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# **CONTRACTING MARRIAGE: THE RISE OF PRENUPTIAL AGREEMENTS IN A CHANGING LEGAL LANDSCAPE**

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## **ABSTRACT:**

There have been huge fundamental changes to the way of marriage is viewed; for example, it has transitioned from a purely customary concept into something that is heavily directed by legal principles across many nations. An example of this change is the rise of prenuptial agreements which allows couples to structuring their financial future before getting married in few countries such as the U.S., U.K.. However, the concept of prenuptial agreements is legally recognised in India and other countries with similar structures as there is presently confusion as to whether or not such contracts are considered valid, due to lack of laws, existing personal laws and a strict policy of public interest at this time.

This paper provides an overview of the roots of antenuptial agreements and how they are developing in India in relation to the historic context of how marriage has progressed; moreover, it highpoints that there exists a large amount of documentation available concerning the use of prenuptial agreements in other countries jurisdictions, and there is not enough legislations to support the existence of such agreements in India currently.

A large amount of the current paper concerning the validity of prenuptial agreements was created prior to/and or around when the guidelines regarding marriage were created in India, thus, leading to little impact in relation to modern prenuptial agreements.

## **INTRODUCTION:**

Historically, marriage has always had a protruding part within both the legal and social systems as having both a private and monitoring feature. When considering the Indian view on marriage, it has, for the most part, been seen as a sacramental relationship because customary rituals are followed.

Owing to increase of divorce rates, the number of dual-income couples, and growing individual independence in managing finances, there is a substantial trend towards contracts

governing marriages. Prenuptial agreements have become a means for two people to agree on how they will split their property if they ought to ever divorce. In India, courts have not always been willing to enforce prenuptial agreements, often citing public policy and marriage's religious nature as blocks. The lack of lawmaking authority to govern prenuptial agreements and there is much inconsistency and changeableness surrounding judicial decisions on this subject. The purpose of this study is to determine how the fortifications afforded by prenuptial agreements are developing as the law evolves concerning their enforceability in India. This paper will discuss the tension between society's expectation of marital cohesiveness versus each individual's right to make personal choices, and propose a fair, consistent legal solution informed by the comparative legal systems of both Great Britain and United States law.

### **OBJECTIVES:**

The specific objectives of this research project will be:

1. To clarify the meaning, function and legal characteristics of a prenuptial agreement.
2. To discuss the legal status of prenuptial agreements in Indian courts today.
3. To examine the factors giving rise to prenuptial agreements in contemporary society.
4. To compare the legal framework for enforcing prenuptial agreements in the United Kingdom and the United States.

### **RESEARCH GAPS:**

Despite the increasing global acceptance of premarital agreements, there exists a lack of thorough and cohesive scholarship on this subject at the Indian legal level; current studies are focused on only the general enforceability of antenuptial or premarital agreements while failing to adequately analyse their relevance to the broad evolution of family law; a systematic analysis is still needed to bring together socio-economic factors surrounding the inclusion and influence of prenuptial agreements within the Indian legal system as a whole.

Other significant gaps exist within comparative analyses examining how legal systems in jurisdictions such as England and the United States have developed legal frameworks that balance parties' contractual autonomy and the interests of fairness; furthermore, limited research exists to evaluate the effect of prenuptial agreements as they relate to gender justice and power dynamics in matrimony.

This research focuses on bridging these gaps through a comprehensive analysis

incorporating doctrinal, comparative, and socio-legal perspectives in order to provide significant contributions to the discourse surrounding the modernization of marriage and family law in India.

By providing:

- A doctrinal analysis of Indian law,
- A comparative analysis of jurisprudence in England and the United States,
- An analysis of the socio-economic factors that have led to the rise of prenuptial agreements; and
- A structured legal framework for India, we hope to assist in addressing these significant gaps present in existing scholarship regarding prenuptial agreements in India.

### **RESEARCH METHODOLOGY:**

Through doctrinal research approaches, as well as a comparative analysis between other international courts, such as the courts of United States and the United Kingdom, an analysis of the decisions of the Indian courts regarding the pertinence of prenuptial agreements will be made based on the concept of justice, equity, voluntariness and a party's right to freedom of choice.

### **THE ORIGINS AND EVOLUTION OF PRENUPTIAL AGREEMENTS**

Prenuptial agreements have existed in Western Laws, and historically in the USA, for many years as a way to protect the property rights of two people when one of them has already entered into a marriage. Over the years, the use of prenuptial agreements became more common as the nature of such agreements broadened from primarily protecting property rights to also addressing issues such as alimony, dividing assets, and assigning financial responsibilities.

In England, prenuptial agreement were viewed as invalid on the basis that they were against the very nature of marriage, but now, they are legal so long as they are fair and voluntary in nature.

The history of prenu in India is generally against recognizing these agreements for the most part due to the belief that divorce is seen as a religious sacrament and not as a contract. Courts historically viewed prenups as a direct violation of social policy.

## LEGAL FRAMEWORK OF INDIA

### **Prenuptial agreements lack statutory recognition.**

There is no law in India that precisely provides for prenuptial agreements. Because of this, the purpose of their validity is made under the Indian Contract Act 1872, but since marriage is governed under personal laws and those laws may conflict with contractual principles, the analysis can be complex.

Under the Indian Contract Act 1872, agreements must receive the essential elements of:

- Offer and acceptance
- Free consent
- Lawful consideration
- Lawful object

Therefore, if these essential conditions are satisfied, a prenuptial agreement may be considered a valid contract. However, Section 23 of the Indian Contract Act makes agreements void that are against public policy and has been a considerable barrier to enforcing prenuptial agreements in India.

Outside of concerns surrounding whether a prenuptial agreement satisfies the essential elements of an enforceable contract, there are personal laws that govern marriage and divorce that override such contractual arrangements:

- Hinduism considers marriage as a sacrament
- Islam recognizes certain contractual provisions (e.g., mehr)
- Christianity operates under statutory laws

All of this adds to the ambiguity and lack of clarity in relation to the enforcement of prenuptial agreements in India.

## JUDICIAL INTERPRETATION

The court in *Tekait Mon Mohini Jemadai v Basanta Kumar Singh*<sup>1</sup> determined that marital relations could not be influenced by agreements, as this is contrary to public policy, thus establishing the judicial disfavor toward prenups in India.

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<sup>1</sup> (1901) ILR 28 Cal 751.

Similarly, in *Krishna Aiyar v Balammal*,<sup>2</sup> the Madras High Court reinforced the sanctity of marriage, stating that any agreements that change or violate any essential marital rights cannot be enforced as standard contracts.

These early rulings indicate a larger principle where the court placed social morality and the institution of marriage before individual contractual autonomy.

Referring to *Muthuswami v Masilamani*<sup>3</sup>, the court made clear that agreements that limit marital rights or induce future separation would typically be held to be void.

*Pran Mohan Das v Hari Mohan Das*<sup>4</sup>, A prenup providing for the segregation of property was upheld by the court as a property transfer in accordance with the part performance doctrine of s 53A of the Transfer of Property Act. The court distinguished this agreement from an agreement for marriage brokerage by indicating that it addressed the distribution of assets only, not providing any inducement to separate.

*Sunita Devendra Deshprabhu v Sitadevi Deshprabhu*, The Bombay HC treated a prenup to be evidence of intention relating to marital assets but did not fully treat it as binding on the parties.

## COMPARATIVE LEGAL SYSTEMS

### IN UNITED KINGDOM:

UK Legal Standing of Prenuptials- Prenuptial agreements became legally binding in the United Kingdom after the *Radmacher v Granatino*<sup>5</sup> Supreme Court ruling. Under this ruling, courts must uphold prenuptials that are freely executed and fair.

### IN UNITED STATES:

US Legal Standing of Prenuptials- The US widely accepts/prenups, but parties must meet minimum procedural protections before a court will enforce the agreement, either by providing the other party with an accurate financial picture through full disclosure or by each party

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<sup>2</sup> *Krishna Aiyar v Balammal* (1913) 36 Mad 378.

<sup>3</sup> AIR 1910 Mad 342.

<sup>4</sup> AIR 1925 Cal 856.

<sup>5</sup> 233 So 2d 381 (Fla 1970).

voluntarily signing the agreement.

In general, US courts will enforce the prenuptial unless it violates one of a few specific exceptions, such as being unconscionable or obtained through duress.

Feasibility of an Indian Legal Model for Prenuptials A review of how other countries regulate prenuptials shows that India could use the model of conditional enforceability to provide a compromise between the autonomy of the sporadic equality and contract law.

There are demographic and socio-economic changes behind the growing prevalence of prenuptial agreements:

- Spousal financial independence
- Divorce rate increase
- Worldwide intermarriages
- Legal right awareness

As these factors demonstrate, more marital couples are embracing the principles of independent self-determination in their marital unions.

## **CHALLENGES AND CONSIDERATIONS IN PRENUPTIAL AGREEMENT DEVELOPMENT**

- Bargaining Power Inequality: More powerful party can monopolise negotiations
- Gender Disenfranchisement: Disproportionate impact on party with fewer financial resources
- Public Policy: Conflicts with cultural value systems
- Lack of Awareness: Many Indian couples are not aware of their legal rights in this area

A critical analysis of prenuptial agreements shows that they can offer many benefits, such as decreased litigation and clear finances; however, the way in which these agreements are adopted should be done with care because of the following factors:

- Power Dynamics Between the Two Party's
- Risk Of Coercion
- Concerns Over Gender Equality
- Cultural Resistance

Thus, a more nuanced legal approach should be pursued.

## **CONCLUSION AND RECOMMENDATIONS**

Prenuptial agreements are more important than ever because marriage is not being viewed as a ritual, but as a choice. Prenuptial agreements still have not been legally recognised in India

today, however, due to changes in the way society functions and laws across other countries, it can be assumed that prenups will be made legally acceptable in India in the near future - not if, but when. The legal framework must include clear definitions so that when enforcement of prenups is attempted, no one can take advantage of others. Fairness in marriage law means protection for both parties when marriage goes wrong. The only way to obtain certainty is through a framework which treats all persons with fairness, i.e. treats each person fairly and equally.

- Create a legislative document for prenups
- Create a mandatory document for disclosure of assets and liabilities
- Require both persons to obtain independent legal advice
- Set standards for equitable treatment of individuals
- Provide gender-sensitive protections

