Boundaries of Arbitration: Courts vs Confidentiality

Introduction

Arbitration has become one of the most important means of settling commercial disagreements in contemporary legal regimes. Its advantage mainly lies in flexibility, speed, and most importantly, confidentiality. Arbitration is preferably selected over litigation to escape the public spotlight of courtrooms and maintain the privacy of their delicate commercial transactions. However, arbitration never exists independently. Courts have a crucial supportive and supervisory function in the arbitral process, whether in recognizing and enforcing arbitral awards, enforcing interim measures, or appointing arbitrators.

This parallel existence of courts and confidentiality tends to create a conflict: while arbitration guarantees privacy, proceedings before courts are public. Confidentiality is held out as one of the cornerstones of arbitration. Sides resort to arbitration so that trade secrets, financial data, and in-house strategies do not enter the public record. Rules of the majority of arbitral institutions, for instance, the ICC, LCIA, and SIAC, specifically place confidentiality burdens on arbitrators and even on parties in certain situations. Confidentiality extends not only to the proceedings but to documents, witness evidence, and the final award. This is especially important in sectors where the revelation of sensitive information may have far-reaching effects. Through the assurance of privacy, arbitration offers a secure platform for parties to negotiate, bring evidence, and settle conflicts without damage to reputation or impacts on the market.

The challenge

Arbitration does not function in a vacuum. It needs judicial backing at critical points. For instance, if a party resists arbitration in the face of an arbitration agreement/call, the courts are approached under provisions like Section 8 or Section 11 of the Indian Arbitration and Conciliation Act, 1996, to compel arbitration or appoint arbitrators. In the same way, where arbitrators have no authority to grant interim relief, the courts are sought under Section 9. Once the arbitral award is rendered, the courts intervene to acknowledge, enforce, or set aside awards. All these interventions by courts demand filings of documents from arbitral proceedings, sometimes pleadings, evidence, and even the arbitral award. The openness in judicial proceedings is based on the open justice principle. Courts owe a duty to the public, and their findings are open to public examination. While court hearings tend to be accessible to viewers, rulings are released for broader publication

The parties who chose to use arbitration in order to remain secret may discover that the tactics and secret documents are revealed once the controversy is in the courts. This paradox shows that although arbitration offers confidentiality, it cannot absolutely protect parties where there is a need for intervention by the judiciary. One of the central issues in this regard is whether confidentiality in arbitration is an implied obligation or an express contractual one. Indian law had no statutory provision for confidentiality until amendments to the Arbitration and Conciliation Act in 2019 added Section 42A, which requires that "the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentiality of all arbitral proceedings." Still, even this section excepts disclosure when required for implementation or enforcement of the award.

Accordingly, even where the law requires confidentiality, courts may still insist on disclosure when considering petitions for enforcement, challenge, or recognition of awards. Another area of complexity is investor–state arbitration, which engages considerations of public interest. Whereas commercial

arbitration between private parties focuses on confidentiality, foreign investor–state disputes often engage issues of public policy, natural resources, or matters of regulation that have direct impacts on citizens. Institutions like ICSID (International Centre for Settlement of Investment Disputes) have taken a step towards more transparency, facilitating the publication of awards and even public hearings. This shows that secrecy in arbitration is not absolute but relative, varying with the character of the dispute and the wider public interest at stake.

Solution

The challenge, thus, is one of boundaries. On the one hand, courts have to uphold the confidentiality that parties desire by opting for arbitration. On the other hand, courts cannot sacrifice their constitutional commitment to openness. A middle ground is procedural protections: courts can institute safeguards like holding in-camera hearings, redacting confidential parts of judgments, or sealing confidential documents from the public eye.

In India, although the law does not expressly provide for such safeguards, courts have the inherent power to regulate proceedings to balance competing interests. Policy-wise, greater specificity must come in maintaining confidentiality once arbitral proceedings enter courtrooms. Arbitrating parties must also be sensible in their expectations: arbitration reduces publicity to the extent possible, but cannot achieve complete secrecy. Confidentiality in arbitration is a shield and not an impenetrable wall. Courts must also walk on eggshells, making sure that disclosure of arbitral material is proportionate and only for what is necessary for judicial determination.

Conclusion

The limits of arbitration exist where two conflicting values meet: confidentiality and open justice. Arbitration guarantees privacy, which is essential, whereas courts ensure transparency, which is vital to the legitimacy of the judicial process. Both cannot be dispensed with. The actual challenge is how to balance them so that the privacy of arbitration is preserved without undermining the openness of judicial proceedings, and the Indian legal system is trying to balance out both of these aspects through constant amendments.