ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE THROUGH THE LENS OF CONFIDENTIALITY IN INTERNATIONAL ARBITRAL PROCEEDINGS

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ABSTRACT

Confidentiality is an integral component of arbitration, and one of the primary reasons why arbitration is preferred over litigation. This was also recognized by a former Secretary General of the Court of International Arbitration in the Esso Case in 1976 when arbitration was still a novel concept.[1] *However, despite its fundamental nature, confidentiality continues to remain a contentious issue in terms of its exceptions which have been created in international jurisprudence over the years; one such exception being the admissibility of illegally obtained evidence. This article primarily looks to explore the admissibility of illegally obtained evidence through the lens of the concept of confidentiality in arbitration.*

This article has been divided into four parts for a clear segregation of topics that have been covered. Part I explores the concept of confidentiality across international and Indian jurisprudence. Part II examines the general law on the admissibility of illegally obtained evidence in various countries, including India. Part III discusses illegally obtained evidence as a violation of the principle of confidentiality in arbitration. Part IV offers concluding remarks of the authors on the confounding interplay of illegally obtained evidence and confidentiality.

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1. Expert Report of Stephen Bond, Esq. in *Esso* v. *Plowman* 11-3 Arb Int'l 273 (1995).

1. CONFIDENTIALITY: INSTITUTIONAL RULES, NATIONAL LEGISLATIONS, JUDICIAL DECISIONS

Confidentiality in arbitration can be construed as the parties' asserted obligations to not disclose information about the arbitration to third parties or the public. It extends not only to prohibiting third parties from attending the arbitral hearings, but also to prohibiting parties to an arbitration from disclosing hearing transcripts, as well as written pleadings and submissions in the arbitration, evidence adduced in the arbitration, materials produced during disclosure and the arbitral award(s) and orders, to third parties.[2]

There are numerous advantages conferred by confidentiality in arbitration,[3] including a much reduced possibility of negatively impacting continuing business relations[4] and setting adverse judicial precedents.[5] Importantly, it offers an opportunity for parties to make arguments that they would be otherwise reluctant to make in a public forum.[6] However, given the uncertainty over the scope of confidentiality, in order to better understand how confidentiality operates within international commercial arbitration, it is imperative that we examine the ways in which different jurisdictions and arbitral institutions have resolved the confidentiality conundrum.

A. Institutional Rules

Arbitral institutions around the world have laid down the principles of confidentiality, its applicability, the nature of the obligations, and whether and to what extent can parties derogate from said obligations. While the International Court of Arbitration **("ICC")** Rules primarily vest power (and discretion) with the tribunal to make orders concerning the confidentiality of arbitral proceedings,[7] the London Court of International Arbitration **("LCIA")** Rules provide for non-derogable confidentiality obligations on the parties.[8] This can be juxtaposed against Article 39.1 of the Singapore International Arbitration Centre **("SIAC")** Rules, which starts with the words "*unless otherwise agreed by the parties*", and provides for

2. Gary Born, *International Commercial Arbitration* (Wolters Kluwer, 2001) 3005.
3. Harvard Negotiation Law Review, 'Confidentiality and Transparency in International Commercial Arbitration: Finding the Right Balance' https://www.hnlr.org/wp-content/uploads/sites/22/HNR203_crop-1.pdf.
4. Charles S. Baldwin, Protecting Confidentiality and Proprietary Commercial Information in International Arbitration, 31 TEX. INT'L L J 451, 453 (1996).
5. Supra n3.
6. *Ibid*.
7. ICC Rules 2021, art. 22(3).
8. LCIA Rules 2020, art. 30.1.

confidentiality obligations on an opt-out basis. Notably, the LCIA rules also empower the tribunal to adopt information safety measures, thus addressing increasing data security concerns too.[9] Pertinently, almost all institutional rules on confidentiality provide certain exceptions.

For instance, disclosures may be made for the performance of a legal duty, to protect or pursue a legal right, or to enforce or challenge an award.[10] A case in point is the 2018 amendment to the Hong Kong International Arbitration Centre Rules in 2018 under which the relatively narrow exception to confidentiality principles in favor of protecting a legal right or interest or enforcing or challenging an award in legal proceedings before a court or other judicial authority as given in the original 2013 rules[11] has been broadened by substituting "other judicial authority" with "other authority".[12] Thus, under the amended HKIAC Rules, where a previous award has rendered certain rights in favour of a party, the same can now be disclosed not only before the Court but also before a subsequent tribunal in order to safeguard that legal right, thereby providing for an exception in cases of parallel arbitration proceedings. Additionally, some rules also carve out exceptions in the pursuance of an order by the tribunal,[13] or to an advisor of the party.[14] These principles operate as an important (though not overriding) consideration when tribunals consider questions of disclosures (and as is later argued, even admissibility of evidence).

B. National Legislations

Most national legislations do not expressly address the issue of confidentiality and instead leave it to be determined by the parties to the arbitral proceedings.[15] This is primarily because many nations have adopted the UNCITRAL Model Law, which does not contain any explicit provisions on confidentiality.[16]

9. LCIA Rules 2020, art. 30A.
10. LCIA Rules 2020, art. 30.1; AIAC Rules 2018, r. 16; HKIAC Rules 2018, r. 45.2; SIAC Rules 2016, r. 39.2.
11. HKIAC Rules 2013, art. 42.
12. HKIAC Rules 2018, art. 45.
13. SIAC Rules 2016, art. 39.2(e).
14. HKIAC Rules 2018, art. 45.3(c).
15. For e.g., United States Federal Arbitration Act 1925, English Arbitration Act 1996, Swiss Private International Law Act 1987, Arbitration Law of the People's Republic of China, Japan Arbitration Act 2003.
16. United Nations Commission on International Trade Law, UNCITRAL Model Law on International Commercial Arbitration 1985: with amendments as adopted in 2006

Nevertheless, some countries, including India,[17] have addressed the issue of confidentiality in their respective statutes including providing for exceptions to the same. Some jurisdictions such as the United Kingdom[18] and France[19] have adopted an implied duty of confidentiality while the law in Australia applies confidentiality on an opt-out basis. Importantly, even in jurisdictions that imply a general duty of confidentiality, its protection is not absolute, but subject to exceptions or limitations. For example, Australian Law permits reasonable disclosures for the establishment or protection of the legal rights of a party to the arbitral proceedings in relation to a third party.[20] Similarly, Hong Kong allows for exceptions to confidentiality for protecting or pursuing legal rights, enforcing, or challenging arbitral awards and disclosures to advisors and governmental authorities.[21]

C. Judicial Decisions

About confidentiality, courts have taken two approaches in determining parties' obligations. Firstly, the courts have adopted the viewpoint that in the absence of statutory principles, it is open to the parties to determine the extent and presence of confidentiality obligations, as was also held in the *Esso Australia*[22] *case*. This, in principle, means that confidentiality was held to not be an essential attribute of arbitration and therefore, in the absence of express party agreement, there is no right to confidentiality. A similar stance was observed in Sweden and the United States[23] wherein the private nature of arbitration was recognized, but the idea that confidentiality is essential to achieving privacy in arbitration was rejected.[24] Secondly, on the other hand, the English Courts are of the view that an implied duty of confidentiality exists in such cases.[25]

(Vienna: United Nations, 2008), available from www.uncitral.org/pdf/english/texts/arbitration/ml-arb/07-86998_Ebook.pdf.

17. Arbitration and Conciliation Act 1996, s. 42A.
18. Ali Shipping Corpn. v. Shipyard Trogir (1999) 1 WLR 314.
19. France Code of Civil Procedure 1981, art. 1469.
20. International Arbitration Act 1974, arts. 23D(4) & (5).
21. Arbitration Ordinance 2011, s. 18(2).
22. Esso Australia Resources Ltd. v. Plowman (1995) 128 ALR 391.
23. (n 2).
24. *Id*.
25. Dolling-Baker v. Merrett (1990) 1 WLR 1205, 1213; Hassneh Insurance Co. of Israel v. Mew (1993) 2 Lloyd's Rep. 243; Ali Shipping Corpn. v. Shipyard Trogir (1999) 1 WLR 314.

In Dolling-Baker v. Merrett,[26] the Court of Appeal emphasized the significance of the private character of arbitration and held that all arbitration contracts must inevitably contain an implied duty not to disclose any information concerning the arbitration unless consent of the other party or leave of the court has been taken.[27]

Furthermore, in Hassneh Insurance Co. of Israel v. Steuart J. Mew,[28] the Court was of the view that the disclosure "*would be almost equivalent to opening the door of the arbitration room to a third party*," thus violating the sanctity of privacy in arbitration.

Ali Shipping Corporation v. Shipyard Trogir reinforced the rulings in *Dolling-Baker* and *Hassnehand* held that confidentiality is not based on custom or business efficiency but can be inferred to be an implied obligation.[29] However, it is pertinent to note that while *Ali Shipping* is viewed as the leading precedent on instituting the implied duty of confidentiality in arbitration, more recent cases such as City of Moscow v. Bankers Trust[30] and Emmott v. Michael Wilson & Partners Limited[31] appear to support a stance favoring a case-by-case approach.

Further, unlike English courts, courts in Australia, Sweden, and the United States do not recognize an implied duty of confidentiality in the absence of an express agreement to this effect.[32] These jurisdictions recognize the private nature of arbitration, but reject the idea that confidentiality is essential to achieving privacy in arbitration.[33] Thus, significant variations exist in the interpretation of principles of confidentiality by various courts and arbitral tribunals.

2. LAW CONCERNING ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE

Even though the exceptions to the principle of confidentiality discussed above may appear straightforward, parties are likely to face tricky

26. Dolling-Baker v. Merrett (1990) 1 WLR 1205.
27. Ibid.
28. Hassneh Ins. Co. of Israel v. Steuart J. Mew (1993) 2 Lloyd's Rep. 243.
29. Ali Shipping Corpn. v. Shipyard Trogir (1999) 1 WLR 314: (1998) 2 All ER 136, 146–47.
30. Department of Economics Policy and Development of the City of Moscow v. Bankers Trust Co. 2005 QB 207 : (2004) 3 WLR 533: 2004 EWCA (Civ) 314.
31. Emmott v. Michael Wilson & Partners Ltd. 2008 EWCA (Civ) 184.
32. (n 2).
33. *Ibid*.

situations. For instance, in parallel arbitration proceedings, where a party wishes to admit documents from another arbitration in the form of evidence in the current arbitration (thus breaching confidentiality), if the arbitral tribunal admits such evidence, it shall result in giving said party an unfair advantage by bending the rules in its favour. On the other hand, if the tribunal refuses to do so, it may result in a violation of the party's right to present its case.

In this part, in order to comprehend the nuances of this issue, the authors delve into the relevant provisions of institutional rules and further examine the law on admissibility of illegally obtained evidence in various jurisdictions, with a special focus on India.

A. Institutional Rules

One way of addressing this conundrum is that the parties must mutually decide on the rules of evidence that shall apply to the arbitral proceedings, for instance, the UNCITRAL Rules on Transparency in Investment Treaty Arbitration[34] and the IBA Rules on the Taking of Evidence in International Arbitration **("IBA Rules")**[35] amongst others. However, instead of addressing the specific situation of illegally obtained evidence, institutional rules adopt broad permissive admissibility powers.

For instance, the IBA Rules introduce the concept of "good faith" into the evidentiary process.[36] Furthermore, the IBA Rules, while vesting discretion with the tribunal to admit evidence obtained illegally, also empower the tribunal to impose costs on the party presenting such evidence to effectively deter such instances.[37] In international commercial arbitrations, not only the arbitral awards, but also decisions on admissibility, which are determined by the order, and often taken at an interim stage, are confidential. Thus, information on how tribunals address illegally obtained evidence is, at best, anecdotal rather than forensic. However, what is fairly settled is that in institutional arbitrations, tribunals are not bound by strict rules of evidence

34. UNCITRAL Rules on Transparency in Treaty-based Investment Treaty Arbitration, ('The UNCITRAL Rules') (2014).
35. International Bar Association Rules on the taking of evidence in International Arbitration, ('IBA Rules') (29 May 2010).
36. *Id.*, art. 9.8.
37. *Ibid.*

and are conferred with broad discretion to decide issues of admissibility, relevance, and weight of evidence.[38]

In any case, regardless of the parties agreeing upon such rules, tribunals are still likely to consider the law of the seat on the subject in order to render an enforceable award.

B. National Legislations

The law on the admissibility of illegally obtained evidence across jurisdictions is replete with inconsistencies. In the United Kingdom, it is widely recognized that an illegally procured evidence shall be admitted if the same is relevant and material, subject to the court's discretion.[39] The same is the case in Singapore,[40] Malaysia[41] and Ireland.[42] The approach adopted by Australia, however, is to weigh the desirability of admitting the evidence against the undesirability of doing so.[43] This is similar to the Indian position, i.e., illegally obtained evidence is not per se inadmissible.[44]

On the other hand, the United States[45] has a history of excluding such evidence in line with the doctrine of the "fruits of the

38. UNCITRAL Arbitration Rules 2014, art. 27(4); SIAC Rules 2016, r. 19.2; AIAC Rules 2018, art. 6(f); LCIA Rules 2020, art. 22(iv).
39. Civil Procedure Rules, part 32.1; Jones v. Warwick University (2003) 1 WLR 954: 2003 EWCA (Civ) 151, (2003) 3 All ER 760; Ras Al Khaimah Investment Authority v. Azima 2021 EWCA (Civ) 349; The courts have also taken to admitting such evidence while imposing costs on the party that seeks to present it, see Imerman v. Imerman (2010) EWHC 64 (Fam), 2010 All ER (D) 219.
40. Law Society of Singapore v. Tan Guat Neo Phyllis (2008) 2 SLR (R) 239.
41. Re Kah Wai Video Ipoh Sdn Bhd [1987] 2 MLJ 459.
42. People (Attorney General) v. O'Brien 1956 IR 142.
43. Uniform Evidence Acts 1995, s. 138.
44. Indian Evidence Act 1872; Ukha Kolhe v. State of Maharashtra AIR 1963 SC 1531: (1964) 1 SCR 926.
45. Sara Mansour Fallah, *The Admissibility of Unlawfully Obtained Evidence before International Courts and Tribunals*, Brill, 2020, https://brill.com/view/journals/lape/19/2/article-p147_2.xml?language=en; Nardone v. United States 1939 SCC OnLine US SC 151: 84 L Ed 307 : 308 US 338 (1939).

poisonous tree",[46] except where the evidence is obtained by a private individual.[47]

The Indian Evidence Act, 1872 postulates relevance as the only criterion for the admissibility of evidence.[48] Though the courts have uniformly adopted the position that illegal evidence is not per se inadmissible,[49] the development of an ascertainable trend in the context of arbitration proceedings in India is not deducible; the reason being that courts have had the opportunity to deal with the question of admissibility of evidence in breach of confidentiality principles only in a few cases.

In this regard, it is pertinent to refer to a crucial judgment on this issue, i.e., R.M. Malkani v. State of Maharashtra,[50] wherein the Supreme Court considered the admissibility of evidence obtained in contravention of Section 25 of the Indian Telegraph Act and held that even illegally obtained evidence is admissible. In several other cases such as State (NCT of Delhi) v. Navjot Sandhu (Afsan Guru)[51] and Umesh Kumar v. State of A.P.,[52] the Supreme Court has held that illegally obtained evidence is admissible so long as it is relevant, and its genuineness is proved. Thus, under Indian law, illegally obtained evidence is admissible so long as it is not prohibited by the Constitution or any other law in force.

More importantly, a key judgment which discussed the admissibility of illegally obtained evidence in context of confidentiality was the Rafale deal case.[53] In this case, it was contended by the Centre that the review petition challenging the Rafale judgment dated 14th December, 2018 ought to be dismissed since the documents relied upon by the review petitioners were protected under the Official Secrets Act, 1923, and illegally procured in

46. The Doctrine of "Fruits of the Poisonous Tree" states that evidence (fruit) obtained through illegal means, which is a tainted source (tree), would also be tainted, and thus, inadmissible. The term was first used by Justice Frankfurter of the Supreme Court of United States in Nardone v. United States, wherein it was held that evidence obtained by wiretapping was inadmissible as it violated the protection granted by the Fourth Amendment to the U.S. Constitution.
47. Burdeau v. McDowell 1921 SCC OnLine US SC 140: 65 L Ed 1048: 256 US 456 (1921).
48. Indian Evidence Act 1872, s. 5.
49. Yusufalli Esmail Nagree v. State of Maharashtra AIR (1968) SC 147; R.M. Malkani v. State of Maharashtra (1973) 1 SCC 471; Pooran Mal v. Director of Inspection (1974) 1 SCC 345.
50. R.M. Malkani v. State of Maharashtra (1973) 1 SCC 471: (1973) 2 SCR 417.
51. State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600.
52. Umesh Kumar v. State of A.P. (2013) 10 SCC 591.
53. Yashwant Sinha v. CBI (2019) 6 SCC 1: 2019 SCC OnLine SC 518.

violation of the said Act. Said documents were published in certain news items in The Hindu.[54] As a result, the question before the Supreme Court was whether these documents can be considered while deciding the review petition. The Court observed that there exists no provision in the Official Secrets Act or any other statute vesting power in the Executive to restrain publication of documents marked as secret or prevent them from being placed before a Court of Law. The Court further held that Section 123 of the Indian Evidence Act applies to unpublished documents, and as said documents were already in public domain, the Court is not barred from relying upon them as evidence. The Court then referred to S.P. Gupta v. Union of India[55] and held that even in case of unpublished documents, the Court shall first assess the nature of the document, and then determine whether it can be placed on record. The Court further referred to Pooran Mal v. Director of Inspection,[56] wherein it was held that "…*in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out*." On the basis of the abovementioned reasoning, the Supreme Court dismissed the objection of the Centre with respect to the maintainability of the review petition and allowed the leaked documents to be relied upon.

3. ILLEGALLY OBTAINED EVIDENCE IN BREACH OF PRINCIPLES OF CONFIDENTIALITY

One of the earliest examples of a Tribunal dealing with illegally obtained evidence is the *Corfu Channel case*[57] in which court admitted the evidence even though violation of territorial waters had enabled it to be collected. In this regard, the Court reasoned that the declaration of violation was considered sufficient sanction for the obtaining of evidence illegally.

Subsequent case law on this matter further shaped the nuances of confidentiality in international commercial arbitration.[58] Pertinently, even in cases where the duty of confidentiality in arbitration is implied by law, its content may depend on the context in which it arises, and the nature of the information or documents in question.

54. Yashwant Sinha v. CBI (2019) 6 SCC 1: 2019 SCC OnLine SC 518.
55. S.P. Gupta v. Union of India 1981 Supp SCC 87: AIR 1982 SC 149.
56. Pooran Mal v. Director of Inspection (1974) 1 SCC 345: AIR 1974 SC 348.
57. United Kingdom v. Albania 1949 ICJ Rep 4.
58. Emmott v. Michael Wilson & Partners Ltd. 2008 EWCA (Civ) 184.

Tribunals have also sought to evaluate the conduct of the parties in determining questions of admissibility. For instance, if the party is acting in good faith, the evidence would not be held to be inadmissible simply on the ground that it was obtained illegally. A case in point is Persia International Bank v. Council,[59] where the tribunal reasoned that if the party comes with clean hands and is not involved in the unlawful nature of procuring evidence, the disclosure cannot be held against it, and the evidence shall be deemed admissible. A similar reasoning was employed in Fusimalohi[60] and Adamu.[61]

Further, in Caratube International Oil Company and Mr. Devincci Saleh Hourani v. Kazakhstan,[62] which involved the production of documents obtained through a hack of the Respondent's computer systems, which were later leaked on a publicly available website known as "KazakhLeaks", the tribunal emphasized the materiality and relevance of the evidence, that it was then "widely, freely and lawfully available in the public domain", and that the wrongdoing was committed by a third party. Based on this reasoning, the Tribunal admitted the evidence.

However, tribunals have also rejected such evidence where the obligations of good faith were not met. For instance, in Methanex Corporation v. United States of America,[63] the tribunal declined to admit evidence obtained by acts of trespass and stated that such admission would amount to a violation of the general duty of good faith. Thus, arbitration entails a relatively larger scope to exclude evidence, and in fact, while deciding questions of admissibility, the general trend for Tribunals has been to prioritize the correctness and validity of their decisions over technical considerations.

Disclosure, however, may be permitted where it is necessary to protect a party's rights against a third party, or in other exceptional circumstances as justice may require.[64] A case in point is *Ali Shipping* where the plaintiff arbitrated a breach of contract dispute with Shipyard Trogir, and an award was passed in the former's favour. Later, Shipyard Trogir

59. Case T-493/10 Persia International Bank v. Council ECLI:EU:T:2013:398.
60. Fusimalohi v. FIFA Case No. CAS 2011/A/2425 (8 March 2012).
61. Adamu v. FIFA Case No. CAS 2011/A/2426.
62. Caratube International Oil Co. LLP v. Republic of Kazakhstan ICSID Case No. ARB/13/13.
63. Methanex Corporation v. United States of America Award (NAFTA Ch 11 Arb. Trib. 2005).
64. Ali Shipping Corpn. v. Shipyard Trogir (1999) 1 WLR 314, CA; Emmott v. Wilson & Partners, 2008 EWCA (Civ) 184.

had separate arbitration proceedings with other companies. In the second arbitration, Shipyard Trogir wanted to produce the arbitration award and other documents, i.e., the written opening submission of Ali Shipping and transcripts of the oral evidence given by certain witnesses for Ali in the first arbitration from its first arbitration with Ali Shipping as those were essential to establish an estoppel issue. The plaintiff objected to this. The Court then formulated certain exceptions[65] to the broad rule of confidentiality including when disclosure is reasonably necessary for the protection of the legitimate interests of an arbitrating party vis-à-vis a third party in order to set up a cause of action against or defend a claim or counter-claim brought by said third party or in the interest of justice.

Additionally, in Associated Electric and Gas Insurance Services Ltd. v. European Reinsurance Co. of Zurich,[66] the plaintiff sought to rely on an arbitration award made by a panel of arbitrators in a dispute between the same parties before another panel.[67] It was held that even in the presence of an exhaustive confidentiality agreement; the provisions of said agreement had to be evaluated against the surrounding circumstances, and the basic principles and purposes of arbitration, and could not be read in vacuum.[68] The reasoning adopted by the Court was that the "*legitimate use of the earlier award would not raise the mischief against which the confidentiality provision was directed, i.e., the risk of valuable information reaching third parties with adverse interests.*"[69] On this basis, the Court held that "*prohibiting any disclosure of the award would frustrate the fundamental purpose of arbitration by preventing the winner from enforcing the rights declared in its favour, and constitute a breach of the other party's duty to perform the award by recognizing and enforcing said rights.*"[70]

4. CONCLUSION

The law on confidentiality is still in a nascent stage in India. While the question was broached in *Yashwant Sinha*, the Supreme Court directed its attention to the authenticity and veracity of the materials produced, without addressing the very nature of the materials as being privileged.[71]

65. *Id.*, at 147–48.
66. Associated Electric and Gas Insurance Services Ltd. v. European Reinsurance Co. of Zurich (2003) 1 WLR 1041: 2003 UKPC 11.
67. *Id.*, at para 1.
68. *Id.*, at para 7.
69. *Id.*, at para 8.
70. *Id.,* at paras 11 and 13.
71. Yashwant Sinha v. CBI (2020) 2 SCC 338.

Further, the 2019 Amendment to the Arbitration and Conciliation Act, 1996 has introduced Section. 42A which imposes an obligation on the parties to maintain confidentially of all arbitral proceedings except that of award where its disclosure is necessary for the purpose of implementation and enforcement of award.[72]

It is also important to acknowledge the limitations that the principle suffers from and the grounds under which the information can be disclosed regardless of the confidentiality between the parties. Further, the nexus between the admission of illegally obtained evidence and breach of confidentiality is another paradigm which has been touched upon while discussing the limitations. Several jurisdictions base the admission of such evidence upon its relevance and discretion of the judges while other countries enunciate different parameters for such evidence to be admitted. In the Indian regime, such evidence is not per se inadmissible and the courts have, on some occasions, allowed for such evidence to be placed on record.[73]

The inherent inconsistency in this regard across jurisdictions can be a point of discourse for the stakeholders. Although there are several factors that guide the tribunals currently, it would be more fruitful if the admission of illegally obtained evidence and the consideration of confidentiality can be weighed against each other allowing the parties to choose the jurisdiction which is more conducive to their needs with respect to confidentiality.

72. Arbitration and Conciliation Act 1996, s. 42A.
73. Lotus Investments and Securities v. Promod S. Tibrewal 1998 SCC OnLine Bom 547: (1999) 2 Arb LR 428.