Non-Arbitrable Disputes in India:

Arbitration is widely recognized as a cost-effective and efficient dispute resolution mechanism. However, not all disputes can be settled through arbitration. In India, several categories of disputes are deemed non-arbitrable due to their inherent public interest, special legal procedures, or statutory framework.



1. The Legal Framework

The Arbitration and Conciliation Act, 1996, based on the UNCITRAL Model Law on International Commercial Arbitration (1985), promotes minimal judicial intervention. Despite this, Indian jurisprudence has evolved to clearly define the boundaries of arbitrability, expanding the scope of disputes that cannot be settled through arbitration.

2. Categories of Non-Arbitrable Disputes

✅. Disputes Involving Rights in Rem

Rights in rem (rights enforceable against the world at large) typically require judicial determination and are non-arbitrable. These include:

- Property disputes – Matters involving title, ownership, or possession of immovable property.
- Trust and Testamentary matters – Issues related to wills, probate, and administration of trusts.

✅. Matters of Public Interest and Welfare

Certain disputes involve public interest and cannot be subjected to private arbitration:

- Criminal offenses – Cases involving crimes, fraud, or illegal activities fall under public law.
- Matrimonial disputes – Matters such as marriage, divorce, judicial separation, and child custody require court adjudication.

- Guardianship cases – Issues related to child custody and guardianship are governed by personal laws and special statutes.

✅. Statutorily Governed Disputes

Where special laws establish specific forums and procedures, arbitration is generally excluded:
- Labour and Industrial Disputes – Governed by the Industrial Disputes Act, requiring adjudication by labour courts and tribunals.
- Tenancy and Eviction Matters – If covered under rent control laws, these disputes are resolved through statutory authorities rather than arbitration.
- Insolvency and Bankruptcy Cases – Governed by the Insolvency and Bankruptcy Code (IBC), involving collective proceedings affecting multiple stakeholders.
- Consumer Disputes – Addressed by consumer forums under the Consumer Protection Act, 2019 to protect consumer rights effectively.

3. Judicial Interpretation & Recent Developments

Indian courts have consistently upheld that certain disputes, by their very nature, must remain within the exclusive jurisdiction of courts and tribunals. Recent Supreme Court rulings have reinforced these principles, clarifying that arbitration cannot be used to bypass statutory protections.

4. Conclusion: The Need for Clarity in Arbitration

While arbitration remains a vital tool for dispute resolution, its scope is not absolute. Businesses and individuals must carefully assess the arbitrability of their disputes before drafting arbitration clauses. A well-defined legal strategy can help navigate these complexities and ensure effective dispute resolution.

For expert guidance on arbitration and mediation, contact ODR Nexus, your trusted partner in alternative dispute resolution.