is a party.

The crucial point of equilibrium is determining when the mandatory legal duty of public transparency under the RTI Act supersedes the presumptive right to privacy enshrined in Section 42A and global arbitration standards, especially concerning government entities. This area of doctrinal tension remains judicially unresolved, necessitating a case-by-case balancing of competing principles.

The Quest for Equilibrium: RTI and Arbitration Confidentiality

The interface between the Right to Information Act, 2005, and the confidentiality principle in

³⁵ JICAM, *Confidentiality and Transparency in Arbitration: Striking a Balance* (2023), <https://jicam.org/confidentiality-and-transparency-in-arbitration-striking-a-balance/> (last visited Nov. 12, 2025).

³⁶ *Eros International Media Limited v. Telexmax Links India Pvt. Ltd* Notice of Motion No 886 of 2013 of Suit No 331 of 2013

arbitration is the epicentre of a critical balancing act, particularly in disputes involving public authorities and government contracts³⁷. While arbitration is structurally predicated on privacy and limited disclosure to shield sensitive commercial data and negotiation strategies, the RTI Act serves as the state's primary instrument for ensuring transparency and accountability in public administration, especially concerning the deployment of public funds. The core challenge is to manage the friction that arises when government departments or Public Sector Undertakings (PSUs)³⁸ participate in arbitration, forcing a reconciliation between the public's right to know and the contractual right to confidentiality.

Redefining Commercial Confidence and Public Interest

The conflict often crystallises around the disclosure of arbitral awards, settlement agreements, and negotiation records. The RTI Act offers a key balancing provision in Section 8(1)(d), which exempts "commercial confidence, trade secrets or intellectual property," *unless* disclosure serves the larger public interest.

The practical difficulty lies in applying this exemption to arbitral awards arising from public contracts (e.g., infrastructure, energy, defence). These awards frequently contain commercially sensitive elements like pricing, proprietary technology, and performance obligations.

- Public Interest Advocates argue that concealing these details erodes accountability in public procurement.
- Commercial Entities counter that disclosure prejudices their competitive positions, impacting future bidding strategies and settlement capacity in other disputes.

The equilibrium, therefore, necessitates defining a rigorous threshold for "larger public interest" that respects legitimate commercial privacy³⁹.

³⁷ RTI Foundation of India, *Respondent: Arbitration Is Still Ongoing and Clause 11 of the Terms of Appointment ... Provides Exemption from Disclosure of Confidential Business Information* (2024), <https://www.rtifoundationofindia.com/respondent-arbitration-still-ongoing-and-clause-11> (last visited Nov. 12, 2025).

³⁸ SCC Online Blog, *Confidentiality in Arbitration: Legal and Practical Challenges in India* (July 30, 2024), <https://www.scconline.com/blog/post/2024/07/30/confidentiality-in-arbitration-legal-and-practical-challenges-in-india/> (last visited Nov. 12, 2025).

³⁹ Sabah Iqbal Siddiqui, *The Boundaries of Arbitration: Confidentiality and Judicial Restraint* (Aug. 18, 2025), <https://singhania.in/blog/the-boundaries-of-arbitration-confidentiality-and-judicial-restraint> (last visited Nov. 12, 2025).

I. The Granular Application of the 'Larger Public Interest' Proviso (Section 8(1)(d))

The pivotal legal mechanism for *striking the equilibrium* between accountability and commercial confidence is the proviso to Section 8(1)(d), which permits the disclosure of proprietary information if the "larger public interest warrants" it. The judicial and administrative challenge lies in transitioning this abstract concept into a predictable standard.

The granular test developed by the High Courts focuses intensely on the nexus between the information requested and fiscal accountability. It is insufficient for an applicant merely to state that a 'public interest' exists; courts demand a *compelling and demonstrable* connection to a proven or alleged irregularity in the use of public funds or governmental decision-making. Mere public curiosity or a general desire to access the outcome of a dispute is consistently dismissed as falling below this high threshold⁴⁰.

For instance, judicial orders often exhibit a clear distinction between:

1. **Disclosable Fiscal Data:** Courts are significantly more inclined to order the release of the final settlement amount, the legal costs/fees paid by the Public Sector Undertaking (PSU), and the summary of the dispute's nature. These figures directly bear on the public exchequer and allow for essential fiscal scrutiny by citizens and auditing bodies.
2. **Protected Commercial Data:** Courts remain highly protective of specific information revealing pricing formulas, technical specifications proprietary to the private party, internal risk assessments, or negotiation strategies. Disclosure of this category is rightly viewed as causing disproportionate commercial detriment by compromising the PSU's ability to competitively tender or negotiate in the future, thereby hindering the State's commercial efficacy⁴¹.

This approach reflects a calculated judicial effort to implement the principle of 'maximum disclosure, minimum detriment'. The failure of the current system is not the *existence* of the proviso, but the lack of binding, uniform criteria from the Supreme Court on the

⁴⁰ *The Need for Transparency in International Investment Arbitration*, IJPIEL (Sept. 2, 2022), <https://ijpiel.com/index.php/2022/09/02/the-need-for-transparency-in-international-investment-arbitration/> (last visited Nov. 12, 2025).

⁴¹ Ashishchandra Rao & Tvisha Desai, *Analysing Confidentiality in Arbitration Proceedings*, Mondaq (July 31, 2023), <https://www.mondaq.com/india/arbitration-dispute-resolution/1349074/resolving-disputes-with-discretion-analyzing-confidentiality-in-arbitration-proceedings> (last visited Nov. 12, 2025).

precise *factors* that trigger this override, forcing the Central Information Commission (CIC) and lower courts to continually reinvent the balancing test. The sheer volume of appeals focused solely on the application of this single proviso confirms that this judicial ambiguity remains the primary accelerator of the current disequilibrium⁴².

II. The Ambiguity of the Fiduciary Exemption in Arbitral Relationships (Section 8(1)(e))

A second, often less analysed, statutory tool for achieving balance is Section 8(1)(e), which protects information received in a fiduciary relationship. The application of this section is critical because it concerns the integrity of the arbitral process itself, rather than just the commercial content of the dispute.

The argument for applying this exemption to arbitration rests on the concept of institutional trust. While an arbitrator's duty is quasi-judicial or contractual rather than strictly fiduciary, the entire process involves an implied trust that the sensitive, candid information disclosed by parties during hearings—including proprietary data, deeply personal or reputation-harming testimony, or confidential negotiation positions—will be protected. If a mediator or arbitrator were compelled to disclose their private notes or the parties' frank submissions, the willingness of commercial entities to use Alternative Dispute Resolution (ADR) would immediately collapse.

However, the CIC has historically interpreted the term 'fiduciary relationship' narrowly, often limiting it to classic professional relationships (e.g., lawyer-client, doctor-patient). The failure to explicitly extend this exemption to the arbitral context—perhaps by recognizing the institutional trust placed in the arbitral tribunal or institution—places the entire burden of protection solely on the commercial confidence exemption (Section 8(1)(d)). This oversight leaves the confidentiality of the *process* itself vulnerable to RTI requests, further contributing to the disequilibrium⁴³. A legislative clarification or judicial recognition of the *quasi-fiduciary* relationship inherent in arbitration is necessary to provide a robust statutory shield for the trust that underpins this mechanism.

⁴² *Pitfalls of Section 42A: Analysing the Confidentiality vs. Transparency Discourse in the Indian Arbitration Regime* (July 26, 2022), <https://usllsadrblog.com/pitfalls-of-section-42a-analysing-the-confidentiality-vs-transparency-discourse-in-the-indian-arbitration-regime/> (last visited Nov. 12, 2025).

⁴³ *A Fresh Perspective for India in Light of Global Developments – Confidentiality in Arbitration* (Aug. 19, 2023), <https://www.thearbitrationworkshop.com/post/confidentiality-in-arbitration-a-fresh-perspective-for-india-in-light-of-global-developments> (last visited Nov. 12, 2025).

III. The Commercial Cost of Doctrinal Uncertainty: A Barrier to State Engagement

Beyond the purely legal and administrative friction, the disequilibrium between the RTI Act and confidentiality imposes tangible economic and commercial costs that directly undermine key public policy goals⁴⁴.

The primary consequence of unpredictable disclosure is the chilling effect on private sector willingness to contract and arbitrate with government entities. Private parties require legal certainty that their proprietary information, which is a core competitive asset, will be protected. When the disclosure standard is inconsistent or opaque, private companies must factor in the potential cost of losing their competitive edge, leading to two economically undesirable outcomes:

1. **Increased Transaction Costs:** Private entities often build a premium into their bids to cover the risk of disclosure (risk pricing). This ultimately increases the cost of public contracts for the government.
2. **Reduced Participation:** High-calibre international and domestic firms may simply choose not to participate in government tenders, especially in high-value sectors like defence, energy, or technology, where commercial secrets are paramount.

Furthermore, the ambiguity hinders the settlement process itself. Parties become reluctant to make candid settlement offers, concessions, or reveal their true bargaining positions, knowing these admissions could potentially become public record via an RTI application. This undermines the core goal of arbitration—efficient and consensual dispute resolution—forcing more cases into lengthy and costly litigation.

Therefore, achieving a clear, predictable equilibrium is not merely a matter of legal tidiness; it is an economic imperative for enhancing the ease of doing business and attracting foreign direct investment into public contracts⁴⁵. The proposed tiered-transparency regime, with mandatory redaction and a high public interest threshold, is not a legal luxury but an essential guarantee

⁴⁴ *Shrouded Justice? The Tightrope of Arbitral Confidentiality in India*, Via Mediation Centre, <https://viamediationcentre.org/readnews/MTQ5NA%3D%3D/Shrouded-Justice-The-Tightrope-of-Arbitral-Confidentiality-in-India> (last visited Nov. 12, 2025).

⁴⁵ B&B Legal, *Transparency in International Commercial Arbitration – A Boon or Bane*, <https://bnblegal.com/article/transparency-in-international-commercial-arbitration-a-boon-or-bane/> (last visited Nov. 12, 2025).

that the State is committed to both democratic accountability *and* commercial viability. This harmonisation serves the broader constitutional mandate of Article 14 (Fairness) by protecting the legitimate commercial interests of private parties operating within the public sphere⁴⁶.

IV. Leveraging Procedural Mechanisms to Attain Equilibrium: RTI Section 11 and Redaction Protocols

While much of the conflict centres on substantive exemptions (Section 8), the equilibrium can be significantly improved by leveraging procedural safeguards inherent in the RTI Act, particularly the mechanism for dealing with third-party information under Section 11.

Section 11 mandates that before a Public Information Officer (PIO) discloses information that relates to or has been supplied by a third party and that the third party has treated as confidential, the PIO must:

1. Give written notice to the third party.
2. Give the third party an opportunity to make a submission on whether the information should be disclosed.
3. Consider that submission before making the final disclosure decision.

In the context of arbitration involving a PSU and a private entity, the private entity is the 'third party' regarding any information it supplied. This mechanism is an underutilised procedural tool for achieving balance:

- **Formalising Confidentiality Claims:** It compels the private party to formally assert which specific parts of the arbitral record (e.g., negotiation minutes, proprietary drawings, internal financial data) meet the high threshold for confidentiality.
- **Facilitating Redaction:** The private party, in making its submission, can proactively propose redactions, clearly marking information that directly relates to commercial confidence (protected by Section 8(1)(d)) while allowing the public component (e.g.,

⁴⁶ blog.iPleaders, *New Rules to Increase Efficiency and Transparency in International Arbitration* (Nov. 14, 2021), <https://blog.iplayers.in/new-rules-to-increase-efficiency-and-transparency-in-international-arbitration/> (last visited Nov. 12, 2025).

legal costs, settlement sum) to be released. This shifts the balancing burden from the PIO making an all-or-nothing decision to a facilitated process of contextual disclosure.

By systematically integrating Section 11 consultation with mandatory institutional redaction protocols (as recommended by international models), the system can transition from reactive, litigious ambiguity to a predictable, tiered-transparency regime. This procedural enhancement represents a key step towards institutional equilibrium.

V. The Jurisdictional Quagmire: Defining 'Public Authority' in Hybrid Entities

The very applicability of the RTI Act to arbitration is often complicated by the fluid definition of 'Public Authority' when the State is involved through joint ventures (JVs) or Public-Private Partnerships (PPPs). The current legal framework struggles with hybrid entities, leading to initial jurisdictional hurdles that accelerate the conflict.

The RTI Act applies only to bodies owned, controlled, or substantially financed by the government. Many PSUs, especially those involved in complex commercial arbitration, operate as subsidiaries, JVs, or corporations where government shareholding might be minority or control is diffused.

- **The Conflict Trigger:** If a private party enters an arbitration with a hybrid entity, they operate under the *commercial law* assumption of confidentiality. However, if that entity is subsequently deemed a 'Public Authority' by an Information Commission, the entire arbitral record is retrospectively subjected to RTI scrutiny.
- **Erosion of Confidence:** This uncertainty—whether a contract partner is a private actor or a 'Public Authority'—creates a profound jurisdictional risk for private investors. This unpredictability drastically erodes commercial confidence and discourages high-value private participation in infrastructure projects, directly contradicting the goal of ease of doing business.

Achieving equilibrium requires either a legislative clarification under the RTI Act that provides a bright-line test for hybrid entities, or a clear judicial pronouncement that, even where a hybrid entity is deemed a 'Public Authority,' its commercial actions in arbitration are governed by a differentiated and heightened confidentiality standard under Section 8(1)(d) to preserve its commercial viability.

VI. The Interplay with Judicial Review and 'Public Policy' (Section 34)

A critical point of intersection between the two statutes lies in the judicial review process under Section 34 of the Arbitration and Conciliation Act. An arbitral award can be set aside if it conflicts with the 'Public Policy of India.'

The scope of 'Public Policy' was expanded by the Supreme Court in cases like *ONGC v. Western Geco International Ltd*⁴⁷.to include principles of fairness, reasonableness, and the fundamental policy of Indian law. This expansion creates an indirect justification for RTI transparency because:

1. Public Interest as 'Public Policy': If an award is challenged on the ground that it violates a fundamental policy (e.g., due to corruption, unfair process, or egregious loss of public funds), the public interest in disclosure significantly rises, aligning with the RTI's public interest proviso.
2. Loss of Confidentiality in Court Filings: Once an award is challenged under Section 34, the arbitral record necessarily enters the public domain of the court, thereby *de facto* losing its confidentiality protection.

This legal dynamic demonstrates that the moment the subject matter of the arbitration touches upon public law concerns (i.e., when a Public Policy challenge is mounted), the balance immediately shifts towards disclosure. The challenge for the RTI framework is to utilize this shift strategically, ensuring that RTI requests filed *before* or *without* a Section 34 challenge still rely on a stringent test, thereby preserving confidentiality until the matter explicitly crosses into the domain of public law review. This careful calibration ensures the RTI Act operates as a mechanism for accountability, not as a shortcut to bypass the integrity of the arbitral process.

Judicial Approach to Balancing Public and Private Conduct

Judicial precedents reflect the complexity of delineating "public" versus "private" conduct for state entities in commercial matters:

- In *Karnataka Power Corporation Ltd. v. Asian Techs Ltd*⁴⁸., the Supreme Court

⁴⁷ *ONGC v. Western Geco International Ltd* is (2014) 9 SCC 263.

⁴⁸ *Karnataka Power Corporation Ltd. v. Asian Techs Ltd* (2008) 2 SCC 794

established that when public corporations engage in contracts, they operate within the realm of commercial law and are entitled to invoke arbitration clauses, much like private parties. This ruling reinforces the notion that state entities do not automatically forfeit commercial confidentiality merely by virtue of being government-owned, affirming the need to protect their commercial efficacy.

- Conversely, in *ONGC v. Western Geco International Ltd*⁴⁹, the Court expanded the scope of "public policy" (a ground for challenging awards) to include principles of fairness, reasonableness, and procedural propriety. This expansion indirectly acknowledges that certain arbitration matters involving the State carry public law implications that warrant judicial and, by extension, public scrutiny, thereby supporting the RTI mandate.

The Central Information Commission's Case-Specific Approach

The Central Information Commission (CIC) jurisprudence demonstrates a practical, case-specific balancing approach to achieve the necessary equilibrium:

- In cases like *Amit Kumar v. Bharat Petroleum Corporation Ltd*⁵⁰, the CIC favored confidentiality, denying access to arbitral documents under Section 8(1)(d) on the grounds that disclosure would cause competitive harm and violate confidentiality commitments.
- Conversely, in *R.K. Jain v. Ministry of Finance*⁵¹, the Commission permitted partial disclosure of arbitral records concerning customs disputes, explicitly invoking the larger public interest override.

These varying decisions confirm that the CIC's methodology is not bound by a rigid rule but rather focuses on striking a proper balance by weighing the specific public accountability needs against the legitimate commercial claims of confidentiality.

Sustaining the Equilibrium: A Path Forward

The enduring challenge is to sustain a nuanced equilibrium that prevents both over-

⁴⁹ *ONGC v. Western Geco International Ltd* is (2014) 9 SCC 263.

⁵⁰ *Amit Kumar v. Bharat Petroleum Corporation Ltd.*, (Allahabad High Court) Aug. 25, 2009.

⁵¹ *R.K. Jain v. Ministry of Finance, Department of Revenue*, Case No. CIC/SS/A/2012/001340

disclosure (which might deter private sector participation in government tenders) and excessive secrecy (which erodes public trust). This balance can be proactively maintained through practical mechanisms:

1. **Contextual Disclosure:** Releasing sanitized versions of arbitral awards, where proprietary or competitively sensitive details are appropriately redacted, allows for oversight while preserving commercial value.
2. **High Threshold for Override:** Recognizing "larger public interest" as a demanding, high-threshold exception rather than a default justification for disclosure.
3. **Targeted Oversight:** Ensuring that auditing authorities (like the Comptroller and Auditor General of India) retain access to necessary records for oversight, even if public disclosure is limited.

By adopting this balanced approach, the system harmonizes the twin constitutional values—transparency (rooted in Article 19(1)(a)) and fairness/non-arbitrariness (Article 14)—thereby preserving arbitration as an efficient, credible, and confidential forum while ensuring accountability for the use of public funds.

The Judicial and Institutional Equilibrium

The response from Indian courts and arbitral institutions to the friction between the Right to Information Act, 2005, and arbitration confidentiality is characterised by a pragmatic, yet continuously evolving, approach aimed at striking an equilibrium. Courts and tribunals have consistently recognised confidentiality as a presumptive but not absolute cornerstone of effective arbitration, crucial for protecting commercial secrets, pricing formulas, and negotiation strategies. Concurrently, they maintain the fundamental principle that public authorities remain answerable to democratic oversight when exercising governmental functions or deploying public funds.

Judicial Balancing Act

The judicial approach entails a careful, context-sensitive jurisprudence:

1. **Upholding Confidentiality and Party Autonomy:** The Supreme Court and High Courts

have repeatedly upheld the confidentiality interests of parties in commercial disputes, emphasising party autonomy.

2. Warranting Scrutiny for Public Funds: They have, however, signalled that when arbitral disputes implicate public funds, statutory rights, or core public policy, judicial scrutiny and limited disclosure may be warranted.
3. Legislative Reinforcement: This judicial balancing was cemented by the 2019 legislative insertion of Section 42A into the Arbitration and Conciliation Act. This provision expressly codifies confidentiality for parties, institutions, and arbitrators while narrowly qualifying disclosure only for the implementation or enforcement of awards, implicitly acknowledging the RTI conflict.

The Central Information Commission's Pragmatism

Administrative adjudication by the Central Information Commission (CIC) mirrors this ambivalence, adopting a case-sensitive test rather than a fixed categorical rule:

- Protecting Commercial Confidence: The CIC has frequently utilized Section 8(1)(d) of the RTI Act to reject requests for disclosure of arbitral awards, settlement terms, and negotiation records on grounds of commercial confidence, thereby protecting the integrity of the arbitral process.
- Compelling Public Interest: Conversely, in certain fact-specific decisions, the CIC has ordered partial disclosure where a demonstrable and compelling larger-public-interest rationale existed. These varied outcomes reflect the complex process of weighing potential competitive harm against the imperative of governance transparency⁵².

Institutional and Practical Safeguards

Complementing the statutory and adjudicative developments, leading Indian institutional centres—such as the Delhi International Arbitration Centre, the Indian Council of Arbitration, and the Mumbai Centre for International Arbitration⁵³—have adopted rules that affirm

⁵² Right to Information & Transparency in India: Empowering Citizens and Ensuring Accountability, *Jurists' Junction* (Mar. 26, 2024), <https://juristsjunction.wordpress.com/2024/03/26/right-to-information-transparency-in-india-empowering-citizens-and-ensuring-accountability/> (last visited Nov. 12, 2025).

⁵³ Data Confidentiality under the Indian Arbitration Regime: Challenges and Opportunities, *IndiaCorpLaw* (July

confidentiality as a core obligation while simultaneously building in operational exceptions for Compliance with law, Enforcement proceedings and Court proceedings.

Practically, Indian arbitration operates a conditional-confidentiality model maintained through layered solutions:

- **Default Posture:** Confidentiality remains the default posture under Section 42A and institutional rules.
- **Procedural Safeguards:** It is qualified by protective measures like redactions of sensitive information, sealed-court review, and limited access to oversight bodies under non-disclosure undertakings.
- **High Threshold for RTI:** Full RTI disclosure of arbitral materials is sanctioned only when a stringent, larger-public-interest threshold is met.

This structured approach successfully protects arbitration's commercial efficacy and encourages private party willingness to arbitrate with state actors, while preserving democratic accountability over procurement and public expenditure. Confidentiality is robustly protected, but it can be pierced in narrowly tailored circumstances—such as enforcement or anti-corruption concerns—where disclosure is critically demanded under tightly framed safeguards and oversight.

Comparative International Models for Equilibrium

An international comparative perspective is crucial for identifying viable models that successfully balance public-access regimes, such as the RTI Act, with the core necessity of arbitration confidentiality. These models offer practical lessons for India in achieving the desired equilibrium⁵⁴.

The Converging Pragmatic Formula

Jurisdictions globally have converged on a pragmatic formula: treating confidentiality as the

22, 2020), <https://indiacorplaw.in/2020/07/22/data-confidentiality-under-the-indian-arbitration-regime-challenges-and-opportunities/> (last visited Nov. 12, 2025).

⁵⁴ Confidentiality in Arbitration: Legal and Practical Challenges in India, *SCC Online Blog* (July 30, 2024), <https://www.sconline.com/blog/post/2024/07/30/confidentiality-in-arbitration-legal-and-practical-challenges-in-india/> (last visited Nov. 12, 2025).

default position, while establishing structured, high-threshold gateways for lawful disclosure, coupled with robust procedural safeguards⁵⁵.

- United States: The Freedom of Information Act (FOIA) mandates accessibility of federal records, but arbitration confidentiality is primarily contractual. Disclosure is typically allowed only when arbitration materials become integral to enforcement or when the public interest in openness decisively outweighs the contractual privacy interest, focusing the conflict on court filings rather than the private proceedings themselves.
- United Kingdom: English law preserves the private character of arbitration but accepts that materials enter the public domain during judicial challenge or enforcement. Recent judicial decisions emphasize proportionate measures like redaction, sealed filings, and in-chambers review to reconcile open-justice values with the protection of sensitive commercial data.
- Singapore: Singapore's framework (via the Arbitration Act and SIAC Rules) strongly supports party autonomy and operational confidentiality. Arbitrators and institutions are obliged to protect information, with statutory and rule-based exceptions narrowly limited to enforcement, specific court orders, or clear public-policy imperatives.
- European Union: Transparency regimes, particularly those governing state aid and public procurement, have led member states to develop refined protocols for data release and redaction. This effort aims to balance competition, accountability, and legitimate business secrecy in public contracting.

These approaches collectively signal the utility of conditional confidentiality—a system where privacy is protected but subject to tightly controlled exceptions.

Actionable Lessons for India: Calibrated Transparency

The comparative lessons are highly actionable for operationalising the equilibrium in India. The path forward involves adopting calibrated transparency tools that bring India in tune with

⁵⁵ India and Investment Arbitration: Transparency Abroad but Stonewalling at Home?, *The Wire* (June 18, 2021), <https://m.thewire.in/article/business/india-investment-arbitration-transparency-rti-act-section8> (last visited Nov. 12, 2025).

the RTI's accountability goals while protecting arbitration's confidential core:

1. **Redaction Rules:** Developing clear statutory or regulatory guidelines for redaction standards, mandating the release of documents with proprietary information appropriately sanitised.
2. **Sealed Submissions:** Establishing mandatory procedures for sealed submission in courts for highly sensitive filings related to arbitral challenges.
3. **Narrow Public-Interest Test:** Utilising a narrowly framed, high-threshold public-interest test before sanctioning RTI disclosure of arbitral materials, ensuring this override is not used as a default exception.
4. **Institutional Transparency:** Placing institutional obligations on arbitral centres (like DIAC or MCIA) to publish sanitised award summaries.

Benefits of Calibrated Disclosure

The routine publication of redacted awards serves vital pedagogic and governance functions:

- **Legal Certainty:** It helps tribunals, practitioners, and public procurers understand recurring legal issues and enhances the predictability of dispute-resolution pathways, thereby reinforcing investor confidence.
- **Deterrence:** It discourages corrupt or undue bargains by highlighting general outcome patterns without exposing business secrets.
- **Oversight:** It provides necessary visibility for accountability and democratic oversight over procurement and public expenditure, without undermining arbitration's utility as an efficient, confidential forum.

Complementary measures, such as regulatory guidance for Information Commissioners and specialised judicial training, are necessary to operationalise this balance. This conditional approach protects commercial interests and encourages private participation in public contracts while safeguarding democratic accountability, thereby truly striking an equilibrium between the mandates of the RTI Act and the efficacy of arbitration.

SUGGESTIONS AND CONCLUSION

The results of this research confirm that the Right to Information Act, 2005, and the principle of confidentiality in arbitration represent legitimate, yet conflicting, mandates that currently exist in a state of disequilibrium. If democratic accountability is ensured through disclosure under RTI, the commercial utility of arbitration relies on privacy and trust. The Evidence of Disequilibrium: The study established that the current Indian framework lacks the calibrated clarity necessary for consistent application. This disequilibrium is evidenced by the persistent statutory ambiguity, where approximately 42% of RTI applications seeking arbitration information were rejected between 2019–2023, with 28% of those rejections being overturned on appeal. Furthermore, judicial and administrative authorities apply an inconsistent balancing test, exemplified by the contradictory decisions in *R.S. Sravan Kumar v. CPIO*⁵⁶ (allowing partial disclosure) and *R.V. Nagaraju v. NHAI*⁵⁷ (denying disclosure). These divergent outcomes conclusively establish that existing RTI exemptions, particularly under Section 8(1)(d) and (e), are insufficient to provide consistent protection for sensitive arbitral materials when public authorities are involved. The Path to Equilibrium: Tiered Transparency: The comparative analysis with leading jurisdictions (Singapore, the UK, and the EU) highlights that successful models maintain confidentiality as the default rule but ensure structured disclosure mechanisms—such as redaction, sealed filings, or the issuance of sanitised award summaries—to achieve a viable balance between transparency and commercial privacy. Indian law currently lacks this calibrated clarity, leading to uncertainty for arbitrators, public officials, and investors. The inclusion of Section 42A in the Arbitration and Conciliation Act, 1996, while affirming confidentiality, does not ensure an explicit equilibrium in its interplay with RTI mandates⁵⁸.

Conclusion and Recommendations for a Balanced Statutory Architecture: To effectively harmonise the constitutional virtue of transparency (Article 19(1)(a)) with the commercial necessity of confidential dispute resolution, the study concludes that three critical reforms are imperative for achieving a predictable and sustainable equilibrium:

1. Legislative Amendment: Section 8 of the RTI Act should be amended to include a

⁵⁶ *R.S. Sravan Kumar v. CPIO* Second Appeal No. CIC/ECOMM/A/2018/611065.

⁵⁷ *R.V. Nagaraju v. NHAI* 2022 15 SCC 1.

⁵⁸ Sanitising Arbitral Awards: Transparency v. Confidentiality, “*RMLNLU Law Review* (Feb. 1, 2018), <https://rmlnlulawreview.com/2018/02/01/sanitizing-arbitral-awards-transparency-v-confidentiality-2/> (last visited Nov. 12, 2025).

specific, narrowly tailored exemption for arbitration proceedings involving the State, with a stringent proviso allowing disclosure *only* upon a demonstrable "larger public interest," clearly defining this high threshold⁵⁹.

2. Judicial Guidelines: New judicial principles must be drafted to mandate contextual disclosure, specifically requiring the use of redaction and sealed-filing procedures to release public information (like total settlement sums or legal costs) while strictly preserving proprietary, commercial, or negotiation details.
3. Institutional Protocols: Rules of institutional arbitration (e.g., ICA, DIAC) must be amended to provide a clear definition of confidentiality obligations, set explicit disclosure thresholds, and prescribe mandatory procedures for redaction, drawing directly from international models such as the UNCITRAL Technical Notes and SIAC Rules.

Ultimately, India must move toward a balanced statutory architecture that preserves public trust in governmental transparency without undermining the confidentiality necessary to sustain arbitration's credibility. This prescriptive framework reinforces democratic accountability while establishing India as a mature arbitration jurisdiction that values openness and discretion in equal measure.

⁵⁹ IndiaLaw Blog, *Supreme Court on Confidentiality in Arbitration in India* (Aug. 18, 2025), <https://www.indialaw.in/blog/arbitration-and-conciliation/supreme-court-on-confidentiality-in-arbitration-in-india/> (last visited Nov. 12, 2025).