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International Commercial Arbitration In The Tech Industry: Balancing Trends Of Confidentiality And Transparency

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INTRODUCTION

International commercial arbitration has long been admired for its private, efficient, and party-controlled system of dispute resolution. It is especially appealing to multinational technology firms, who frequently have to contend with cutting-edge proprietary information, cross-border intellectual property, and intricate commercial contracts. The confidentiality of arbitration offers protection for trade secrets, reduces repetitional risks, and allows firms to have control over their disputes. But as technology leaves an increasing mark on public life and involves issues of public concern, regulatory compliance, and human rights, the very nature of confidentiality in arbitration is being subjected to unprecedented scrutiny. In the technology sector, where firms exist as both commercial entities and as platforms for public utility, the call for transparency, especially in cases involving labour rights, data privacy, and antitrust conduct has increased exponentially. The need for balancing the requirements of confidentiality against the imperatives of transparency has emerged as a core normative challenge in international commercial arbitration. This tension between confidentiality and transparency is the central theme of this article. This article examines the new and consequential tension, in particular, as it pertains to arbitration disputes that arise within the tech sector. Through a critical analysis of exemplary case studies, including Apple v. Qualcomm and Uber v. Indian Regulatory Authorities, it delves into how confidential arbitration has at times squarely collided with the larger aims of regulatory oversight, the development of legal precedent, and public accountability. These cases are not only legal milestones but also a marker of a broader shift in the perception of international arbitration, in particular, when areas of business that overlap with the public attempt to conceal disputes from the public eye. Ultimately, this article contends for an overhauled model of international arbitration, one that takes into account the evolving role of tech companies as quasi-public actors and that acknowledges that certain disputes, despite arising from private agreements, have public implications that necessitate at least some measure of transparency. Arbitration does not have to be jettisoned; rather, its frameworks must evolve to meet the complexities of the digital age. Only through doing so can it maintain its legitimacy while advocating the virtues of accountability and justice in an increasingly globalized world.

THE CLASSIC JUSTIFICATION FOR CONFIDENTIALITY IN ARBITRATION

Confidentiality has always been one of the most highly prized attributes of international arbitration. It is more than a matter of procedural choice; instead, it is a fundamental attribute that renders arbitration an even more attractive option to litigation, particularly for multinational corporations faced with sensitive, complicated, and high-stakes disputes.[1] It is particularly significant in sectors such as technology, where the rate of innovation is high, intellectual property is a top priority, and proprietary information is one of the most highly protected assets.[2]

At its essence, confidentiality in arbitration is a shield for business secrets. In industries whose success relies on preserving competitive advantage through innovation, whether in algorithms, hardware design, data analysis, or proprietary software, disclosure of technical or strategic information can be commercially damaging to the extent of being irreparable. Public litigation entails disclosure of pleadings, evidence, and judgments laying bare

[1] Tung, Sherlin Hsie-lien, and Brian Lin. "More transparency in international commercial arbitration: to have or not to have." Contemp. Asia Arb. J. 11 (2018): 21.

[2] Feliciano, Florentino P. "The ordre public dimensions of confidentiality and transparency in international arbitration: examining confidentiality in the light of governance requirements in international investment and trade arbitration." In Transparency in International Trade and Investment Dispute Settlement, pp. 15-29. Routledge, 2012

corporate weaknesses, trade secrets, and contractual terms to public view.[3] Arbitration, on the other hand, provides a sealed setting in which such information is protected from competitors, investors, and even regulators unless disclosure is absolutely necessary. For instance, imagine a dispute regarding a software licensing agreement between two technology firms. The agreement might include sensitive information regarding pricing structures, future product development, or licensing strategies. Were such a dispute ventilated in public court proceedings, competitors would gain knowledge of this information and be able to utilize it against them. Arbitration enables such disputes to be settled behind closed doors, protecting business secrets and preserving a company's competitive advantage.[4] Moreover, this confidentiality is not restricted to the parties. Arbitral proceedings typically exclude public access to hearing transcripts, pleadings, witness statements, and tribunal deliberations. Even the final award may not be publicly disclosed unless the parties desire it. This degree of discretion is particularly prized in industries where reputational capital is at stake. Public legal combat can generate negative publicity, undermine investor confidence, and erode customer confidence, consequences that confidentiality aims to avoid.[5]

Another traditional justification of confidentiality is its role in the management of reputational risk. For global business firms, particularly in the consumer-facing sectors such as telecoms, e-commerce, cloud computing, or mobility, public disputes pose the risk of reputational harm. Suits alleging breach of contract, abuse of intellectual property, or anti-competitive practices, even if lost, can besmirch a company's brand reputation. Arbitration allows companies to manage such disputes confidentially, eliminating public theatre and permitting more effective resolution of disputes.[6] Confidentiality is also the emblem of party autonomy, a hallmark of arbitration. Parties may specifically tailor the degree of confidentiality wished for, commonly tailoring their arbitration provisions to accommodate the particular sensitivities of their industry. In high-level commercial agreements, such as cross-licensing contracts in the high-tech industry, provisions of confidentiality are not template but negotiated in great detail to detail what can or cannot be disclosed, on what basis, and to whom.[7]

The majority of large arbitral institutions have incorporated confidentiality into their rules and therefore have made it a normative obligation. Institutions such as the United Kingdom's London Court of International Arbitration (LCIA), the International Chamber of Commerce (ICC), Singapore's Singapore International Arbitration Centre (SIAC), and Hong Kong's Hong Kong International Arbitration Centre (HKIAC) have explicit confidentiality provisions within their procedural rules. The LCIA, for instance, mandates all the players, that is, parties, legal advisors, arbitrators, and tribunal secretaries, not to make available any materials pertaining to the proceedings without prior authorization or legal necessity. Similarly, the ICC has traditionally maintained arbitral awards confidential, though recent reforms have allowed more open reporting in anonymized form. These institutional obligations are generally complemented by ethical obligations imposed on arbitrators and counsel, thereby creating a robust ecosystem that imposes confidentiality as an enforceable obligation rather than a desire. For technology companies and their attorneys, this provides the assurance that sensitive information disclosed during arbitration will not inadvertently become public.

Though it is important, confidentiality in arbitration is neither absolute nor universal. Its application can differ depending on the governing law, seat of arbitration, and particular arbitral rules in invocation. Some jurisdictions, primarily England and Wales have created a healthy jurisprudential basis for accepting confidentiality as an implied duty in arbitration. English courts have consistently upheld this doctrine, mandating

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[3] Malatesta, Alberto, and Rinaldo Sali. The rise of transparency in international arbitration. Juris Publishing, Inc., 2013

[4] Rogers, Catherine A. "Transparency in international commercial arbitration." U. KaN. l. rev. 54 (2005): 1301

[5] De Ly, Filip, Mark Friedman, and Luca Radicati Di Brozolo. "International Law Association International Commercial Arbitration Committee's Report and Recommendations on 'Confidentiality in International Commercial Arbitration'." Arbitration International 28, no. 3 (2012): 355-39

[6] Bhatia, Vijay K., Christopher N. Candlin, and Rajesh Sharma. "Confidentiality and integrity in international commercial arbitration practice." Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 75, no. 1 (2009).

[7] Trakman, Leon E. "Confidentiality in international commercial arbitration." Arbitration International 18, no. 1 (2014): 1-18.

the privacy of the arbitral process unless there are overriding reasons for disclosure.[8] Conversely, judicial systems in countries like the United States are more conservative in their approach. The legal system in the U.S. does not recognize an implied obligation of confidentiality in arbitration unless this duty has been specifically agreed to by the concerned parties. Courts have further required disclosure of documents related to arbitration in legal or regulatory proceedings, particularly when such information is deemed relevant to the public interest or the rights of third parties.[9] The UNCITRAL Arbitration Rules, widely employed in investor-state arbitration and transnational commercial arbitration, are not equipped with built-in confidentiality provisions. Accordingly, parties employing such rules are required to include explicit confidentiality undertakings within their arbitration clauses. Absent this, it can lead to a less secure system, which can release confidential information in the process of enforcement or ancillary legal proceedings.[10] Such legal heterogeneity makes it risky for multinational enterprises that arbitrate in more than one jurisdiction. Institutional rules could be made confidential, but their enforcement would vary based on where challenge or enforcement procedures are initiated. Therefore, parties need to be cautious while including confidentiality clauses in their agreements and carefully choose arbitral seats and institutional rules while keeping the protection of confidential information in view.

Even with a strong sense of confidentiality in certain systems, exceptions do occur. Statutory provisions, regulatory requirements, or compelling public interests may compel disclosure. For example, a firm might be obligated to inform securities regulators or stock exchanges of significant disputes. Likewise, requests concerning anti-trust issues, taxation disclosure, and compliance with national security regulations may compel some degree of disclosure. Certain arbitral institutions have acknowledged the validity of such carve-outs. The ICC, for instance, permits disclosure where it is necessary in order to satisfy legal requirements. The LCIA sanctions disclosure "to the extent necessary in connection with legal proceedings," finding a balance between maintaining party interests and compliance with external legal regimes. These exceptions do not weaken the confidentiality principle but rather underscore its dynamic nature. As social concerns regarding accountability, fairness, and systemic risk increase, especially in those areas with wide-ranging societal impacts like data privacy, gig work, and platform regulation, arbitration must evolve while safeguarding its core principles.[11]

EROSION OF THE NORM OF CONFIDENTIALITY

Confidentiality in arbitration was extolled for centuries as the basis for its efficiency, impartiality, and commercial appeal. But whereas the scope and influence of international arbitration have extended, particularly technology, the very same principles by which confidentiality has been sustained in the past are being undermined. The arbitration of today no longer entails confidential commercial disputes between equals—it now oftentimes entails large public interest cases, legal control, and broad social implications. As such, the standard of confidentiality, one that was traditionally regarded as almost sacred, is being subjected to a deep and contentious erosion.[12] This erosion is not an abstract issue, rather it's a normative, regulatory, and democratic issue. In industries like tech, where business practice impacts the lives of tens of millions of users, workers, and stakeholders, arbitration disputes become systemically determinative. They're not just discrete matters of contract interpretation or damages; rather, they're matters of data privacy, algorithmic accountability, worker misclassification, and consumer protection, matters that echo far beyond the arbitration room and into the public square.[13]

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[8] Gu, Weixia. "Confidentiality Revisited: Blessing or Curse in International Commercial Arbitration?." American review of international arbitration (2006).

[9] Villanueva Picos, Evelyn Marina. "A modern approach to confidentiality in international commercial arbitration: transparency v secrecy." PhD diss., University of Essex, 2019.

[10] Carmody, Matthew. "Overturning the presumption of confidentiality: should the UNCITRAL rules on transparency be applied to international commercial arbitration." Int'l Trade & Bus. L. Rev. 19 (2016): 96.

[11] Poorooye, Avinash, and Ronan Feehily. "Confidentiality and transparency in international commercial arbitration: finding the right balance." Harv. Negot. L. Rev. 22 (2016): 275.

[12] Zhao, Mary. "Transparency in international commercial arbitration: adopting a balanced approach." Va. J. Int'l L. 59 (2019): 175.

[13] Tung, Sherlin Hsie-lien, and Brian Lin. "More transparency in international commercial arbitration: to have or not to have." Contemp. Asia Arb. J. 11 (2018): 21.

Today's technology companies do not exist just in the commercial realm. They are embedded in the social, economic, and even political fabric of daily life. These companies are de facto public utilities in transport, communication, commerce, and information. Their actions have transnational implications, and regulatory interest is therefore not only warranted by one state, but by multiple states, trade blocs, and international institutions. Accordingly, when such companies are involved in controversies, about algorithmic justice, antitrust behavior, or user privacy, the idea that such controversies must be decided in their entirety in private becomes increasingly unrealistic. The public has a stake in knowing how such controversies are decided, what legal principles are being established, and whether corporate parties are being held accountable. When such controversies are decided by arbitration, closed to the public eye, it creates what scholars have referred to as a "transparency deficit", a state of affairs in which decisions that define regulatory compliance and public well-being are made without public awareness, scrutiny, or participation.[14] This conflict was clearly evident in the dispute of Apple v. Qualcomm (2017–2019), where standard-essential patent (SEP), licensing fee, and antitrust concerns were decided by secret arbitration. Although the conflict initially played out in open courts, with significant regulatory scrutiny and media debate, its eventual resolution in secret arbitration left core legal questions unresolved and off public record. Not only did this deny regulators judicial precedent value but also hid potential anti-competitive conduct that was able to influence wider market regulation.

A deeper issue with the use of arbitration to resolve tech disputes is the effective bypassing of public regulatory processes. Arbitration was originally designed as a means for resolving private commercial disputes. But when used to resolve disputes of regulatory compliance—such as data protection requirements, classifying gig workers, or platform accountability—it begins to displace the traditional function of courts and administrative agencies. Arbitration in these instances functions less as an adjudicative forum and more like a system of privatized governance.[15] The Uber v. Indian Regulatory Authorities case (2017–2020) is a good example of this problem. Uber employed private arbitration with employees and partners over complaints like labour misclassification, workplace safety, and data privacy abuses. But these were not even contractual grievances. They encroached upon the very nature of how public transport was governed, how digital employers treated employees, and how user data was protected in a fast-digitizing society. Civil society organizations and media repeatedly called for greater transparency, arguing that private settlement of these grievances undermined public accountability and democratic control. Indeed, if arbitration were to become the focal point through which tech companies resolve complaints that ought instead to be litigated or regulated, public interest law actually does risk being emptied out. Secret arbitration awards could yield de facto regulatory regimes without parliamentary input, judiciary supervision, or publicity. Not to mention this subverting formative legal institutions, these risks excluding parties whose voices are not represented in the arbitral forum: consumers, civil society, employees, and sometimes even state regulators.

CONFIDENTIALITY VS. RIGHT TO KNOW

This institutional, constitutional, and normative tension between transparency and secrecy lies in the fact that democratic governance rests on the assumption that law and its administration are to be made transparent to public scrutiny. For this reason, arbitration does not fit well with the general design of public law, particularly if it starts making rules of common application or resolving issues touching upon substantial segments of the people. There is therefore an emerging thesis that confidentiality in arbitration must be reweighted when cases have public interest aspects. That is not necessarily to abandon confidentiality altogether. Rather, it is that arbitral tribunals, institutions, and parties must cultivate more nuanced confidentiality regimes that allow for transparency in some forms, e.g., release of redacted awards, public hearings in regulation cases, or third-party interventions by public interest groups.[16] Some international initiatives have sought to redress this imbalance.

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[14] Blavi, Francisco. "A Case in Favour of Publicly Available Awards in International Commercial Arbitration: Transparency v. Confidentiality." Int'l Bus. LJ (2016): 83.

[15] Ramphal, Talitha. "Confidentiality in International Commercial Arbitration: A Plea for a (Practical) Balance between Confidentiality and Transparency in the Publication of Arbitral Awards." Disp. Resol. Int'l 17 (2023): 91.

[16] Ahn, Keon-Hyung. "Confidentiality and the Riddick Principle in International Commercial Arbitration." *J. Arb. Stud.* 31 (2021): 43.

The UNCITRAL Transparency Rules, originally designed for investor-state arbitration, give an example of opening up proceedings when public policy is concerned. Not immediately applicable in commercial arbitration, the rules have stimulated more general discussion of transparency obligations where public goods are concerned. Likewise, arbitral bodies such as the ICC have embraced greater transparency through publication of anonymized awards and procedural orders. While continuing to maintain party confidentiality, these shifts recognize that legitimacy in arbitration, especially in high-value tech disputes, demands a measure of transparency.[17]

APPLE V. QUALCOMM AND THE SECRET POWER OF CONFIDENTIAL ARBITRATION IN STANDARD-ESSENTIAL PATENTS

The decades-long battle between Apple Inc. and Qualcomm Inc. over standard-essential patents (SEPs) and licensing royalties is a classic example of a broader and more contentious dispute: the validity of confidentiality in arbitration, traditionally seen as a desirable aspect in commercial disputes, where the interests involved have high public, economic, and regulatory stakes. This case has emerged as a model case, not for the judicial rulings, which are largely confidential to date, but for the issues it raises about how private arbitration can hide matters of high public interest and skew the behaviour in the international market.[18] At the heart of the controversy was Apple's contention that Qualcomm was abusing its dominance in the market for chipsets to charge technology companies exorbitant royalties to use Standard Essential Patents (SEPs) that were integral to the 3G and 4G mobile telephony systems. Apple also argued that Qualcomm's licensing practices were going against its pledge to make SEPs available on Fair, Reasonable, and Non-Discriminatory (FRAND) terms. On its part, Qualcomm argued that Apple had started global regulatory wars against its business model while also refusing to pay royalties according to terms of prior agreements. The court fight was waged across different jurisdictions, with some aspects being fought out in open courts, i.e., the United States, Europe, South Korea, and China. Regulatory bodies in these jurisdictions initiated antitrust probes against Qualcomm with mixed outcomes. In the United States, the Federal Trade Commission (FTC) brought an antitrust action against Qualcomm, and it was granted an initial decision which was later overturned on appeal. But the most important aspects of the Apple and Qualcomm war were out of sight: they were settled by private arbitration, under arbitration provisions in the companies' license and supply contracts.[19]

In 2019, the case was suddenly resolved when Apple and Qualcomm reached a confidential settlement, dismissing all pending litigation and arbitration proceedings. The settlement included a six-year license agreement, a multi-year chipset supply agreement, and a one-time cash payment by Apple to Qualcomm, reportedly in the tens of billions of dollars. Aside from the broad terms described in press releases and investor notices, however, the exact legal and commercial terms were not made public. The arbitral award, the findings of fact, and the legal basis for the settlement were never published. This impenetrable settlement had ripple effects far beyond Qualcomm and Apple's short-term interests. First, the settlement came at a moment when regulators and courts around the world were actively wrestling with the appropriate valuation of SEPs, the permissible scope of licensing practices, and the line between patent law and antitrust regulation. Without publicly available arbitral reasoning, regulators and courts had a void: one of the largest and most important legal fights over FRAND commitments had been resolved in a forum that produced no precedent, no clarification of law, and no accountability.[20] The consequences were swift. Qualcomm leveraged the settlement to make a public announcement that its licensing model had been validated. Even though no judicial or arbitral ruling was publicly disclosed, Qualcomm framed the outcome as approval of its long-term business model. This strategic deployment of a private resolution blurred the line between legal legitimacy and business narrative—a development that not

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[17] Susan, Binsy, and Amogh Srivastava. "Publication of Arbitral Awards: Balancing Confidentiality and Transparency in Arbitration." Ind. Arb. L. Rev. 4 (2022): 13.

[18] Villanueva Picos, Evelyn Marina. "A modern approach to confidentiality in international commercial arbitration: transparency v secrecy." PhD diss., University of Essex, 2019.

[19] Mahajan, Rahul, and Rinkal Goyal. "The Dilemma of Confidentiality in Arbitration Proceedings: A Legal Quagmire." Part 1 Indian J. Integrated Rsch. L. 2 (2022): 1.

[20] Stern, Richard H. "FTC and Apple Sue Qualcomm for Cell Phone Standardization Skullduggery: Part 1." IEEE Micro 37, no. 02 (2017): 81-89.

only left the public bewildered but also brought serious concerns for regulators, scholars, and small industry players.

For regulators, confidentiality of the settlement undermined attempts to determine whether Qualcomm's licensing terms were indeed fair and non-discriminatory, or whether Apple had merely opted for a commercially convenient solution to a long and costly legal fight. For policymakers interested in writing or creating SEP-related legislation, unavailability of accessible jurisprudence was a missed opportunity. For smaller companies in the telecom and semiconductor industries, confidentiality of the solution denied them the chance to compare licensing expectations or learn the legal costs they would face in trying to challenge similar SEP regimes.[21] In short, the non transparent arbitration procedure and secrecy of the settlement had a demoralizing effect on both legal creativity and enforcement of policy. Matters that could have set judicial precedents of landmark significance regarding FRAND compliance, antitrust limitations, and abuses in the intellectual property context remained unresolved—because they were within an arbitral proceeding not open to the public.

The Apple-Qualcomm saga is an emblem of profound democratic failure in the arbitration process, especially when used in cases that affect public markets and regulatory frameworks. The secrecy that is generally acceptable in common commercial contracts on the basis of business secrecy and procedural convenience becomes problematic if the arbitration forum replaces public courts in deciding matters affecting the general market and consumer welfare. When such landmark cases are decided in secret, the intrinsic idea of law as a public good is violated. Justice becomes a transactional and isolative process without the accountability, transparency, and jurisprudential development that is facilitated by public litigation. This problem is most acute in the technology industry, where issues of licensing, ownership of data, platform liability, and access to markets have come to take on increasingly greater significance in the global economy. Decisions reached in private arbitration proceedings have the potential to create de facto standards that affect all participants, from software developers and manufacturers to consumers, without granting either procedural or substantive access. More troubling is the practice of firms selectively revealing the outcomes of such settlements to meet their strategic needs, a process best illustrated by Qualcomm, and hiding information that would disprove their public narrative.[22]

The Apple-Qualcomm battle cannot be understood as a business solution in and of itself, but rather as a caution regarding the risks of unregulated arbitration, which dismembers the social role of law beyond the ambit of private contracts. The correct reaction is not to ban arbitration entirely, but to acknowledge its limits and impose corresponding standards.National parliaments and arbitral institutions should start to draw lines around particular areas of cases where transparency is not an option but an imperative, especially where stakes intrude upon public markets, consumer protection, or wide regulatory regimes. Conditional disclosure of awards, third-party access provisions in cases of public interest, and judicial oversight of arbitration in disputes over statutory rights can be such accommodations. Just as with the centuries-long struggle of courts to balance confidence and public accountability, so too should arbitration. The shroud of secrecy, which had been regarded as a protection to commerce, should not be an impediment to justice.[23]

UBER V. INDIAN REGULATORY AUTHORITIES (2017–2020): A WINDOW INTO ARBITRATION'S DEMOCRATIC DEFICIT

The rise of the gig economy, spearheaded by technology giants like Uber, has precipitously upended traditional employer-employee relationships and transformed the regulatory landscape of labor markets globally. India, with its fast-growing urban labor force and burgeoning digital services economy, has become a pivotal battleground for such change. Between 2017 and 2020, Uber faced vigorous regulatory scrutiny and judicial battles in India on matters pertaining to driver classification, passenger safety, and data handling. However, as opposed to conventional court cases where such matters are publicly adjudicated, Uber utilized private arbitration to settle

[21] Chen, Shangle, Chang Liu, and Jiaming Yang. "The Patent Dispute Between Apple, Samsung, and Qualcomm: Was Apple, a Good Negotiator?." In 2021 International Conference on Economic Development and Business Culture (ICEDBC 2021), pp. 140-143. Atlantis Press, 2021.

[22] Born, Gary B. "International commercial arbitration." (2020): 1-5048.

[23] Mahajan, Rahul, and Rinkal Goyal. "The Dilemma of Confidentiality in Arbitration Proceedings: A Legal Quagmire." Part 1 Indian J. Integrated Rsch. L. 2 (2022): 1.

most of these matters. This case study illustrates the democratic and regulatory concerns that arise when matters of public interest are shrouded in secrecy by international commercial arbitration.[24]

Uber's Indian business model was based on agreements that classified drivers as independent contractors and not as employees. The agreements contained arbitration provisions that required disputes to be resolved by private arbitration, most often under the jurisdiction of foreign institutions such as the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA). When multiple disputes arose covering issues pertaining to wages, violations of safety, and abuse of data. Uber used these arbitration provisions to prevent judicial scrutiny in open courts. This strategic reliance on arbitration immediately served to shield the company from public legal action. But the darker effect was that serious matters concerning public welfare were shifted from open courtrooms where there was public participation and media monitoring to closed arbitration rooms where the outcomes were not disclosed and legally unclear.[25] There were many issues that occurred in these arbitrations, all of which deviated from the area of private contractual disputes and into public interest law. The question of the employee status of Uber drivers lay at the centre of the dispute. The drivers wanted the status of employees under Indian labour law, which would entitle them to statutory benefits like a minimum wage, social security, and the right to collective bargaining. Uber responded, however, that its drivers were independent contractors, a status that relieved the company of such responsibilities. This was not a contractual dispute; it was a question of first principles for the law of the gig economy in India. In the public court arena, this argument would have most likely produced judicial decisions that would impact the rights of millions of gig workers. But in the private arbitration world, the legal analysis was evasive, and the normative questions were left unaddressed.[26] Second, conflicts erupted regarding the safety and liability of passengers in the context of violent ride-related violence. A string of high-profile cases in the media created concerns regarding sexual harassment and physical assault that had occurred during Uber rides, and serious questions arose regarding the company's vigilance in background checks and live monitoring. The families of victims and consumer rights activists demanded explanations, both legal and moral, regarding Uber's accountability system. Again, instead of being made publicly legally accountable, Uber opted for settling claims through arbitration clauses, typically under non-disclosure agreements that barred survivors from speaking out. The secrecy of such hearings prevented broader public discussion and legal momentum on platform safety measures and corporate accountability in India.[27] The question of data governance and potential privacy violations was a core issue. Uber's vast repository of user and driver data, including real-time location tracking and payment details, created questions of storage practices, processing, and potential sharing with third parties. In India, where the digital privacy legal framework was still in its infancy at the time, these arbitrations had the potential to shape data protection law. Instead of promoting transparency, however, they were conducted in secrecy, beyond regulatory oversight, and had no required public standards set.[28]

These arbitration mechanisms were assailed by a broad spectrum of actors. Labour movements, human rights groups, and digital rights activists contended that Uber's resort to arbitration effectively precluded workers and consumers from accessing public justice. Secret settlements, they contended, were not just about protecting commercial secrets, about avoiding legal responsibility and stifling rights-based jurisprudence. The issue before us was not theoretical. Worldwide, parallel trends were occurring. In the United States, for instance, Uber faced class action claims of worker misclassification, and in some jurisdictions, courts invalidated arbitration provisions barring suit.[29] In the United Kingdom, the Supreme Court ruled in Uber BV v. Aslam that drivers are to be

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[24] Gupta, Aanchal. "Litigating the Arbitration Clause: Considering Uber-Driver Arbitration in India." Arbitration: The International Journal of Arbitration, Mediation and Dispute Management 90, no. 4 (2024).

[25] Lombardo, Abigail M. "The Uber challenge: A comparative analysis of regulatory schemes governing transportation app firms." Sw. J. Int'l L. 28 (2022): 176.

[26] Rajah, V. K. "Courting Global Commerce: The Shifting Dynamics Between International Arbitration and International Commercial Courts." Journal of International Arbitration 42, no. 2 (2025).

[27] Narain, Aishani. "Transparency in Arbitration Proceedings." Arbitration Law Review 11, no. 1 (2019): 3.

[28] Dayanidhi; Riktika. "Exploring the Dichotomy of Transparency and Confidentiality in Modern Arbitration Proceedings." Issue 2 Int'l JL Mgmt. & Human. 6 (2023): 2416.

[29] Juratowich QC, Ben. "Departing from confidentiality in international dispute resolution." Indian Journal of International Economic Law 12, no. 1 (2020): 5.

classified as "workers" and therefore are entitled to the minimum wage and paid holidays. The decision was issued through an open judicial hearing and thus provided both clarity and precedent to the emerging debate about the gig economy. Private settlement in India left such issues less formally settled in terms that would be citeable by future litigants or by regulatory authorities. Legal norms were still unclear and no message was sent to the industry. This judicial silence was most harmful within the precedent-based legal system like India's that relies so much on precedents and public reasoning to develop statutory interpretation.

The Uber arbitration case highlighted a deeper issue, the privatization of regulatory authority. By referring disputes to private tribunals, Uber and similar platform companies essentially shielded themselves from full legal reform. Regulatory bodies, including the Ministry of Labour, the Ministry of Electronics and Information Technology, and state transport departments, were subsequently deprived of final orders or policy directives to inform their regulatory work. The lack of public adjudication also allowed other platform businesses to carry on in equivalent legal uncertainty, rested on the absence of deterrent case law. This detracts from the objective of regulatory parity and makes for a patchwork enforcement environment, in which only public interest litigants or whistleblowers are able to campaign for change frequently at significant personal and financial expense. In addition, the confidentiality inherent in these arbitration processes has impeded Indian courts from making case law on core constitutional questions, such as the application of the scrutiny of fundamental rights under Articles 14 and 21 to online platforms performing public functions. In a country where technology is increasingly intertwined with government through education, health, and welfare apps, the fact that disputes over the use of data and workplace dignity can be resolved in secret threatens democratic accountability.[30]

GLOBAL TRENDS OF TRANSPARENCY-CONFIDENTIALITY PARADIGM IN ARBITRATION: IMPLICATIONS FOR THE TECHNOLOGY INDUSTRY

As international arbitration becomes a go-to mechanism for technology industry disputes, this conflict between confidentiality and transparency has become an acute normative and regulatory issue. In public interest cases, e.g., consumer protection, labor rights, marketplace competition, and cyber privacy, confidential arbitration risks undermining the values of legal accountability and democratic control. Jurisdictions have responded to the challenge in levels of legislative innovation, institutional reform, and judicial activism. A comparison of the experiences of the European Union, Singapore, the United States, and other jurisdictions allows a glimpse of how balance between the imperatives of privacy and the interests of public interest might be struck, particularly in the context of India's developing technology-based economy.

THE EUROPEAN UNION: PRO-TRANSPARENCY REGULATORY ETHOS

The European Union has been at the forefront of integrating transparency into legal and quasi-legal procedures, including arbitration, particularly where there is public interest involved. While EU law does not apply equally to private arbitration in all member states, its values have a wide impact on local reforms. One of the key mechanisms is the General Data Protection Regulation (GDPR), which has raised awareness of the handling of personal data across different legal areas, including arbitration. For instance, in a case where there are matters related to user data or company data-sharing behavior, both arbitrators and affected parties can now be subject to an uncodified duty to ensure that the decision-making process is in accordance with the demands of public accountability. This duty is also supported by the European Court of Justice's rulings in cases like Schrems II, which attest to the EU's resolve to uphold fundamental rights even in the realm of cross-border commercial disputes. Another domain of sweeping change is the Energy Charter Treaty arbitration system, which has been criticized for resolving public interest cases, i.e., environmental and regulatory ones secretly. In response, the EU has promoted the elimination of investor-state arbitration systems and the creation of a multilateral investment court system that is transparent and open to public participation. This change is part of a sweeping trend toward

[30] Reymond-Eniaeva, Elza. Towards a uniform approach to confidentiality of international commercial arbitration. Vol. 7. Springer, 2019.

injecting openness principles into institutions that have long been shrouded in confidentiality.[31] While these reforms are mostly apparent in investor-state arbitration, their impact is progressively shaping the commercial arbitration standards, especially in large technology company cases and regulatory norm compliance.

UNITED STATES: A JURISDICTION CHARACTERISED BY CONTRACTUAL PREEMINENCE WITH NOTABLE EXCEPTIONS

The United States traditionally has enjoyed a strong presumption of confidentiality in arbitration that is a reflection of its commitment to the foundations of party autonomy and contractual freedom. But this position is being increasingly eroded by concerns of public interest, particularly in the area of class action waivers and compulsory arbitration clauses between consumers and employees. The Federal Arbitration Act (FAA) does not mandate confidentiality per se, and therefore leaves such a decision to the parties and the applicable arbitration rules. However, in recent years, the courts have increasingly questioned the enforceability of confidential arbitration agreements, especially where such agreements obstruct enforcement of statutory remedies or public interest suits. For example, in the seminal case Epic Systems Corp. v. Lewis (2018), the U.S. Supreme Court affirmed preclusionary arbitration agreements but the decision provoked withering criticism for restricting the disclosure of employment complaints and restricting collective redress mechanisms. Likewise, regulatory bodies such as the Consumer Financial Protection Bureau (CFPB) and the Securities and Exchange Commission (SEC) have promulgated rules mandating increased disclosure of arbitration results in consumer finance or investor rights proceedings.[32] In technology disputes, arbitration as a means of protecting claims of workplace harassment, labor rights, or data breaches, as in disputes against Uber and Google companies has attracted public criticism. Civil society groups have called for legislative changes mandating disclosure of arbitration results in such disputes, and some state legislatures (most prominently California) have passed legislation mandating disclosures. Thus, while the U.S. is effectively committed to private arbitration, it is increasingly appreciated that complete confidentiality cannot be defended in cases on the borderline of public policy or statutory rights.[33]

SINGAPORE: A HYBRID STRATEGY BASED ON INSTITUTIONAL INNOVATION

Singapore, being one of the preeminent arbitral centers in Asia, has pursued a cosmopolitan and sophisticated balance between confidentiality and openness. Embracing the essential role of arbitration within its legal economy, Singaporean law strongly favors confidentiality as described in both the Arbitration Act (Cap. 10) and the International Arbitration Act (Cap. 143A). These pieces of legislation establish a ground-level duty of confidentiality over arbitration proceedings that corresponds to commercial parties' expectations. But Singaporean courts have made some exceptions to this principle in cases involving public interest. In AAY v. AAZ[34], for instance, the High Court conceded that although confidentiality is the key component of arbitration, it is not absolute. The court sanctioned the disclosure of arbitration documents where disclosure was required to fulfill statutory obligations or where disclosure was in the public interest. Furthermore, the Singapore International Arbitration Centre (SIAC) has incorporated procedural facilities for allowing the involvement of third parties in specific arbitration processes. This includes the facility to file amicus curiae briefs or limited publication of arbitral awards based on the concurrence of the interested parties. These advancements are meant to balance the effectiveness of confidentiality with the need for public accountability in the contemporary world where technology disputes commonly entail large stakeholder networks beyond the immediate concerned parties. Singapore's model is best suited to India, which wants to be a regional hub for arbitration. Institutional reform

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[31] Szalay, Gábor. "A Brief History of International Arbitration, Its Role in the 21st Century and the Examination of the Arbitration Rules of Certain Arbitral Institutions With Regards to Privacy and Confidentiality." Analele Universităţii de Vest din Timişoara-Seria Drept 2 (2016): 4-19.

[32] Noussia, Kyriaki. Confidentiality in international commercial arbitration: A comparative analysis of the position under English, US, German and French law. Springer Science & Business Media, 2010.

[33] Zhao, Mary. "Transparency in international commercial arbitration: adopting a balanced approach." Va. J. Int'l L. 59 (2019): 175.

[34] [2011] SGHC 200

under SIAC direction, codified public interest exceptions and greater procedural flexibility could help Indian arbitration systems grow into more responsibly mature systems in tech-savvy disputes.[35]

OTHER JURISDICTIONS AND JOINT EFFORTS

In the rest of the globe, countries like Australia and Canada have moved towards greater transparency in arbitration, especially in cases involving public welfare. The United Nations Commission on International Trade Law (UNCITRAL) has embraced Rules on Transparency in Treaty-based Investor-State Arbitration, while although initially confined to investment arbitration, have formed a platform for principles of transparency to be utilized in the wider commercial sphere. Arbitral institutions themselves are changing. In 2021, the International Chamber of Commerce (ICC) revised its rules to require default publication of arbitral awards with an opt-out.[36] This is a major shift in the philosophy of confidentiality in arbitration. Similarly, the London Court of International Arbitration (LCIA) permits anonymized publication of awards and has explicitly stated that confidentiality can be displaced in the interest of legal duty or strong public interest. These institutional developments suggest that confidentiality, although firmly entrenched, is being rethought in response to contemporary legal and social pressures.[37]

IMPLICATIONS TO THE INDIAN LEGAL SYSTEM:

The growing prevalence of international arbitration in the tech sector, while beneficial to operational efficiency and commercial confidentiality, poses serious challenges to the Indian regulatory and legal apparatus. The high-profile Apple v. Qualcomm and Uber v. Indian Regulatory Authorities cases demonstrate that these arbitration proceedings are not deal issues of contract enforcement or royalty. Rather, they are addressing broader public law issues—i.e., regulation of competition, classification of labor, consumer protection, and protection of data. The application of private and confidential arbitration in these issues has significant implications for the development of India's legal system, the resilience of its institutions, and the administration of justice. For redressing these ailments, India's regime of regulation and arbitration needs to be recalibrated. The Indian jurisprudence must achieve a balance between arbitration's efficiency and discretion, on the one hand, and transparency and public law accountability on the other hand. Legislative reform can start with the inclusion of exceptions to confidentiality in arbitration in the public interest, especially in disputes concerning statutory rights or regulation by means of oversight. Judicial officers also need to be conferred the authority to investigate arbitral provisions that in effect circumvent legal safeguards under Indian law. Indian arbitral institutions like the Mumbai Centre for International Arbitration (MCIA) need to be encouraged to publish redacted awards where there is public interest involved.[38] The Indian courts can be more active by declining to enforce arbitration agreements or awards which are contrary to constitutional principles or statutory safeguards. This can be achieved through a more prudent interpretation of Section 34 of the Act, 1996[39], which confers jurisdiction on the courts to set aside awards against the public policy of India. Lastly, Indian authorities must cooperate with arbitral institutions in developing guidelines on disclosure of cases involving compliance with regulatory requirements. Confidentiality should never be absolute; it must give way whenever public health, safety, employment, or privacy rights are at stake.[40]

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[35] Nottage, Luke. "Confidentiality and Transparency in International Arbitration: Asia-Pacific Tensions and Expectations." Asian Int'l Arb. J. 16 (2020): 1.

[36] Villanueva Picos, Evelyn Marina. "A modern approach to confidentiality in international commercial arbitration: transparency v secrecy." PhD diss., University of Essex, 2019.

[37] Tung, Sherlin Hsie-lien, and Brian Lin. "More transparency in international commercial arbitration: to have or not to have." Contemp. Asia Arb. J. 11 (2018): 21.

[38] De Ly, Filip, Mark Friedman, and Luca Radicati Di Brozolo. "International Law Association International Commercial Arbitration Committee's Report and Recommendations on 'Confidentiality in International Commercial Arbitration'." Arbitration International 28, no. 3 (2012): 355-396.

[39] The Arbitration and Conciliation Act of 1996

[40] Ramphal, Talitha. "Confidentiality in International Commercial Arbitration: A Plea for a (Practical) Balance between Confidentiality and Transparency in the Publication of Arbitral Awards." Disp. Resol. Int'l 17 (2023): 91.

CONCLUSION

In the fast-paced global business world, technology firms have shifted from being marginal actors to core players determining not only economic markets but also the social, legal, and ethical dimensions of modern life. As these firms become core service providers—managing everything from communications networks to digital financial infrastructure, transport, health platforms, and personal data, the conflicts that emerge from their activities move beyond traditional commercial disputes. In this regard, the resolution of such conflicts, especially by private international arbitration, demands a sensitive and ethical rethinking.

The cases of Apple-Qualcomm, and Uber-Indian Regulatory Authorities, have identified the importance of using private arbitration in deciding issues related to diffuse public interests. The cases present the ways in which arbitration, which began as a way to settle commercial disputes through quick and discreet processes, is increasingly used to decide matters affecting millions of stakeholders who are not immediate parties to the litigation, e.g., consumers, workers, competitors, regulators, and wider civil society. As helpful as such secrecy might be in protecting trade secrets, proprietary information, and corporate image, it is destructive to public accountability, normative legal development, and regulatory measures' enforcement. In the Apple-Qualcomm dispute, secrecy surrounding the arbitration process concealed the legal and economic reasoning that would have been of immense help to courts, competition agencies, and innovators who are burdened with the duty of licensing standard-essential patents. The lack of public publication of the arbitral awards resulted in a loss of precious insights into the ecosystem as a whole about fair standards of licensing, FRAND commitments, and the validity of Qualcomm's commercial practices issues that have far-reaching implications for industrial policy and global innovation. By resolving the issue in private, Apple and Qualcomm effectively avoided the risk of creating judicial precedents that would have illuminated the rule of law on follow-on disputes, small tech firms, and public regulatory agencies.

With the same logic, in the case of the Uber litigation in India, the application of arbitration served to protect rudimentary questions of labor classification, safety of passengers, and data privacy from public examination. These are not simply technical contractual questions; they are fundamental elements of social justice in the platform economy. By employing arbitration provisions embedded in clickwrap contracts, Uber effectively guaranteed that controversial issues like whether drivers are employees under Indian labor law and whether the firm's data gathering practices constitute compliance with constitutional protections were decided privately, if at all. In the process, the judiciary was circumvented, statutory regulators were kept in the dark, and civil society was excluded from engagement in a process capable of reconfiguring norms in the gig economy. This outcome has serious consequences for procedural justice and democratic accountability.

In the Indian context, the implications are most significant. The country stands at a crossroads in the evolution of its legal and regulatory framework relevant to the digital economy. Law on data protection, competition in digital markets, regulation of gig economy labor, and governance of platforms are all in their infancy. In this context, the outsourcing of adjudication of disputes to secret foreign arbitration subverts the evolution of these legal regimes. It bifurcates the rule of law into a two-track system: one regulated by public norms available to all and the other regulated by private, contractually based norms intended to serve the interests of the most dominant actors in the ecosystem. The unrestrained practice of arbitration poses the threat of bypassing Indian regulatory institutions, such as the Competition Commission of India, the Data Protection Board, and other labor enforcing authorities. These institutions are not bureaucratic ones; instead, they are established through constitutional and legislative provisions for protecting the public and upholding standards of justice. If technology corporations resolve serious grievances in foreign arbitral fora, such regulatory authorities are deprived of both jurisdictional power and access to essential evidence. Their role of enforcing compliance, detecting transgressions, or drafting sectoral rules thus severely gets diluted. Ultimately, such institutional powerlessness erodes the capability of the state to act in the public interest.

Furthermore, secrecy in arbitration subverts the constitutionally mandated role of the judiciary as an interpreter of law and guardian of rights. This issue is particularly significant in a common law system such as India, where judicially developed law still plays a crucial role in the development of societal norms; thus, absence of judicial scrutiny in critical technology disputes has significant implications. In the absence of public judgments, Indian courts are deprived of developing a coherent body of jurisprudence on issues of digital rights, algorithmic accountability, and antitrust conduct in technology markets. Such a failure of development of the law transcends

abstract implications, it has consequences for real individuals, rightful enterprises, and the fundamental equity of the justice system. But this must not be taken as a plea for the abolition of arbitration or against its advantages. International arbitration has established itself as a vital tool for the settlement of intricate transnational disputes in a quick, impartial, and legally enforceable way. It is a great help in attracting foreign capital and promoting business confidence. What is essential, however, is a subtle reorganization, a transition from absolute secrecy to cautious openness. Arbitration, particularly in the technology field, must be adapted to include provisions for graduated public disclosure, third-party involvement, and involvement of regulatory bodies in cases where the public interest is clearly engaged.

Reforms in legislation and institutions can reduce that imbalance. For example, India can modify its arbitration laws to include exceptions to confidentiality where disputes involve fundamental rights, significant regulatory interests, or significant consumer impact. Arbitral institutions would be incentivized to publish redacted awards in such situations, thereby promoting legal development without compromising proprietary information. Regulators can be given standing to appeal or set aside arbitral awards contrary to public policy objectives. Most importantly, arbitration clauses in contracts need to be subject to careful scrutiny so as not to lead to procedural excess or denial of access to justice. The validity of international arbitration throughout the technology industry will finally rely not just on its efficacy or enforceability, but on its perceived reasonableness, accountability, and worth to society. Dispute resolution mechanisms cannot be employed as tools for evading legal liability. Rather, they must be founded on principles that uphold both commercial autonomy and democratic openness. Only then can arbitration be a trustworthy and moral method of settling the new class of digital disputes. India sits at the center of the intersection of legal modernization and technological transformation, with the challenge and the opportunity to drive this change. By developing a legal system that is transparent, equitable, and responsive to the conditions of the technological economy, India can maintain its regulatory autonomy while creating an environment that supports innovation. The way ahead is not between secrecy and transparency, but in developing a system where both exist to support the cause of justice.