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Implications and Legal Validity of Prenuptial Agreements in India

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In India, Marriage is considered a “sacrament” or a religious institution rather than a contractual agreement in most beliefs and so is recognized under their personal laws. The word “sacrament” signifies that once a marriage is instituted, the marriage is abiding and inevitably related to a perpetual desire. Contractual agreements between marriage partners to execute consistently atypical commitments made in utmost situations, either before or during the continuation of marriage, have been witnessed in a long history. In modern times, Prenuptial Agreements are significantly used as efficient tools for providing the rights of spouses all through marriage and in circumstances leading to the dissolution of marriage. Prenuptial Agreements, also referred to as “Pre-Nuptial” is a form of contractual agreement initiated by individuals who are going to be married and aim to transfer or allocate certain property that they hold specifically or jointly and address liabilities that could arise in the course of divorce, separation, and marital termination. Originally limited to Western countries, where divorce rates are higher than that of India’s rate of divorce, the practice is now prevalent and gaining hold in Indian societies as well. India’s situation on prenuptial agreements might be determined as vague and uncertain. This article aims to provide insight into the validity of prenuptial agreements in India and attempts to evaluate the benefits that prenuptial agreements can provide to couples in Indian society.

Keywords: *prenuptial agreements, marriage, couples.*

INTRODUCTION

A prenuptial agreement is a legally enforceable agreement put up by two people who are about to marry that outlines their financial conditions and individual duties in the miserable event of the termination of the marriage. The prenuptial agreement, often known as a prenup, has European origins and is gradually gaining favour throughout diverse worldwide regions.¹

Prenuptial agreements are common in Western nations and are increasingly being adopted by newlyweds and young couples seeking to protect their assets, finances, and rights in the sad event of divorce, which results in the termination of the marital relationship. Couples are increasingly recognizing the idea of entering into different types of prenuptial agreements as divorce rates are rising not only in India but globally also. This tendency can be ascribed to changing perceptions of marriage and a significant shift in attitudes towards it. Furthermore, changing dynamics, such as women's increased independence, lead to an increase in the adoption of such agreements. While Western countries have gradually accepted such arrangements, India has a hurdle because there is no specific law that governs the validity of prenuptial agreements in India.²

THE ASPECT OF PUBLIC POLICY ON PRENUPTIAL AGREEMENTS

Prenuptial agreements, while not formally ruled by Indian personal laws, have clearly existed in Indian society for a long time. In the legal realm, Section 40³ of the Divorce Act of 1869, which includes Christian marriages, specifically authorises district courts to examine the terms of prenuptial agreements when issuing property settlement decisions post-divorce. Prenuptial agreements, on the other hand, have been more difficult to incorporate into Hindu marital rituals due to the particular conception of Hindu weddings as religious institutions rather than contractual agreements. A prenuptial agreement might potentially fall under the ambit of the Indian Contract Act 1872, given its contractual nature and the absence of particular restrictions

¹ Sakshi Shrivastava, 'Are Prenuptial Agreements Valid in India' (*Finology Blog*, 18 September 2021) <<https://blog.finology.in/recent-updates/prenuptial-agreement>> accessed 26 August 2023

² Rushabh Gurav, 'PRENUPTIAL AGREEMENTS IN INDIA: AN ANALYSIS' (2022) 30 *Supremo Amicus* <<https://supremoamicus.org/wp-content/uploads/2022/07/Rushabh-Gurav.pdf>> accessed 26 August 2023

³ Divorce Act 1869, s 40

within Indian personal laws. As a result, it's not surprising that courts have traditionally ruled that prenuptial agreements are invalid owing to a perceived violation of public policy. Courts have shown this inclination notably in situations where premarital agreements appeared to encourage separation or sought to amend established rules of personal law governing marriage.⁴

Given the scepticism surrounding the acceptance of prenuptial agreements, particularly in light of the Hindu religion's sacred perspective on marriage, it's important to recognise that prenuptial agreements do not have to be viewed as contradicting religious beliefs about marriage. Prenuptial agreements are also common in Islamic marriages since marriage is recognised as a civil contract. Prenuptial contractual conditions in the context of Muslim weddings may include any clause sanctioned by Islamic law, as long as both parties agree. One significant example is the insertion of stipulations in Muslim prenuptial agreements relating to the payment of Mahr, Mu'ajjal, or Mu'akhkhar to the wife in the event of divorce or the husband's death.⁵

PRENUPTIAL AGREEMENTS: ADVANTAGES AND DISADVANTAGES

Advantages:

The fundamental advantage of a prenuptial agreement is its ability to settle property problems between divorced couples, especially after an official divorce decision. The majority of the rights mentioned in divorce legislation in India are subject to personal laws linked with the parties concerned. Acts such as the Hindu Marriage Act of 1955, certain areas of Muslim personal law, the Dissolution of Muslim Marriage Act of 1939, and the Divorce Act of 1869 are some examples. Furthermore, the Special Marriage Act of 1954 governs inter-religious marriages and divorces. A prenuptial agreement, regardless of the prevailing legal framework, can be considered a powerful instrument for establishing a fair allocation of marital assets throughout divorce proceedings. Prenuptial agreements can protect an individual from their partner's financial

⁴ Amrita Ghosh and Pratyusha Kar, 'PRE-NUPTIAL AGREEMENTS IN INDIA: AN ANALYSIS OF LAW AND SOCIETY' (2019) 12(2) NUJS Law Review <<http://nujlawreview.org/2019/12/13/pre-nuptial-agreements-in-india-an-analysis-of-law-and-society/>> accessed 26 August 2023

⁵ *Ibid*

obligations, protect one's business, professional pursuits, or estate from division, secure spousal maintenance or alimony provisions, ensure remarriage rights, and address responsibilities for child support, custody, and parental obligations. Prenuptial agreements also assist in reducing legal conflicts, managing child custody concerns, defining the legal rights of couples with cross-border considerations, handling maintenance issues, and promoting an equitable wealth allocation. Furthermore, such procedures might effectively reduce frivolous legal proceedings brought by deceptive spouses who may take advantage of provisions established to protect women in marriages.⁶

Disadvantages:

Marriage, in particular, has immensely holy implications in India. Because a substantial percentage of the population is illiterate and adheres to traditional ideas, even the idea of a prenuptial agreement would seem ludicrous. The concept would very certainly be rejected on its own. Furthermore, most people believe that a party's idea of entering into a prenuptial agreement indicates a lack of mutual trust, which is the cornerstone of any partnership. As a result, these attitudes towards prenuptial agreements serve as a major disincentive for those considering entering into one.

As a result, in instances involving divorce or death, the division of marital assets is left to the jurisdiction's legal structure and eventually falls within the purview of the court. While the legal system makes every effort to divide the parties' assets and possessions in the most equitable manner possible, it is evident that the procedure is not just time-consuming and financially demanding. To avoid this situation, married couples should prioritise pragmatism and understand the benefits of a prenuptial agreement. They should recognise that entering into such an agreement does not suggest a lack of trust or affection but rather acts as a preventative step to avoid hassles for both parties in the case of unforeseen situations.⁷

⁶ Vijender Kumar, 'QUEST FOR PRENUPTIAL AGREEMENT IN INSTITUTION OF MARRIAGE: A SOCIAL-LEGAL APPROACH' (2018) 60(4) Journal of the Indian Law Institute
<<https://www.jstor.org/stable/e26826651>> accessed 26 August 2023

⁷ *Ibid*

ADMISSIBILITY OF PRENUPTIAL IN INDIA

Prenuptial agreements have earned a reputation for being a powerful instrument for outlining spousal rights both during the course of a marriage and after its breakup. The Indian judiciary has evolved gradually through time, demonstrating their recognition and integration. In turn, such judicial outcomes motivate legislative attempts to adjust and write necessary legislation when considered necessary. Divorces, with their emotional and financial consequences, have the potential to turn into long legal fights for couples, involving disagreements over finances, alimony, and child custody. This frequently leads to significant monetary losses, time consumption, and increased stress levels. While it is seldom the intended conclusion, modern couples must accept that marriage might end in divorce if circumstances deteriorate. Prenuptial agreements emerge as essential tools in such situations, providing assistance to both spouses and the legal system in properly handling separations. Specific agreements have been deemed invalid throughout history owing to their conflict with national policy. There are cases where case laws are so ludicrous that they must be ruled void independent of legal criteria; these are rightly overturned based on public policy concerns. Prenuptial agreements are often used to protect the interests of the parties involved. However, when the terms of such agreements surpass specific borders and begin imposing unreasonable limitations, the agreement becomes illegal owing to its divergence from legality.⁸

JUDICIAL PRECEDENTS

A remarkable prenuptial agreement was revealed in the case of **Tekait Mon Mohini Jemadai v Basanta Kumar Singh**⁹, heard by the Calcutta High Court. The husband had agreed that he and his parents would live permanently at his mother-in-law's residence. However, after 15 years of marriage, disagreements between the two families occurred. Following that, the husband moved out and requested that his wife also leave her mother's house and join him. When Mon Mohini challenged the issue in court, the High Court ruled that the prenuptial agreement, which

⁸ Gurav (n 2)

⁹ *Tekait Mon Mohini Jemadai v Basanta Kumar Singh* (1901) ILR 28 Cal 751

attempted to limit the husband's rights under Hindu law, violated established legal principles and was therefore regarded against public policy, resulting in its avoidance.

In the case of **Krishna Aiyar v Balammal**¹⁰, the circumstances revolved around a couple who had already separated. In order to reconcile and re-establish their marital relationship, the husband filed a court action to reclaim his marital rights. Following that, the pair individually formed an agreement in which they planned to live together again, with the husband promising to pay alimony to the wife in the event of a future separation. The court held that this arrangement did not qualify as prenuptial, owing to the fact that the wife did not return to their marital life. Furthermore, the Madras High Court emphasised the *Mon Mohini* case and reaffirmed that such agreements violated Hindu marital vows. Because this contractual agreement hinted at eventual separation, it was found to be against public policy and hence null and void.

The primary argument raised in the *Mon Mohini* case was reflected in the case of **Sribataha Barik v Musamat Padma**¹¹. A prenuptial agreement was the source of contention in this case. Prior to marriage, the husband agreed to live at his wife's mother's house. After a few years, he decided to relocate to his mother's house, which was also in the same community. When this issue was heard by the Orissa High Court, it immediately referenced the *Mon Mohini* case, determining that the agreement violated both public policy and Hindu law requirements, rendering it invalid. The wife and their kid were also ordered to move into the husband's home by the court.

A contract had been created between a Muslim man and woman in the judicial case of **Bai Fatma v Ali Mahomed Aiyab**¹², specifying that in the event of future separation, the husband would give a fixed sum to the wife as support. The Bombay High Court deliberated on the matter using English law. The court determined that the language of the agreement anticipated and even

¹⁰ *Krishna Aiyar v Balammal* (1911) ILR 34 Mad 398

¹¹ *Sribataha Barik v Musamat Padma* AIR 1969 Ori 112

¹² *Bai Fatma v Ali Mahomed Aiyab* (1912) 14 BOMLR 1178

encouraged impending separation, which was clearly against public policy. As a result, the agreement was declared null and invalid.

The Bombay High Court examined a prenuptial agreement ordering that the couple establish their residency in Bombay following marriage in the legal case of **Bai Appibai v Khimji Cooverji**¹³. The court ruled that this arrangement did not violate public policy since it did not impose an unreasonably restrictive duty on either spouse to permanently remain in Bombay. Another prenuptial agreement between the same couple, which stated that if the wife married the husband, she would get decorations, was deemed to be invalid owing to ambiguity. It was not, however, considered to be against public policy. The Bombay High Court ruled in this instance that a prenuptial agreement is legal and enforceable when followed by marriage. Marriage itself acted as the consideration for the agreement in this situation.

CONCLUSION

Prenuptial agreements are becoming increasingly common, spreading beyond elite circles to a larger audience. There is a persistent misconception that these agreements are unenforceable owing to supposed conflicts with public policy and apparent impracticability. This objection is partly based on the mistaken idea that legalising premarital agreements will accidentally encourage divorce. It has been demonstrated that prenuptial agreements resemble regular contracts and are not accompanied by any express or tacit legal stipulation rendering them void. Furthermore, there is no overarching court proclamation declaring that such agreements are fundamentally illegitimate. Each prenuptial agreement must be meticulously evaluated against the backdrop of the validity criteria specified in the Indian Contract Act and the relevant rules governing personal laws. These agreements are founded on basic rights to choose and personal autonomy, and hence cannot be discarded casually by labelling all premarital agreements as unenforceable. They have the ability to improve public policy by providing equal opportunity for couples to align their respective interests within the agreement. Such agreements have the potential to provide quick answers to controversial issues that sometimes entail courts for

¹³ *Ibid*

lengthy periods of time. Furthermore, prenuptial agreements provide an intrinsic structure for mediation, arbitration, and conflict settlement, therefore improving the public policy environment. These agreements have the potential to dissuade partners from divorcing on frivolous grounds, as both parties would be on an equal footing. This contradicts the widely held belief that such agreements just favour divorce.