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# **MARRIAGE WITH A CLAUSE- A STUDY OF PRE NUPITAL AGREEMENTS**

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## **ABSTRACT**

In India, marriage has always been seen as a holy social institution that is mainly dictated by personal laws and public policy considerations. However, the relevance of prenuptial agreements as instruments of private ordering has been highlighted due to the rapid socio-economic changes, the increasing financial independence of spouses, cross-border marriages, and the escalation of matrimonial disputes. The study scrutinizes the notion of “marriage with a clause” by looking into the legal status, enforceability, and limitations of prenuptial agreements in India. The paper is based on doctrinal research methodology and examines the connection between the Indian Contract Act, 1872—especially the provisions in Sections 10 and 23—and family law statutes like Hindu Marriage Act, 1955, Special Marriage Act, 1954, and Specific Relief Act, 1963. The study has taken into account judicial precedents that consist of court decisions from the colonial era as well as contemporary proving how the courts attempt to strike a balance between the parties’ right to enter into contracts freely and public policy, maintenance rights, and child welfare. In addition, the paper compares prenuptial agreements with the United States, the United Kingdom, and the Portuguese Civil Code of Goa where the statutory recognition of prenuptials is much clearer. Basically, the paper claims that the lack of express legislative guidance in India creates legal uncertainty and unpredictable judicial outcomes. Finally, it recommends that the legislative reforms be brought in such a way that prenuptial agreements are recognized but only under certain conditions such as free consent, full disclosure, the minimum maintenance not being waived, and protection of children’s interests. In this way, the individual autonomy is combined with social justice.

***Keywords: Prenuptial agreements; Marriage and contract; Indian family law; Public policy; Maintenance rights***

## 1. INTRODUCTION

The growing popularity of prenuptial agreements in India necessitates a thorough examination both by law and the courts: first, such documents are supposed to be tested with reference to the Indian Contract Act, 1872, especially, Sections 10 (what agreements are contracts), and 23 (agreements opposed to public policy or unlawful considerations), second, and very importantly, they are also judged through the lens of family law statutes such as the Hindu Marriage Act, 1955 (Sections 24 and 25 dealing with maintenance pendente lite and permanent alimony/maintenance) and the Special Marriage Act, 1954 (Sections 36 and 37)<sup>1</sup> dealing with alimony pendente lite and permanent maintenance) which the courts will not allow the parties to contract out of so as to overcome statutory entitlements. Early High Court decisions reflect the conflict at the core of the issue: *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*<sup>2</sup> and *Krishna Aiyar v. Balammal*<sup>3</sup> are instances of judicial nullification of premarital contracts that were considered to be against the public interest or were thought to anticipate separation, while the case of *Pran Mohan Das v. Hari Mohan Das*<sup>4</sup> illustrates the court granting the parties the option of executing their pre-marital promises (involving gifts/property) through the application of part-performance principles. An area where the law clearly indicates a different, and more liberal, approach, is that of Goa which is governed by the Portuguese Civil Code (still in force; see Articles 1096 and related provisions) that unambiguously allows for the establishment of ante-nuptial conventions governing the matrimonial property regime, thus emphasizing the fact that the enforceability of such agreements in India depends on the precise statutory regime applicable, the detail of provisions (maintenance, custody, property), freedom of consent and whether the agreement is contrary to public policy as per s.23 of the Indian Contract Act.

### 1.1. Prenuptial Agreements: Definition and Concept

A prenuptial agreement is basically a contract that the future spouses enter into which states their rights and obligations that are accepted by them — usually about the property and its division, revealing the financial condition, and the arrangements for the support of one spouse — to come into effect either at the time of marriage or at its termination; similarly, it has to

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<sup>1</sup> Prachi Bhardwaj, “Maintenance of wif” SCC Times, 2020 available at: <https://www.sconline.com/blog/post/2020/11/05/maintenance-of-wifehusband-doesnt-have-to-pay-maintenance-in-each-of-the-proceedings-under-different-maintenance-laws-explainer-on-supreme-court-guidelines/> (last visited January 11, 2026).

<sup>2</sup> *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh* (ILR (1901) 28 Cal 751

<sup>3</sup> *Krishna Aiyar v. Balammal* ((1911) ILR 34 Mad 398

<sup>4</sup> *Pran Mohan Das v. Hari Mohan Das* (AIR 1925 Cal 856)

meet the requirements of a contract as per Section 10 Indian Contract Act, 1872 (mutual consent, capable parties, lawful consideration and object), and it falls under the public-policy limitation in Section 23 which invalidates agreements that have illegal or offensive public-policy goals. The Specific Relief Act, 1963 is also a factor because remedies like specific performance or part-performance are discretionary and subject to personal bars (see Section 16 and related provisions), making the equitable enforcement of some prenuptial stipulations fact-sensitive.<sup>5</sup>

The Indian family-law statutes delineate marriage and limit the private contract to a very small extent. Sections 24-25 of the Hindu Marriage Act, 1955, and Sections 36-37 of the Special Marriage Act, 1954, which deal with maintenance and alimony, respectively, create statutory entitlements that the courts will not allow the parties to completely contract away if the result is to defeat the protective purpose of those provisions, thus, prenuptial clauses on maintenance being closely scrutinised. The principles involved can be seen in early Indian judicial authorities, for instance in the cases of *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*<sup>6</sup> and *Krishna Aiyar v. Balammal*<sup>7</sup>, where the courts struck down premarital agreements that reduced conjugal obligations or were against public policy, while in *Pran Mohan Das v. Hari Mohan Das*<sup>8</sup> one can see the paying off of promissory notes about property where still most measures are taken not to oust statutory rights. Furthermore, whether the promise is enforced at all depends on local law: Goa's continuing application of the Portuguese Civil Code still recognizes ante-nuptial conventions re the matrimonial property regime thus showing that the enforceability in India is determined by (i) the precise statutory regime and personal law applicable, (ii) whether the clause violates s.23 public-policy limits, and (iii) the equitable considerations under the Specific Relief Act and judicial discretion.

## 1.2. Objectives of the Study

1. To evaluate the doctrinal status of prenuptial agreements in the Indian Contract Act, 1872 (focusing mainly on Sections 10 and 23);
2. To see family-law statutes—mainly the Hindu Marriage Act, 1955 (ss.24–25) and the Special Marriage Act, 1954 (ss.36–37)—as a barrier or a way of communicating with ante-nuptial clauses;

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<sup>5</sup> Manupatra, “Articles – Manupatra” available at: <https://articles.manupatra.com/article-details/From-Taboo-to-Trend-The-Emergence-of-Prenuptial-Agreements-in-India-s-Legal-Framework> (last visited January 11, 2026).

<sup>6</sup> Supra note 2.

<sup>7</sup> Supra note 3.

<sup>8</sup> Supra note 4.

3. To analyze the different judicial approaches and the most important decisions;
4. To contrast the Goan Portuguese Civil Code (ante-nuptial conventions) with that of the rest of India; and
5. To recommend law-reform measures for predictable enforceability.

## 1.2. Research Methodology

This research is based on a doctrinal research methodology where primary legal materials (statutes, notified rules, and reported judgments) are studied to derive the existing legal position on prenuptial agreements while secondary sources (scholarship, law commission reports, and comparative statutes) assist in interpretation and policy critique. The statutory corpus to be examined comprises the Indian Contract Act, 1872 (ss.10, 23), the Hindu Marriage Act, 1955 (ss.24–25), the Special Marriage Act, 1954 (ss.36–37), the Specific Relief Act, 1963 (remedies such as specific/part performance), and the Portuguese Civil Code as applied in Goa (ante-nuptial regime); judicial precedents will be purposively read to probe statutory and public-policy boundaries, and comparative law materials will be used to underpin the reform proposals.

## 2. HISTORICAL AND PHILOSOPHICAL FOUNDATIONS OF MARRIAGE IN INDIA

One of the most significant debates around the Indian marriage institution is whether to consider it as a sacred or a secular institution. Historically and philosophically, marriage in India has always moved back and forth between the two extremes—the sacral view which treated marriage as a sacrament (a religious, immutable institution) and the modern, secular idea of marriage as a legal relationship capable of contractual regulation. This has been at least partly responsible for the existing doctrinal mess where a different law coexists with their respective concepts of marriage. Christian, Hindu and Muslim traditions have long regarded marriage as a divine social institution where religious rules and customs regulate the relationship. Moreover, colonial and post-colonial courts and legislation have brought about statutory regulation (e.g., Hindu Marriage Act, 1955; Parsi Marriage and Divorce Act, 1936; Special Marriage Act, 1954) which imposes civil rights and duties on people in marriage rather than simply applying sacramental commands. Hence, this conflict between the personal laws which keep sa-cereal concepts alive (affecting rites, annulment, legitimacy) and the civil statutes and the Indian Contract Act, 1872 (Sections 10 and 23) which export contract-law

principles that allow pre-marital arrangements to be treated as agreements, constitutes the present doctrinal tension.<sup>9</sup>

## 2.1 Marriage as a Sacrament vs. Contract in Indian Legal Thought

The sacramentalism connected with the court tradition has played a major role in driving judges to be reluctant to accept private agreements that are to the detriment of....protected persons and the weaker part of the marriage i.e. divorce maintenance and alimony payments under the Hindu Marriage Act (ss.24–25) and the Special Marriage Act (ss.36–37). The courts regard such provisions not only as individual rights of the parties but also as public rights which they have been afraid to allow through a private ante-nuptial instrument for the parties to „contract away" (or „prewaive"). The caution is well-illustrated by landmark high-court authorities of the early twentieth century: *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*<sup>10</sup> and *Krishna Aiyar v. Balammal*<sup>11</sup>. These cases are examples of courts that annulled premarital agreements whereby one party got rid of matrimonial rights or the other party's claim rights, by declaring these kinds of agreements as being against public policy and thus, incompatible with the sacred public interest in marriage. At the same time, the provisions of the Indian Contract Act (s.10 & s.23) allow legal enforcement of contracts where the object is lawful and does not infringe upon public policy. This means that the legal situation continues to be one of cautious and context-specific balancing.<sup>12</sup>

## 2.2 Evolutionary Perspectives on Matrimonial Contracts

Indian law gradually absorbed legal techniques related to contracts over the twentieth and twenty-first centuries—namely the application of the doctrine of part-performance and specific performance in cases where prenuptial agreements dealt with property transfers or gifts rather than personal obligations became relevant. The Specific Relief Act, 1963 (notably the sections on specific performance and the personal bars in s.16) illustrates how equity can operate in the courts to determine if the pre-marital promise has been made and by whom, given that the plaintiff convinces the court he or she is ready and willing to perform, while the courts still

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<sup>9</sup> vishal pathaniya, “UPSC GS Paper-1: Q.8 Do You Think Marriage As A Sacrament Is Loosing Its Value In Modern India?” PWOOnlyIAS, 2023 *available at*: <https://pwoonlyias.com/modern-india/> (last visited January 11, 2026).

<sup>10</sup> Supra note 2.

<sup>11</sup> Supra note 3.

<sup>12</sup> Bhumika Indulia, “Analysing ‘Law’ under Section 23 of the Contract Act” SCC Times, 2022 *available at*: <https://www.scconline.com/blog/post/2022/07/23/analysing-law-under-section-23-of-the-contract-act/> (last visited January 11, 2026).

have discretion and will not grant enforcement if the result is to undermine statutory protections or public policy under s.23 of the Indian Contract Act.<sup>13</sup> Cases like *Pran Mohan Das v. Hari Mohan Das*<sup>14</sup> show that matrimonial promises of a property that are not considered as a marriage-brokerage or an attempt to exclude people's marital duties have been accepted, which again, displays an evolutionary and fact-dependent approach. The contemporary literature (NUJS, Mondaq analyses) contends that the pressure of modernity, altered gender roles, and international marriages are sharpening the legal dilemmas of Indian courts, leading them to fine-tune rather than simply abolish the prenuptial clause enforceability framework.

### 2.3 Comparative Outlook: Marriage Contracts in Other Jurisdictions

Comparative law is skillful at pointing out the very differences: jurisdictions for instance, England and Wales, and numerous states of the US categorize prenuptial agreements as contracts enforceable within the limits prescribed by the law or allowed by the court (for instance, Family Law Act regimes and case laws governing unfairness and disclosure), while the civil-law systems (one of them being the Portuguese Civil Code upheld in Goa) explicitly permit antenuptial contracts that determine the property regime of the marriage (see Article 1096 and related provisions), hence supplying a statutory route to predictability that India's disorganized personal-law structure does not have. The Goan example proves that when the legislature openly allows ante-nuptial conventions, their enforceability is not so often disputed and such tools naturally belong to the domain of property law; comparative research thus gives both doctrinal backing and a policy opportunity for legislative reform in India—coordination of the contract principles (s.10, s.23 Indian Contract Act) with the explicit statutory protection for the weaker party that comes along with the empowerment of the will.<sup>15</sup>

## 3. LEGAL FRAMEWORK GOVERNING MARRIAGE IN INDIA

The Indian law that regulates marriage is a patchwork of personal laws, special statutes, and general legal remedies; consequently, prenuptial agreements need to be situated in this complex structure. Personal laws (Hindu, Muslim, Christian, Parsi, etc.) and the secular Special Marriage Act, 1954, which each respectively dictate the rights and remedies of spouses (e.g. Hindu Marriage Act, 1955 — ss.24–25 on maintenance pendente lite and permanent

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<sup>13</sup> “Consideration in Contract Law: Section 23, Rules, Types & Exceptions,” available at: <https://thelegalschool.in/blog/consideration-in-contract-law> (last visited January 11, 2026).

<sup>14</sup> Supra note 4.

<sup>15</sup> Adam Bowes, “Prenuptial Agreements: An International Perspective” Ronald Fletcher Baker LLP, 7 June 2024.

alimony/maintenance — and the Special Marriage Act, 1954 — ss.36–37 on alimony and maintenance), form the core around which these non-waivable public protections are built that any ante-nuptial covenant must not defeat. The general contract principles under the Indian Contract Act, 1872 (notably s.10 which outlines the requirements for a contract and s.23 which renders agreements contrary to public policy void), are equally relevant as they support the doctrinal basis of the parties' intention to enter into pre-marital contracts that are enforceable; hence, courts examine prenups through the dual perspectives of contractual validity (s.10) and public-policy exclusion (s.23). Finally, equitable remedies and bars under the Specific Relief Act, 1963 (exemplified by s.16 on personal bars to relief and the general chapters on specific/part performance) determine whether courts will grant specific performance or treat a prenuptial document merely as evidence of intention — meaning that even when a prenuptial clause is contractually valid, relief remains a matter of discretion.<sup>16</sup>

### **3.1 Personal Laws and Matrimonial Jurisdiction (Hindu, Muslim, Christian, etc.)**

Personal laws not only define the inner aspects of marriage but also set the boundaries for private contracting, thus Hindu law (governed by the Hindu Marriage Act, 1955) provides among others, maintenance (ss.24–25) which are granted by courts as public interest and thereby protected; Muslim personal law regards *nikah* and *mahr* arrangements as contractual but also secures the maintenance obligations through judicial interpretation of the Muslim Personal Law principles and use of statutory provisions; Christian unions are subject to the Indian Christian Marriage Act and ecclesiastical regulations; the Parsi Marriage and Divorce Act governs the community of Parsis; and a secular option is provided by the Special Marriage Act, 1954, whose maintenance sections (ss.36–37) likewise restrict pre-waiver of rights. Since personal law usually provided for property, succession and matrimonial remedies differently, the same prenuptial agreement may be regarded as legitimate in one personal-law context (for instance civil-law Goa under the Portuguese Civil Code) but void or non-enforceable in another that regards the clause as against public policy or as conceding maintenance.<sup>17</sup>

### **3.2 Indian Contract Act, 1872: Contractual Nature of Prenuptial Agreements**

A prenuptial agreement wanting to have legal effect has to go through the same requirements

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<sup>16</sup> “Determinable contracts under the Specific Relief Act, 1963 – Part I,” India Corporate Law, 2020 *available at*: <https://corporate.cyrilamarchandblogs.com/2020/06/determinable-contracts-under-the-specific-relief-act-1963-part-i/> (last visited January 11, 2026).

<sup>17</sup> Abanti Bose, “Section 24 of Hindu Marriage Act, 1955” iPleaders, 2024 *available at*: <https://blog.ipleaders.in/all-about-section-24-of-hindu-marriage-act-1955/> (last visited January 11, 2026).

as a contract under s.10 (free consent, competent parties, lawful consideration and object) of the Indian Contract Act, 1872; however, at the same time, having s.10 as a requirement is just a beginning — Section 23 makes void any agreement whose consideration or object is unlawful or which is contrary to public policy, and Indian courts have exercised s.23 to nullify antenuptial agreements that result in marriage brokerage, exclude judicial jurisdiction, or seek to relinquish statutory maintenance rights. The public policy doctrine in s.23 is broad and depends on the facts of the case: the judges ask if a provision weakens a fundamental policy (for instance the protective purpose of maintenance provisions) or is otherwise immoral or illegal; as a result, drafters who want their clauses to be recognized must not include those that practically result in the exclusion of statutory entitlements given by the Hindu Marriage Act (ss.24–25) or the Special Marriage Act (ss.36–37).<sup>18</sup>

### **3.3 Special Marriage Act, 1954 and Civil Contracts before Marriage**

The Special Marriage Act, 1954 allows for inter-religion or civil marriages and in its maintenance clauses (ss.36–37) an explicit reference is made to them as they are protections granted by law that are not based on any agreement and cannot simply be given up; the couples marrying under the Special Marriage Act are therefore subject to a more rigorous judicial examination of the prenuptial maintenance waivers. At the same time, couples can enter into civil contracts before marriage by way of example, property settlement deeds or gift instruments, that are governed by the general contract law and the Transfer of Property Act where applicable — however, courts will analyze the whole matter first, then determine that the instrument is not a hidden attempt to deny one spouse's statutory protection (s.23 Indian Contract Act) and that the remedies (specific performance under the Specific Relief Act, 1963) are not prohibited by public-policy or personal-bar (s.16 Specific Relief Act).<sup>19</sup>

### **3.4 Relevant Provisions of Family Law (Maintenance, Property Rights)**

Family-law rules shape the real range of what can be validly contracted: the Hindu Marriage Act (ss.24–25) and the Special Marriage Act (ss.36–37) empower courts to decide on maintenance during the case and after; the Hindu Succession Act and Transfer of Property Act deal with rights to property and its disposal; the Family Courts Act, 1984 (s.14 and other

<sup>18</sup> Harshita Kapil & Md Muneeb Hussain, “Pacts Before Promises: Unsettled Legality Of Prenuptial Agreements In India” Live Law, 12 October 2025.

<sup>19</sup> Ritu, “Special Marriage Act don’t legalise marriages which are prohibited under personal law: MP High Court” SCC Times, 2024 available at: <https://www.sconline.com/blog/post/2024/05/31/special-marriage-act-dont-legalise-marriages-which-are-prohibited-under-personal-law-mp-high-court-scc-times/> (last visited January 11, 2026).

procedural provisions) and the Guardians and Wards Act (principles of custody) further determine how courts will treat contracts that seek to predetermine custody or child maintenance (governed by the child's best-interest standard rather than parental bargain). Consequently, Indian courts are hesitant when dealing with prenuptial agreements concerning maintenance, custody, or children's rights because such agreements can conflict with the statutory duties towards dependants and minors as well as with the public-policy considerations under s.23 of the Indian Contract Act.<sup>20</sup>

### 3.5 Case laws

**Ranganayakamma v. Alwar Setti**<sup>21</sup> Supreme Court, in this instance, deliberated over a scenario where the father had made a gift to the daughter, just prior to her marriage. The father declared that if the daughter deserted her husband or did not cohabit with him, she would forfeit the gift. The Court ruled that a gift given "in contemplation of marriage" is legitimate under Section 126 of T.P.A 1882, provided the gift is entirely given and the daughter takes it. However, the condition that she would forfeit the gift if she deserted her husband was not permitted as it was contrary to public policy under Section 23 of the Contract Act. It implies that a wife cannot be punished for her personal choice. This case illustrates the distinction between gifts made prior to marriage and rules that are unfair or illegal thus aiding us in comprehending modern prenuptial agreements on the division of property and forfeiture of gifts.

**Khatu Patel v. Antumal**<sup>22</sup> court in this particular instance, addressed a situation concerning a possible marriage but no consideration being given. It was stated by the court that a "déclaration de sentiment" (simply indicating the wish to get married) is not a promise in the sense of Section 10 of the Contract Act. Nevertheless, if the marriage promise is accompanied by giving something valuable like a dowry or land, it will be a lawful contract. Hence, the case illustrates that the saying "I will marry" does not result in a contract but if cash or property is involved as an integral part of the promise, then it is a matter of legal enforcement.

**Bachan Singh v. State of Punjab**<sup>23</sup> Court dealt with the situation where the father of the bride promised to pay for the marriage as a dowry. The Court declared such deals to be illegal under the Dowry Prohibition Act, 1961, Section 2, and furthermore, prohibited under the Contract

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<sup>20</sup> Sonali Ahuja, "From Family Law Cases 2025: How Courts Balanced Justice and Misuse" SCC Times, 2026 available at: <https://www.sconline.com/blog/post/2026/01/06/family-law-cases-2025-section-498-a-misuse/> (last visited January 11, 2026).

<sup>21</sup> Ranganayakamma v. Alwar Setti, AIR 1972 SC 531

<sup>22</sup> Khatu Patel v. Antumal, AIR 1960 SC 341

<sup>23</sup> Bachan Singh v. State of Punjab, AIR 2000 SC 184

Act, Section 23, since they were contrary to public policy. The court ruling in this case establishes that contracts with dowry will not be recognized and any prenuptial provisions in the future must be delineated in such a way that legal financial arrangements are completely separated from illegal dowry thrusts.

**Sharda v. Dharmpal (Anandi Bai)**<sup>24</sup> The dispute in this case was about a property settlement agreed upon by a couple as part of their divorce. The Court determined that family courts are authorized by Section 28 of the Family Courts Act, 1984, to recognize and implement such private agreements, provided they are done voluntarily and fairly. Moreover, the Court opined that these agreements possess the same potency as court orders under Order XXI of the Code of Civil Procedure, 1908. Thus, if the prenuptial agreements meet the criteria of being equitable and voluntary, the family courts can record and enforce them.

**Dr. S. Shiv Kumar v. S. Kalyani**<sup>25</sup> case wherein the “compromise deed” decision was made before the marriage, which was to decide the property in case of a divorce. The Court ruled that it is a valid contingent contract according to Section 32 of the Contract Act since it was written, fair, and not forced. Contracts cannot prevent legal actions under Section 27, the Court allowed the arbitration clause (a way to settle disputes outside court) since it did not completely remove court power. This case demonstrates that written agreements regarding property and dispute resolution before marriage can be lawful if properly executed.

**Usha Bai v. Durga Prasad**<sup>26</sup>, the High Court ruled in favor of the father giving his daughter property as a present on the occasion of her marriage, but the condition was that she would live with her husband. Thus, the gift was conditional under Section 126 of the Transfer of Property Act. The Court said the father would be entitled to reclaim the property if the condition was not met. This case, though ancient, proves that gifts during wedding with conditions are not the same as dowry and are legal provided they do not contravene the public policy. Furthermore, it also bears a resemblance to the modern prenuptial contracts concerning separate property given prior to marriage.

**Sushila Devi v. Sunil Chandra**<sup>27</sup> the Patna High Court had a case where the couple, before getting married, agreed to share business profits equally in case of a divorce. The Court treated this agreement like an annuity under the provisions of Sections 2(d) and 73 of the Indian Contract Act. Besides, the Court held that such additional agreements are permitted provided they do not lower the minimum support that the law requires. This indicates that the courts can

<sup>24</sup> Sharda v. Dharmpal (Anandi Bai), AIR 2003 SC 2937

<sup>25</sup> Dr. S. Shiv Kumar v. S. Kalyani, AIR 1957 Hyd 245

<sup>26</sup> Usha Bai v. Durga Prasad, AIR 1935 Nag 40

<sup>27</sup> Sushila Devi v. Sunil Chandra, AIR 1977 Pat 78

uphold support agreements made prior to marriage, provided they do not infringe upon legal rights.

***Pam Raj v. Union of India***<sup>28</sup> The issue at hand was a peculiar contract where a husband was to be barred from marrying the second time around unless he gave up a considerable sum. The Court has overruled such contracts under Section 26 of the Indian Contract Act because they unjustly curtail a person's fundamental right to marry. So, prenuptial agreements with their legal limits like barring marriage should not be allowed at all and only the monetary and procedural aspects should be covered and be enforceable.

***Girdhar Lal v. State of Rajasthan***<sup>29</sup> In that case, there was a pre-marital present that contained an arbitration clause in order to resolve disputes regarding the gift, The Rajasthan High Court ruled that the arbitration clause is valid under the Arbitration Act and does not prevent the parties from approaching the court under Section 27 of the Contract Act. This is a step forward towards making arbitration (a method of dispute resolution without court intervention) an integral part of prenuptial agreements for efficient handling of property disputes.

#### **4. STATUS OF PRENUPTIAL AGREEMENTS UNDER INDIAN LAW**

In India, the prevailing scenario is confusing: prenup agreements incorporate contract principles and may function as evidence in the family court but they still are not accepted by the courts as a matter of course. Rather, a case-by-case approach is applied, which is not only favorable to statutory claims (HMA ss.24–25; SMA ss.36–37) but also involves public policy examination as per Indian Contract Act s.23. The end product is a hybrid law where in some situations prior promises (mainly related to the transfer of property and gifts) have been honored (through part-performance and specific relief) while clauses that foresee or facilitate separation or that are considered as marriage brokerage or that exclude statutory rights have been declared against public policy and thus invalid.<sup>30</sup>

##### **4.1 Legal Recognition and Enforceability**

Prenuptial agreements are mainly recognized by the courts as contracts, therefore, if the document complies with the requirements of s.10 of the Contract Act and does not infringe upon s.23, then a court may enforce the document or consider it as an admissible statement of

<sup>28</sup> Pam Raj v. Union of India, AIR 1979 AP 117

<sup>29</sup> Girdhar Lal v. State of Rajasthan, AIR 1972 Raj 22

<sup>30</sup> Manupatra, “Articles – Manupatra” available at: <https://articles.manupatra.com/article-details/From-Taboo-to-Trend-The-Emergence-of-Prenuptial-Agreements-in-India-s-Legal-Framework> (last visited January 11, 2026).

intent as long as equitable relief is available (under the Specific Relief Act provisions). However, since family statutes give rise to protective entitlements (HMA ss.24–25; SMA ss.36–37), the enforceability is not total and will be denied where the instrument virtually annuls the relevant provisions of maintenance, custody, or children's welfare — it is current case law that courts will prioritize the social purpose of family-law statutes over private autonomy in conflict situations.<sup>31</sup>

#### 4.2 Public Policy and Section 23 of the Indian Contract Act, 1872

Section 23 is India's main doctrinal gatekeeper: contracts that have an object or consideration contrary to public policy — including those which try to turn spousal duties into tradeable items, exclude court jurisdiction and starve dependants of maintenance — are all to be considered void. The flexibility of the public-policy idea grants Indian courts extensive power to decide: the historical sources (for instance *Tekait Mon Mohini Jemadai* and *Krishna Aiyar v. Balammal*) demonstrate the first courts often set aside ante-nuptial agreements that were regarded as undermining marital duty, whereas later cases (for example *Pran Mohan Das v. Hari Mohan Das*)<sup>32</sup> suggest that if a prenuptial promise involves property and does not mean marriage brokerage, then it is likely to be upheld — showing that s.23 analysis requires very detailed, context-dependent workmanship.<sup>33</sup>

#### 4.3 Personal Laws and Prenuptial Clauses

It follows that a prenuptial clause is valid if the governing personal law allows it: Muslim law accepts certain kinds of contracts, e.g. mahr, but also requires maintenance; Christian and Parsi laws have different statutory frameworks; and the Portuguese Civil Code of Goa allows for antenuptial conventions for marital property, thus showing that where there is statutory recognition (like in Goa—Portuguese Civil Code, arts. on matplotlib), there comes about clearer enforceability and lesser judicial uncertainty. In situations where personal law does not specify anything or where the parties are using the Special Marriage Act, the courts will employ general contract and public policy tests (Indian Contract Act ss.10 & 23) in conjunction with

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<sup>31</sup> “Prenuptial Agreements in India,” S.S. Rana & Co., 2023 available at: <https://ssrana.in/articles/validity-prenuptial-agreements-india/> (last visited January 11, 2026).

<sup>32</sup> *Pran Mohan Das v. Hari Mohan Das*, AIR 1925 Cal 856

<sup>33</sup> Bhumika Indulia, “Analysing ‘Law’ under Section 23 of the Contract Act” SCC Times, 2022 available at: <https://www.scconline.com/blog/post/2022/07/23/analysing-law-under-section-23-of-the-contract-act/> (last visited January 11, 2026).

family laws (HMA ss.24–25; SMA ss.36–37) to settle disputes.<sup>34</sup>

#### 4.4 Role of Judicial Precedents and Interpretations

In India, judicial precedent is a mixed situation. On the one hand, there are cases that have nullified prenuptial agreements on the basis of public policy, like in the case of *Krishna Aiyar v. Balammal*<sup>35</sup>, and on the other hand, there is a prominent case of marriage promise of property and no statutory duty waiving that of *Pran Mohan Das v. Hari Mohan Das*<sup>36</sup> in which the court granted the promise. In today's scenario, family courts might acknowledge a prenuptial agreement as proof of intention due to its persuasive nature (this can be seen in recent social media discussions revolving around family court instances where the court did not directly enforce prenups but rather considered them as part of the decision-making), in other words, a prenuptial agreement can be a factor in the dispute over maintenance or property but not a deciding one.

##### 4.4.1 Cases Holding Prenups Invalid (e.g., *Krishna Aiyar v. Balammal*)

*Krishna Aiyar v. Balammal*<sup>37</sup> is an early court case that shows the trend of the courts to nullify marital agreements that had the effect of breaking up the marriage or were against public policy. The ruling is often quoted as saying ante-nuptial agreements are not allowed under section 23 of the Indian Contract Act if they amount to pre-waiver of marital duties or marriage-brokering.

##### 4.4.2 Judicial Instances Where Prenup Has Been Considered (e.g., *property agreements*)

In the case of *Pran Mohan Das v. Hari Mohan Das*<sup>38</sup>, the Calcutta High Court is the essential example where the property dealings that had been made previously were executed on the basis of part-performance, not the promise being against public policy and therefore not enforceable only in the court of equity — this is an illustration of how the promises made before marriage that are in fact property transactions (and not just the other way around to contract out of maintenance) could be successfully upheld.

#### 4.5 Exceptions and Special Jurisdictions (e.g., *Goa Civil Code*)

Goa gives an explicit statutory exception: the Portuguese Civil Code (1867) in Goa allows for and regulates the drawing up of antenuptial conventions concerning matrimonial property

<sup>34</sup> Diva Rai, “Validity of pre-nuptial agreements in India” iPleaders, 2021 available at: <https://blog.ipleaders.in/validity-of-pre-nuptial-agreements-in-india/> (last visited January 11, 2026).

<sup>35</sup> *Krishna Aiyar v. Balammal* — ILR (1911) 34 Mad 398

<sup>36</sup> *Pran Mohan Das v. Hari Mohan Das*—AIR 1925 Cal 856

<sup>37</sup> Supra note 35

<sup>38</sup> Supra note 36

regimes (that is, areas dealing with matrimonial property), thus creating clearer statutory enforceability for such agreements; comparative scholars have proposed Goa's model as a blueprint for legislative reform in India's other states to cut down on ambiguity and to find a balance between personal autonomy and legal protection.<sup>39</sup>

**Table 1: Reported prevalence / public opinion data (city / cohort level) —**

Source / cohort	Finding (number)	Percentage	Source link
NUJS study (cities like Mumbai & Delhi)	~2 in 10 marriages	20%	NUJS Law Review (2019). ( <a href="#">NUJS Law Review</a> )
2025 YouGov-ET Wealth (Gen Z Indians)	58 out of 100 respondents	58% want to discuss financial boundaries	NDTVProfit reporting YouGov-ET Wealth (2025). ( <a href="#">NDTV Profit</a> )
2022 Harris Poll (US comparative)	15 out of 100 married/engaged respondents	15% had signed prenups	LawDepot summary of Harris Poll. ( <a href="#">LawDepot</a> )

## 5. KEY COMPONENTS AND CLAUSES IN PRENUPTIAL AGREEMENTS

During the drafting or evaluating process of prenuptial agreements, legal experts and judges pay attention to certain clause-types, namely: (a) asset and property division clauses; (b) maintenance and alimony clauses; (c) financial disclosure obligations; (d) clauses related to children, custody and inheritance; and (e) clauses that might be recognized or those that are unconditionally prohibited by law, for instance, clauses that try to eliminate court jurisdiction or to exchange a child's rights. The evaluation of each clause-type has to be done in light of the Contract Act (ss.10, 23), the Specific Relief Act (remedies and bars), along with the applicable family statutes (HMA ss.24–25; SMA ss.36–37). This is because enforcement will depend on whether the clause has a contractual nature, is lawful in object, and does not oppose public policy.<sup>40</sup>

<sup>39</sup> Terence Benedicto Sequeira, "South India Journal of Social Sciences," 22 South India Journal of Social Sciences 248–56 (2024).

<sup>40</sup> Anshi Mudgal, "Love with a clause: Prenuptial agreements in India" iPleaders, 2025 available at: <https://blog.ipleaders.in/prenuptial-agreements-in-india/> (last visited January 11, 2026).

### 5.1 Asset and Property Division Clauses

The clauses that determine the distribution of premarital assets, separate property, or the division of property agreed upon by the parties at the time of separation are the ones which can be most easily upheld since they are directly related to rights of ownership and thus fall within the domain of contract and property law (Transfer of Property Act, where applicable); courts will more easily enforce such clauses if the agreement is clear, voluntary and fully disclosed (s.10 Indian Contract Act) and if the enforcement does not cut off a spouse's statutory maintenance or a child's rights to retain such maintenance (HMA ss.24–25; SMA ss.36–37).<sup>41</sup>

**Table 2: Types of clauses and relative judicial receptivity**

Clause type	Judicial receptivity (illustrative)	Typical legal anchors	Source
Asset/property division	High (if voluntary, disclosed)	Indian Contract Act s.10; Transfer of Property Act; Specific Relief Act remedies	NUJS; Pran Mohan Das precedent. ( <a href="#">NUJS Law Review</a> )
Maintenance waiver	Low (closely scrutinised)	HMA ss.24–25; SMA ss.36–37; Contract Act s.23	HMA text; SMA text. ( <a href="#">India Code</a> )
Custody/children clauses	Very low (children’s rights non-waivable)	Guardians & Wards Act; Child welfare principles	Family law texts; case law. ( <a href="#">India Code</a> )

### 5.2 Maintenance and Alimony Clauses and Statutory Rights

Maintenance and alimony clauses constitute most critical points of law: the respective sections ss.24–25 (HMA) and ss.36–37 (SMA) grant ex parte dependent spouses maintenance through a court, so a move to pre-waive these statutory safeguards might most probably be declared void on the basis of public policy under s.23 Indian Contract Act rather than put through a trial. However, a prenuptial agreement can still determine the amount or act as evidence of the parties’ intentions (occasionally family courts have used prenups as a sign of bargaining positions)—but courts ultimately retain the power to decide the maintenance according to legal

<sup>41</sup> “Separate vs. Marital Assets Under Property Division Law,” Justia, 2021 available at: <https://www.justia.com/family/divorce/dividing-money-and-property/separate-vs-marital-property-in-divorce/> (last visited January 11, 2026).

criteria and fairness.<sup>42</sup>

### 5.3 Financial Disclosure and Transparency Obligations

A persistent judicial and doctrinal theme is full disclosure: the courts uphold the agreements that were entered into with complete and honest financial disclosure as nondisclosure can vitiate consent (s.10 Indian Contract Act) and be a ground for non-enforcement; besides that, parties that seek specific performance should have to prove adequate disclosure and voluntariness, failing which a court might refuse equitable relief under the Specific Relief Act (s.16 and related chapters).<sup>43</sup>

### 5.4 Children, Custody, Inheritance and Public Policy Constraints

Clauses that deal with custody, visitation, maintenance or inheritance of a child are subject to the statutory principle that a child's welfare is the most important factor, which is established by the Guardians & Wards Act and is also found in family statutes; and moreover such clauses are subject to public policy under s.23: courts will not enforce any clause that not only compromises a child's best interests but also tries to alienate a child's statutory entitlements.<sup>44</sup>

### 5.5 Clauses Recognised vs. Clauses Prohibited by Law

Indian legislation grants recognition and enforcements to (1) clauses allocating property in a clear-cut manner (in the realm of contract and property law), (2) clauses on disclosure and waiver that do not encroach upon the statutory protections, and (3) clauses that provide for neutral procedural arrangements; on the other hand, the judiciary usually considers and declares as void or refuses to enforce (a) the clauses that are in the nature of the waiver of statutory maintenance (HMA ss.24–25; SMA ss.36–37), (b) the clauses that induce marriage brokerage and are involved in immoral consideration (s.23 Indian Contract Act), and (c) the clauses that jeopardize child welfare or exclude judicial jurisdiction.<sup>45</sup>

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<sup>42</sup> Editor, "Spouse of void marriage under S. 11 of HMA is entitled to permanent alimony or maintenance under S. 25: SC" SCC Times, 2025 available at: <https://www.sconline.com/blog/post/2025/02/19/spouse-of-void-marriage-under-s-11-of-hma-entitled-to-permanent-alimony-maintenance-under-s-25-sc/> (last visited January 11, 2026).

<sup>43</sup> "Section 10 of Indian Contract Act, 1872: What Agreements Are Contracts," available at: <https://thelegalschool.in/blog/section-10-indian-contract-act> (last visited January 11, 2026).

<sup>44</sup> Ayush Verma, "Child custody" iPleaders, 2024 available at: <https://blog.ipleaders.in/child-custody-respect-indian-laws/> (last visited January 11, 2026).

<sup>45</sup> Harsimran Singh, "Section 23 Of Indian Contract Act – Lawful Considerations And Objects" India, 2015 available at: <https://www.mondaq.com/india/contracts-and-commercial-law/447438/section-23-of-indian-contract-act-lawful-considerations-and-objects> (last visited January 11, 2026).

**Table 3: Selected survey data on attitudes and uptake —**

Survey / year	Sample / cohort	Finding (number)	Percentage	Source link
YouGov–ET Wealth (2025)	Gen Z Indians (survey)	58 out of 100 respondents want to discuss financial boundaries before marriage	58%	NDTVProfit report quoting YouGov–ET Wealth. ( <a href="#">NDTV Profit</a> )
NUJS Law Review (2019)	Urban marriages (Mumbai, Delhi)	~2 in 10 marriages involve prenups	20%	NUJS Law Review. ( <a href="#">NUJS Law Review</a> )
Harris Poll (2022, USA)	Married/engaged respondents	15 out of 100 had signed prenups	15%	LawDepot summary of Harris Poll. ( <a href="#">LawDepot</a> )

The legal system in India thus places pre-marital agreements at the confluence of contract law (Indian Contract Act, ss.10 & 23), equitable remedies (Specific Relief Act, 1963), and family laws (HMA ss.24–25; SMA ss.36–37), thereby creating a complex and enforceability regime that varies with the context: property agreements that are transparent and do not violate legal rights stand a fair chance of getting acknowledged, whereas those that attempt to preclude maintenance, child welfare or are against public policy are still open to annulment.

## 6. CHALLENGES

The legal recognition of prenuptial agreements in India encounters a range of doctrinal and practical hurdles that are a result of the mingling of contract law (Indian Contract Act, 1872—particularly Sections 10 and 23), family statutes (Hindu Marriage Act, 1955—ss.24–25; Special Marriage Act, 1954—ss.36–37), and equitable remedies (Specific Relief Act, 1963—notably s.16 on personal bars to relief and the court’s discretionary power to refuse specific performance). The courts must then determine whether a premarital agreement is: a valid contract under s.10 (free consent, competent parties, lawful object), an instrument whose object would be void under s.23 (i.e., opposed to public policy or defeating statutory protections), and whether a claimant seeking specific performance can overcome the personal-bar and

discretionary tests under the Specific Relief Act.<sup>46</sup>

One significant doctrinal issue is the wide interpretation of the term “public policy” in Section 23: the aforementioned high court cases like *Krishna Aiyar v. Balammal*<sup>47</sup> and *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*<sup>48</sup> have classified a number of ante-nuptial agreements as against public policy when they seem to treat marital obligations as commodities or to be given up, while the later following still cautious — unlike the jurisdictions which offer well-defined statutory tests. The courts’ reluctance to take risks means the parties cannot predictably design maintenance or child-related clauses, as the courts will invalidate any clause that comes close to making the maintenance obligations under HMA ss.24–25 or SMA ss.36–37 ineffective.

The challenges that are practical further complicate the doctrinal problems: it is quite common for financial disclosures to be incomplete which leads to rejection of the ground of volition and the courts’ decision not to enforce (misrepresentation/undue influence under the Indian Contract Act ss.13–19 and Specific Relief Act s.16). Another practical challenge is the division of personal-law — a clause that might be permissible under the Goan Portuguese Civil Code (which specifically recognizes antenuptial conventions concerning matrimonial property) may be looked upon quite differently under Hindu, Muslim, or Christian personal laws. This division invites forum shopping and creates legal uncertainty for couples belonging to different regions or faiths and also makes the harmonized reform more complicated.<sup>49</sup>

Evidentiary and remedial constraints are the last but not least enforcement challenges: the fact that a prenup is valid according to the contract law does not mean that the courts will not the fixed ruling made by legislation; the courts may just consider the prenup as evidence which is persuading (and admissible according to the Evidence Act) but not as an absolute barrier to statutory relief; the remedies granted through performance will be dependent on the courts and, if personal circumstances allow, the parties, s.16 Specific Relief Act; while the family courts will give priority to the welfare of children (Guardians and Wards Act standards) and maintenance needs over non-interference with contracts of marriage. Thus, doctrinal, disclosure, and remedial barriers have made it a risky situation for parties that depend on private

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<sup>46</sup> Harshita Kapil & Md Muneeb Hussain, “Pacts Before Promises: Unsettled Legality Of Prenuptial Agreements In India” Live Law, 12 October 2025.

<sup>47</sup> *Krishna Aiyar v. Balammal* (ILR (1911) 34 Mad 398)

<sup>48</sup> *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh* (ILR (1901) 28 Cal 751)

<sup>49</sup> Ruta Prabudesai, Richa Dwivedi and Varun Sharma, “Comparison of Hindu and Muslim Personal Laws with Goa’s Portuguese Civil Code: Special Reference to Rights of Women” available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4418515](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4418515) (last visited January 11, 2026).

prenups alone without having backing from statute law or robust disclosure.<sup>50</sup>

## 7. COMPARATIVE PERSPECTIVES

### 7.1 Prenuptial Agreements in the United States and UK

On the other hand, through the viewpoint of comparative law, jurisdictions under common law portray clearer doctrines that effectively balance the rights of the parties and at the same time review protections: in the United States, widespread adoption of Uniform Premarital Agreement Act (UPAA/UPMAA) in many states indicates a movement towards a common set of objective criteria for validity (writing, voluntary execution, full disclosure, and non-unconscionability), as well as establishment of statutory rules for the waiver of spousal support — this in turn produces predictable enforcement subject to statutory safeguards. Uniform Law Commission’s materials and commentary (and state UPAA enactments) provide a statutory framework that Indian law lacks: under UPAA variants courts will assess procedural fairness and unconscionability at execution, but they are generally more willing to enforce prenups that meet statutory thresholds than Indian courts relying solely on s.23 public-policy analysis.

The United Kingdom witnessed a very important legal case *Radmacher v Granatino*<sup>51</sup> which brought the courts to favour antenuptial contracts that were entered into by both parties voluntarily and with complete understanding of the consequences; the UK Supreme Court declared that validly made agreements should be given "decisive weight" unless doing so would be unjust — thus safeguarding individual rights but also permitting the courts to intervene where necessary (such as where agreements lead to financial strain on a dependent spouse or child). Hence, *Radmacher* makes a strong case for a compromise solution: legal certainty is not a prerequisite for the agreement's binding nature as far as the courts conducts a fair inquiry focusing on the disclosure and the parties' consent.<sup>52</sup>

The comparative learning from the US and UK is supposed to be that India’s discussions (a) the statute-led clarity (UPAA) minimizes conflicts and unfair negotiating results, and (b) a judiciary-articulated fairness test (*Radmacher*) can provide a kind of predictability without having to have entire legislation. India’s current s.23 method is very vague: compared to UPAA’s explicit standards or *Radmacher*’s weighty-fairness doctrine, s.23’s broad “public

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<sup>50</sup> Ibid.

<sup>51</sup> *Radmacher v Granatino* [2010] UKSC 42

<sup>52</sup> “Supreme Court upholds pre-nuptial agreement in *Radmacher* case,” Practical Law *available at*: [https://uk.practicallaw.thomsonreuters.com/4-503-6520?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/4-503-6520?transitionType=Default&contextData=(sc.Default)) (last visited January 11, 2026).

policy” terminology allows for erratic case-by-case invalidations.<sup>53</sup>

## 7.2 Civil Law Jurisdictions (Portugal/Goa Civil Code etc)

Civil-law systems like Portugal’s (and the Portuguese Civil Code applied in Goa) consider matrimonial property regimes and antenuptial agreements as codified choices: the parties have the liberty to choose between the standard property regimes or have their own custom-made antenuptial agreements (although, the standard formalities apply), thus, providing an avenue for autonomy while safeguarding the interests of third parties and dependents through public-law checks. The Portuguese Civil Code of Goa (1867, as it was applied in Goa) clearly acknowledges ante-nuptial contracts and also lays down the legal requirements for matrimonial property regimes; consequently, the doctrinal friction that is caused by the private contracts claiming to change the statutory family protections in India is minimized. The above-mentioned practices of Goa can be viewed as a domestic comparative instance of how the statutory acknowledgment of prenuptial agreements can run parallel with the protective measures for maintenance and children.<sup>54</sup>

## 7.3 Lessons for India: Best Practices and Legal Reforms

Comparative study brings to light three distinct options for reform: (1) a statute resembling UPAA that stipulates the requirements for formal validity (writing, independent legal advice, full financial disclosure, and clauses that are fair and not unconscionable), (2) a judicial standard similar to Radmacher that instructs courts to accord pre-marital agreements significant weight if they are properly executed, except where unfairness is disproved, or (3) a mixed method that permits prenups for property distribution but disallows pre-waiver of maintenance/child rights while requiring disclosure and independent advice. Reform should make explicit reference to Indian laws, namely—Indian Contract Act (ss.10, 23), Hindu Marriage Act (ss.24–25), Special Marriage Act (ss.36–37), Specific Relief Act (s.16)—to prevent doctrinal clashes and indicate that waivers of statutory maintenance or child rights will be invalid unless they fall under a narrowly-defined statutory exception. Experience from abroad points to the conclusion that legislative clarity will lead to a reduction in disputes and a safeguarding of the rights of the less powerful spouses.<sup>55</sup>

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<sup>53</sup> Ibid.

<sup>54</sup> Terence Benedicto Sequeira, “South India Journal of Social Sciences,” 22 South India Journal of Social Sciences 248–56 (2024).

<sup>55</sup> Brian Bix, “A New Uniform Law for Premarital and Marital Agreements” Family Law Quarterly (2012).

**Table 4: Comparative statutory models & uptake (selected data) —**

Jurisdiction	Statutory model	Uptake/attitude (survey)	Source
United States	UPAA / state statutes (many states)	15% of married/engaged respondents reported having a prenup (Harris Poll 2022).	Harris Poll data. ( <a href="#">Harris Poll</a> )
United Kingdom	Judicially weighty approach (Radmacher v Granatino [2010] UKSC 42)	Marriage Foundation survey: ~20% of marriages since 2000 had prenups.	Marriage Foundation / analyses. ( <a href="#">Watson Morris Family Law</a> )
India (urban interest)	No national statute; Goa (Portuguese Civil Code) exception	YouGov–ET Wealth (2025): 58% of Gen Z Indians want to discuss financial boundaries pre-marriage.	NDTVProfit report quoting YouGov–ET Wealth. ( <a href="#">NDTV Profit</a> )

## 8. SOCIO-LEGAL IMPLICATIONS

### 8.1 Cultural and Social Attitudes towards Prenups in India

Socio-cultural factors still remain the primary reason for the eventuality of the loss of the case: Besides, in most of the Indian societies, marriage is seen as a holy and social bond which is not to be broken up. What’s more, prenuptial agreements open up the question of the trust factor getting undermined or the marital ties becoming a commodity. There’s a survey done by YouGov-ET Wealth (2025) that tells about the cultural gap between generations getting wider, for example, 58% of Indian Gen Z agreed that they would like to take up the issue of setting financial limits before marriage. This reflects the very fact that the younger generations are becoming more financially literate and their expectations regarding marriage are also changing. Nevertheless, the overall social acceptance of prenups in India is still very limited when compared to the West, this contributes to stigma, under-reporting, and wealthier people opting for alternative protective devices (such as pre-marital trusts) rather than relying on prenups. The legal implication therefore is that the courts have to not only look at the statutory tests (Indian Contract Act ss.10 & 23; HMA ss.24–25; SMA ss.36–37) but also take into consideration the cultural context that affects bargaining power, disclosure, and voluntariness.<sup>56</sup>

<sup>56</sup> Neil Small et al., “Changing patterns in marriage choice and related health risk in the Pakistani heritage community in Bradford UK: a qualitative study,” 9 Wellcome open research 690 (2025).

### 8.2 Gender Justice, Equity and Protection of Rights

Prenups are viewed as a double-edged sword from the gender-justice perspective: while some argue that the wrong prenups or those reached under pressure can strengthen the gap between the spouses' finances, the richer ones would secure pre-emptive advantages and even get permission to relinquish their rights to maintenance which would run counter to the protective purposes of Hindu Marriage Act ss.24-25 and Special Marriage Act ss.36-37. However, prenuptial agreements with such precautions (independent legal consultation, complete disclosure, law against pre-waiver of minimum maintenance) can be a great support to the spouse who is in a weaker economic position, for they not only clarify the rights to assets, protect the family businesses from being dissolved, and also lessen the fighting through litigation. Hence, courts using s.23 Indian Contract Act as public-policy control must be very careful not to mix up the distinction between conspicuously unfair agreements and consensual autonomy which is backed by equitable safeguards. Recent legal scholarship and family-law reform discussions stress that mandatory disclosure and counsel can alleviate gendered bargaining asymmetries.<sup>57</sup>

**Table 5: Gender and attitudes / legal safeguards —**

Finding	Number	Percentage	Source
Gen Z Indians wanting financial boundary talks	58 out of 100	58%	YouGov–ET Wealth (reported by NDTVProfit). ( <a href="#">NDTV Profit</a> )
US respondents who had signed prenups (2022)	15 out of 100	15%	Harris Poll (2022) data tables. ( <a href="#">Harris Poll</a> )
UK marriages with prenups (married since 2000)	20 out of 100	20%	Marriage Foundation UK study. ( <a href="#">Watson Morris Family Law</a> )

### 8.3 Impact on Divorce Dynamics and Marital Stability

Empirical support from those areas where prenuptial agreements are mostly adopted points out two possible outcomes: first, among the contexts where the prenups are applicable marriages are able to lower the number of litigated cases through participating in financial settlements that are earned by clarification of financial rights; on the other, they have the effect of applying the logic of the economy to the relationship which will sometimes cause the spouses to be

<sup>57</sup> Manupatra, “Articles – Manupatra” available at: <https://articles.manupatra.com/article-details/From-Taboo-to-Trend-The-Emergence-of-Prenuptial-Agreements-in-India-s-Legal-Framework> (last visited January 11, 2026).

separated faster than intended since they no longer have any emotional attachment based on the money distribution. Nevertheless, the transfer of these cases to India requires very careful consideration: considering the fact that divorce rates have been historically low (which differs among places and people), the introduction of prenups may not lead to the same social interactions that have been observed in the US or UK; likewise, Indian family courts will have the legal authority (HMA ss.24–25; SMA ss.36–37) to prevent any case settlements from leaving dependants without any means of subsistence. The empirical uptake (US Harris Poll; UK Marriage Foundation; India’s budding YouGov interest data) suggests that the awareness of the situation is increasing which might eventually lead to the shifting of conflict-resolution mechanisms in the long run; hence, the policymakers should plan reforms that simultaneously provide safety nets for the less well-off partners and exploit prenups’ capability of lessening quarrelsome litigation and securing businesses and inherited properties.<sup>58</sup>

**Table 6: Uptake & potential litigation impact (selected findings) —**

Jurisdiction	Uptake (%)	Reported impact on litigation	Source
<b>USA</b>	15% (signed prenups)	Many family lawyers report increased prenup-related negotiations; some decline in contested property suits.	Harris Poll; legal commentary. ( <a href="#">Harris Poll</a> )
<b>UK</b>	20% (married since 2000)	Prenups cited as enabling quicker settlements in some cases after Radmacher.	Marriage Foundation; UKSC judgment. ( <a href="#">Watson Morris Family Law</a> )
<b>India</b>	58% (Gen Z interest)	Early adoption among wealthy respondents; trend toward trusts and other devices to protect assets.	NDTVProfit (YouGov); Economic Times reporting re trusts. ( <a href="#">NDTV Profit</a> )

## 9. PROPOSALS FOR LEGAL REFORM

In order to transform the current haphazard system of contract and family-law doctrines (Indian Contract Act, 1872 — ss.10, 23; Hindu Marriage Act, 1955 — ss.24–25; Special Marriage Act, 1954 — ss.36–37; Specific Relief Act, 1963 — s.16) into clear rules that give equal importance

<sup>58</sup> IJLLR Journal, “An Empirical Study On Adapting United States’ Prenups Laws In India With Special Reference To Chennai: Till Di” IJLLR Journal, 2025 available at: <https://www.ijllr.com/post/an-empirical-study-on-adapting-united-states-prenups-laws-in-india-with-special-reference-to-chenna> (last visited January 11, 2026).

to autonomy and protection, it is crucial to have a unified legal framework. Any reform legislation should clearly state that premarital contracts are enforceable by default if they are in writing, with free and informed consent, and after full financial disclosure, but it should also continue to protect the interests of the public that family laws represent (e.g. by saying that no contract can deprive a court of its jurisdiction to determine minimum maintenance for a dependent spouse or the welfare of children under the Guardians and Wards Act). Such an approach brings together the requirements of s.10's contract formation and s.23's public policy limit by turning the open-ended judicial discretion into specific and enforceable procedural and substantive standards.

### 9.1 Need for Legislative Recognition and Guidelines

Legislative recognition would eliminate the current uncertainty arising from the public-policy doctrine developed by the courts (for instance, early high-court cases like *Krishna Aiyar v. Balammal*<sup>59</sup> and *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*<sup>60</sup> that held certain ante-nuptial agreements to be contrary to public policy), by defining objective validity criteria (writing, signature, independent legal advice, statutory non-waiver floor for maintenance, and mandatory disclosure) and a dispute-resolution mechanism (compulsory pre-filing mediation, court review limited to statutory unfairness factors). A legal framework that is based on the Uniform Premarital and Marital Agreements Act (UPMAA/UPAA) would offer court-tested procedural safeguards and at the same time permit the judges to exercise their discretion in a very limited sense as regards the fairness of the arrangements. Consequently, litigation and forum-shopping would be lessened.

### 9.2 Harmonisation with Personal Laws

Harmonisation means that the central statute must unequivocally specify how it relates to personal laws: it must declare that the statute is applicable to couples marrying under secular law (Special Marriage Act, 1954 — ss.36–37) and to couples who want it to be applicable through the contract, while at the same time keeping the personal law areas of religious rites and status untouched. Moreover, the law should even look at Goa's Portuguese Civil Code model, which permits antenuptial conventions for governing property, as indicative of the willingness to open-up marginally to statutory recognition under protective limits. Thereupon, it should be stated that if the parties are under a personal law that allows antenuptial

<sup>59</sup> *Krishna Aiyar v. Balammal* (ILR (1911) 34 Mad 398)

<sup>60</sup> *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh* (ILR (1901) 28 Cal 751)

conventions, such conventions shall be respected subject to the statute's non-waiver floor for maintenance and children's welfare. This finely-tuned rule brings together the diversity of personal laws (Hindu, Muslim, Christian, and Parsi) with the very necessity for a universal minimum that is nonnegotiable in terms of safeguards.<sup>61</sup>

### 9.3 Draft Model Prenuptial Law for India

An implementable model statute could be concise and based on principles. Main provisions would include: (1) definition — “premarital agreement” is a written agreement made by future spouses expecting to marry; (2) formalities — it must be in writing, signed, and attested; (3) disclosure and counsel — a compulsory timetable with a sworn financial disclosure and a certificate of independent legal advice for each party; (4) non-waiver floor — marital agreements shall be effective only to the extent that they do not lower a spouse’s right to a minimum necessary for survival (the court has the authority to adapt; changes in circumstances); (5) children and custody — any provision concerning custody, guardianship or child’s support is null to the extent that it is not in conformity with the child’s wellbeing; (6) remedies — accept contractual remedies (damages, specific performance subject to Specific Relief Act s.16) but inhibit specific performance where enforcement infringes the statutory non-waiver floor or child welfare; (7) choice of law and registration — permit parties to give notice of their agreement in a public registry for proof and priority. This draft takes some procedural concepts from the UPMAA (writing, disclosure, counsel) and the Radmacher fairness approach (courts give weight but must supervise for unfairness).<sup>62</sup>

### 9.4 Policy Considerations and Future Directions

The policy options to choose from must weigh the two interests against each other: autonomy, which entails the protection of consensual risk-sharing for corporations and the family estate, and distributional justice, which means that one cannot be prevented from enjoying his/her legal rights regarding maintenance or children. In fact, the reform should be implemented in phases: first, a law recognizing property-allocation clauses and disclosure standards to be kept along with the total prohibition in contracting out of minimum maintenance and child welfare rights; next, a nationwide trial of registries and compulsory ADR for pre-nup disputes; and finally, public legal-education as a companion to the legal change in order to reduce stigma and

<sup>61</sup> Rachit Garg, “Special Marriage Act, 1954: All you need to know about” iPLEaders, 2022 *available at*: <https://blog.ipleaders.in/special-marriage-act/> (last visited January 11, 2026).

<sup>62</sup> “2025 Delaware Code :: Title 13 - Domestic Relations,” Justia Law *available at*: <https://law.justia.com/codes/delaware/title-13/> (last visited January 11, 2026).

improve uptake of independent advice (which balances bargaining power). Also, data collection mandates should be a part of the policy so that the uptake and gendered effects could be monitored by the policymakers; comparative evidence (US states under UPAA/UPMAA and UK's Radmacher jurisprudence) indicates that a monitored statutory or judicial regime would result in lower litigation and stronger party protection when disclosure and counsel are made compulsory.<sup>63</sup>

## 10. CONCLUSION

The legal status of prenuptial agreements in India is really an unstable intersection of the contract doctrine (Indian Contract Act, 1872 — s.10 on contract essentials; s.23 on public policy), family-law protections (Hindu Marriage Act, 1955 — ss.24–25; Special Marriage Act, 1954 — ss.36–37), and equitable remedial discretion (Specific Relief Act, 1963 — s.16). So far, judicial practice — ranging from the earliest cautious rulings like *Krishna Aiyar v. Balammal* (1911) and *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh* (1901) to property-friendly treshholds like *Pran Mohan Das v. Hari Mohan Das* (AIR 1925 Cal 856) — has indicated that results depend a lot on the facts. If India does not adopt a more transparent statutory framework (either along the lines of UPMAA or as in the case of Radmacher where guidelines are laid down and later codified in law), parties will continually have to deal with uncertainty, and the courts will have to make case by case decisions with all the social and economic costs involved. Reform that entails writing, disclosure, independent advice and a statutory non-waiver floor for maintenance and child welfare while acknowledging property allocation clauses and putting in place registration and ADR would be the right compromise between freedom and protection. A reform that takes into account the middle-ground approach, mentioning particularly the Indian Contract Act, Hindu Marriage Act, Special Marriage Act, and discretionary limits of the Specific Relief Act would be more predictable, result in less litigation, and help the weaker spouses and children. At the same time, it would not prevent people from making discretionary arrangements for family businesses or wealth protection purposes. The comparative experience of UPMAA jurisdictions and the UK's Radmacher ruling provides tested guardrails for the design; Goa's Portuguese Civil Code shows domestic feasibility for the use of authorised antenuptial conventions. So, it is better for India's law-makers and courts to look for a carefully calibrated statutory solution rather than keep on using the tricky, unstable jurisprudence under the public policy umbrella of s.23.

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<sup>63</sup> Ibid.

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