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**PRENUPTIAL AGREEMENTS IN CURRENT WORLD, WITH REFERENCE  
TO INDIA**- Adithya GD<sup>1</sup>**ABSTRACT**

Prenuptial agreements are gaining a faster pace and are trending in recent days and they are widely known concept in other countries and also used widely in other countries, but in India it has started to gain its pace, and also if we look from the Indian scenario there are many hurdles for it and at the same time some religious personal laws permit it.

The gain of pace by Prenuptial agreements is that its awareness and becoming of popular among the couples who are very young why because in order for protection of their property and also to create an equal and fair deal that would work out for both of them.

We must also see that there is increase in the rate of signing of the prenuptial agreements which means that the case of divorce is also high and also another reason is the concept of the "Independence for women" whenever they feel discomfort in the relationship.

The most important thing is that this concept has wide mass base in western countries and also in use , if we talk about India it is totally different here there is very less idea about that concept and no wide mass base why because it is still at its infancy if we talk about it in India , and also there is no clear cut judicial stance , policies by legislators in India it remains as a void which is to be filled with a clear cut answers , so in this research paper we are going to analyse its position in India i.e. the present scenario , and from the angle of Public policy , its enforceability under both Hindu and Muslim personal Laws.

Key Words; {Prenuptial agreements, Bequest, Civil Code, Public Policy, Probate}

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## **INTRODUCTION**

In our country the concept of prenuptial agreements is not widely used as they are not recognised under the marriage laws, but in recent days those who get married they are interested in these prenuptial agreements, and the T&C varies in every agreement, and the question of making it recognizable hangs in the mid-air.

The advancement of the Indian society at the faster pace not only brought good changes but also some social problems which are expected to be solved via the constitutional interpretations of basic guarantee in recent times which directly made the involvement of judiciary more active, so as a result of these "The Domestic Violence Act 2005" which was brought to ensure no harm to women in "domestic violence" and also another important example i.e. "Right to receive alimony even after the iddat period" guaranteed by the Judiciary for the Muslim women and also other acts.

All these advancements in terms of laws helped for open up of economic sphere which directly responsible for the empowerment of the women which further extended to economic independence which gave them confidence to survive out of the marriages which they do not find fit for them and also for this in our society the women are looked down for the act of divorce<sup>2</sup>.

Because of many reasons the divorce is issued , and the process of it is very hard i.e. it involves many complications and the involvement of financial aspect is very much frustrating , this divorce leads to the court hall battle for a long time which results in the loss of property , money , etc , so from this view point the concept of prenuptial agreements plays a very important role why ? because they can actually preplan for such instances in case of accidental occurrence of such events , so in this agreement the T&C clearly mentioned obligation of Husband & Wife in due course of marriage and also after divorce.

## **RESEARCH METHODOLOGY;**

The research has been conducted by analysing various primary sources and secondary sources, and is Doctrinal Method of research, in order to make the readers understand this concept to the fullest, the materials like legislations, and books of reputed authors, the

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judgements of various High courts and Supreme court has been used with analysis of them to get insights into the topic so that the readers can understand the research.

### **SCENERIO OF PRENUPTIAL AGREEMENTS IN INDIA;**

The advancement of the Indian society at the faster pace not only brought good changes but also some social problems which are expected to be solved via the constitutional interpretations of basic guarantee in recent times which directly made the involvement of judiciary more active, so as a result of these "The Domestic Violence Act 2005" which was brought to ensure no harm to women in "domestic violence" <sup>3</sup>and also another important example i.e. "Right to receive alimony even after the iddat period"<sup>4</sup>guaranteed by the Judiciary for the Muslim women and also other acts.

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### **ANGLE FROM PUBLIC POLICY:**

We all know that the concept of prenuptial agreements which is not under the ambit of the Indian Laws has been in the society of India from time immemorial.

For that there are some of the case laws during the period of before independence "Hamidunnessa Biwi v. Zohiruddin Sheikh "Krishan Iyer v. Ballamal " <sup>5</sup>in this case the court

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<sup>3</sup>"Domestic violence" Domestic Violence Act 2005

<sup>4</sup>"Right to receive alimony even after the iddat period"

<sup>5</sup>"Hamidunnessa Biwi v. Zohiruddin Sheikh "Krishan Iyer v. Ballamal(1890) 17 Cal 670 "

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did not accept the prenuptial agreements, but the other cases like "Mahmud Ali v. Ghulam Fatima, AIR 1935 " "Nawab Khwaja Md. Khan v. Nawab Husaini Begam, (1910) " <sup>6</sup>this notion was upheld.

Since because of its nature i.e. of contract and also due to no regulations to govern the prenuptial agreements are absent and also the nature of contract they can be arguably regulated under the "Indian Contract Act 1872" <sup>7</sup>because of this reason this notion is said to be non-enforceable i.e. void why because it is in opposite to "Public Policy" , and this is the stance taken even by the courts which is against the notion of prenuptial agreements , which would make the courts look like they are promoting the separation , and also to create change in the personal laws.

The non-acceptance of prenuptial agreements is because of the religious sentiment attached to it i.e. particularly of the Hindu religion for marriage because in Hindu religion marriage is not like a contract it is "Sacrament" and if we take a look at other religions like Jews the marriage called "Ketubah marriage" there is a contract i.e. commitment by groom towards bride that if he dies or separation the financial safeguard has to be provided this happens prior to the marriage , so this is also the prenuptial agreements.

If we take Islam where the marriage is considered as "Civil contract" where the "Mahar" has to be provided by groom in case of his death or divorce is also a prenuptial agreement among Muslims.

The important thing to keep in mind is in case if the objectives which an agreement sought to achieve is opposite to the public policy, then it is void, so as a result of this the courts have held that prenuptial agreement is void as it is opposite to public policy.

"Tekait Mohini Jemadi v. Basanta Kumar Singh"<sup>8</sup> in this case the Calcutta HC held that the prenuptial agreement saying the wife of the husband should not ever be taken from the house of her mother and also that husband should do accordingly as his wife's mother says , is opposite to the public ;policy and as a result of it is void , "Khatun Bibi v. Rajjab " <sup>9</sup>the court in this case gave verdict that prenuptial agreement which said that the husband should stay in the hose of his wife is opposite to the concept of public policy which is absolutely causing restrictions to the "Right to liberty" <sup>10</sup>for husband.

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<sup>6</sup>"Nawab Khwaja Md. Khan v. Nawab Husaini Begam, (1910) 37 IA 152"

<sup>7</sup>"Indian Contract Act 1872"

<sup>8</sup>"Tekait Mohini Jemadi v. Basanta Kumar Singh 1901 ILR"

<sup>9</sup>"Khatun Bibi v. Rajjab AIR 1926"

<sup>10</sup>"Right to liberty" *Article 21 of Indian Constitution.*

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In the scenario where the prenuptial agreements which specified the amount to wife in the scenario when she chose to leave him is not valid as it is opposite to the public policy in case of "Krishna Aiyar v. Balammal".<sup>11</sup>

"Bai Fatima v. Ali Mahomed Aiyab"<sup>12</sup> a prenuptial agreement which says for the payment of maintenances for the bride in the situation where there is possibility of future separation, held not valid by the court because it is like that agreement itself is encouraging for divorce, and in another case where the agreement that said the groom would live the life like servant in the bride's house is not enforceable the case was "Mst. Jani v. Mohd. Khan"<sup>13</sup>

In the case of "Bai Appibai v. Khimji Cooverji"<sup>14</sup> the verdict was that the agreement is not opposite to the public policy because it only said that once the marriage has been completed both husband and wife should move to Bombay and live there, and here there was restriction clause or any obligations also i.e., permanent residence for either of them.

"Abbas Ali v. Nazemunnessa Begum"<sup>15</sup> In this case the prenuptial agreement to provide "maintenance to Muslim wife" where divorce is done is not opposite to public policy.

So, from the above-mentioned cases we can clearly see that there are mixed opinions and interpretation even though some have similar circumstances, so now we have to look clearly at the concept of public policy, so as per Lord Atkin he said that public policy should invoke only in case of clearcut violation and if there is imminent harm to public and should not be dependent on the minds of the judges.

"ONGC Ltd. v. Pipes Ltd"<sup>16</sup> In this case the court opined that the notion of public policy changes as the time changes i.e. from decade to decade so as a result of it it is not clear and also one cannot say it has narrower or wide concept because it rests on the situations which it is used as a result of this in order to come to the final decision the Supreme Court of India gave reference to "Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly"<sup>17</sup> it was said that the question of welfare of the public, public good and what is good for them changes from period to period i.e. time, and also reference was given to the

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<sup>11</sup>"Krishna Aiyar v. Balammal ILR 34 (1911)".

<sup>12</sup>"Bai Fatima v. Ali Mahomed Aiyab 1912 BOMLR"

<sup>13</sup>"Mst. Jani v. Mohd. Khan"

<sup>14</sup>"Bai Appibai v. Khimji Cooverji 1936) 38 BOMLR 77"

<sup>15</sup>"Abbas Ali v. Nazemunnessa Begum 1939 SCC Online Cal 133"

<sup>16</sup>"ONGC Ltd. v. Pipes Ltd"

<sup>17</sup>"Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly 1986 AIR 1571"

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case of "Janson v. Driefontein Consolidated Gold Mines Ltd" which said that the notion of public policy is not safe and harmful for the making the legal decision.

The judge of Andhra Pradesh HC "Justice Reddy" said that the good for public and also their welfare are the foundation for public policy and foundation can't be ignored so a judge should take decision not ignoring the foundations and also as being "experienced &enlightened"<sup>18</sup> person of the society.

One can see that in west the judiciary was of the opinion that they are legal until unless it violates the liberty of the person and also if both husband and wife are willing not to enter and also until unless they don't conflict with the public policy and also if the agreement is ok for both of them and enforced , if this causes no unfair to either of them it is valid , but in India we can't neither say it can be entered nor we can say it can't be done because from above mentioned cases there is a clear cut idea that none of the judicial verdicts have clearly laid down any of the rules in this regard , there is mixed opinion by courts itself i.e. confusion.

### **JUDICIAL ANGLE:**

The condition of prenuptial agreements in Hindu Marriages as we saw above in various scenario i.e., agreement entered in context of Hindu marriages has gone to the judiciary, as we saw the above verdicts, the way in which judiciary takes it is worthy to see.

Prenuptial agreements not valid;

"Sheonarian v. Paigi" <sup>19</sup>In this case both husband and wife made a prenuptial agreement stating that he would come and stay at mother in laws house after the marriage , but after that he did not act as per the agreement and went out and did not accept to come and live at his mother in laws house , and also he started to live with a Muslim women , later that husband claimed for "Restitution of Conjugal rights"<sup>20</sup> , and the court also said the wife to go to him within the notified date , the important thing to notice here is that the stance taken by her i.e. about the prenuptial agreement she said that she married because of the acceptance of that agreement by the husband and now he has violated that by not following that so he cannot claim his right , the court did not accept the argument made by her instead was viewed as peculiar.

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<sup>18</sup>Being "*experienced &enlightened*" Justice Reddy.

<sup>19</sup>"Sheonarian v. Paigi"

<sup>20</sup>"Restitution of Conjugal rights" Hindu Marriage Act 1955.

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"Tekait Mon Mohini Jemadai v. Basanta Kumar Singh"<sup>21</sup> this case , where the groom and his parent also agreed and sign the prenuptial agreement at the time when the groom was "minor" which said that he would stay in mother in laws house and will follow all the instruction provided by her. , even though after that husband lived there for nearly fifteen year but to some clashes , he left and the demand from him was that his wife should also come with husband and live with him , now the above mentioned case was referred here and also one foreign case "Wilson v. Wilson" <sup>22</sup>which stated that these type of prenuptial agreements are against the public policy and also it is violating the "Right to Liberty" and also under Hindu Personal laws , as it violated many rights , it is not valid .

"Krishna Aiyar v. Balammal" <sup>23</sup>a prenuptial agreement stating that in case of separation in future alimony would be paid, but after marriage the wife did not enter the conjugal life, so this was held to be no prenuptial agreement and also the case of "Mon Mohini" was referred as per that prenuptial agreement is against the public policy and also opposite to Hindulaw, why because the prediction of separation in future.

So, from above mentioned instances we can see that how the Indian Judiciary is opposing to validate the prenuptial agreements by giving the reasons of the "Public policy", and also the entitlement & right given by Hindu laws, and also one of the reasons is that they itself promote for divorce in future which is also opposite to the concept of public policy.

### **SCENARIO IN WHICH THEY ARE VALID**

We all know that there are plenty of cases stating that these types of agreements are not accepted, but there are some cases in India itself which says that they are accepted.

"Pran Mohan Das v. Hari Mohan Das"<sup>24</sup>in this case groom accepted the marriage with the bride on the condition that the bride's father will give a house as a gift to his daughter , and once the marriage was complete as per the condition the father of the bride transferred the procession via gift which was unregistered , after that both husband and wife enjoyed the procession of that house for a long time and later it was given to others i.e. via sale , later the

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<sup>21</sup>"Tekait Mon Mohini Jemadai v. Basanta Kumar Singh (1901) ILR 28 Cal 751"

<sup>22</sup>"Wilson v. Wilson S C R 533"

<sup>23</sup>"Krishna Aiyar v. Balammal 1911ILR 34 Mad 398"

<sup>24</sup>"Pran Mohan Das v. Hari Mohan Das AIR 1925"

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father in law of the husband filed a claim for that house , the court held that the prenuptial agreement was valid as it had no separation clause which is not against the public policy and also that father cannot claim back the property as it is "Performance of the contract".

"Sunita Devendra Deshprabhu v. Sitadevi Deshaprabhu"<sup>25</sup>in this case the prenuptial agreements while sorting out the problem of the property separation it was taken into consideration.

## **1. THE VALIDITY OF PRENUPTIAL AGREEMENTS UNDER MUSLIM LAW:**

### **1.1.INVALID AGREEMENTS:**

We all know that the in Islam the marriage is a "Civil Contract", and there are many case laws relating to prenuptial agreements.

"Bai Fatma v. Ali Mahomed Aiyab"<sup>26</sup>in this case the scenario was that there was a prenuptial agreement that in the event of any separation in future the maintenance will be provided , so the contention was that was this clause valid ? , so later it was said by court that as this entertains the separation in the coming days , it is opposite to the public policy , and in parallel the judiciary in England also opined that importance should be attached to the commitments with regard to the matter of finance and it should be controlled accordingly.

Here in this case there was prenuptial agreement that the groom after marriage would stay at his in laws house and would not go anywhere without their consent , if in case he does so then the bride would be married again to another boy , so now the judiciary held that it is contrary to the public policy as it in violation of right of that groom , and also this agreement which is compelling the groom to stay in the House of in laws after marriage for permanently is not accepted under "Mohammedan Law"

So the cases which were dealt above clearly shows that , not only in Hindu Laws but also in Muslim Laws they are not considered as an agreement even though their marriage is a type of civil contract , and also the judiciary has the discretion to draw the concept of public policy

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<sup>25</sup>"Sunita Devendra Deshprabhu v. Sitadevi Deshaprabhu (2016) SCC ONLINE Bom"

<sup>26</sup>"Bai Fatma v. Ali Mahomed Aiyab 1912 14 BOMLR"

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and declare that prenuptial agreements are not considered , and also we must see that if that agreement is affecting any one among them then also it is not valid and also same if it is contrary to "Mohammedan Law" , so we can see that the stringent application of the clause in "Nikahnama" , which is prenuptial agreement.

### **1.2.VALID AGREEMENTS:**

As compared to the Hindu personal laws here it is seen that they are no such stringent refusal regarding the same, "Muhammad Muin-Ud-Din v. Musammat Jamal Fatima" <sup>27</sup>here the prenuptial agreement was considered and not declared it as invalid it was the agreement that groom would look out for the maintenance and also the debts of dower if there is any misunderstanding between them.

"Buffatan Bibi v. Sheikh Abdul Salim"<sup>28</sup> here the bride after the marriage left the husband the reason was that as he did not satisfy all the criteria mentioned in the prenuptial agreement , so she also got divorce , so now the court told that in the prenuptial agreement it was mentioned that his wife stay at her father home in the scenario of she has any misunderstanding between them and also the clause stating the divorce in case of failure on the part of him to maintain her for the period of 6 month , now it was said that it is not contrary to the public policy.

"Razia Begum v. Sahebzadi Anwar Begum" <sup>29</sup>here in the prenuptial agreement it was agreed that the husband would pay the wife monthly, but he stopped the payment and there was no reason for that, so now the wife went to court for validating the prenuptial agreement, and later i.e., 10 days after that a counter complaint was filed stating for the claimant of the everything he had paid till now, so the court now held that prenuptial agreement entered must be followed and it is valid

"Mohd. Khan v. Mst. Shahmali" <sup>30</sup>this is one of the most controversial case in the aspect of prenuptial agreement , laws relating to the Muslims and also the concept of public policy ,

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<sup>27</sup>"Muhammad Muin-Ud-Din v. Musammat Jamal Fatima 1921 ILR"

<sup>28</sup>"Buffatan Bibi v. Sheikh Abdul Salim AIR 1950 Cal 304"

<sup>29</sup>"Razia Begum v. Sahebzadi Anwar Begum AIR 1958"

<sup>30</sup>"Mohd. Khan v. Mst. Shahmali AIR 1972"

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here the groom after the marriage accepted to stay as "Khana Damad"<sup>31</sup> in the house of his in laws , and also pay money as the expenses of the marriage in case if he goes leaving them , and also in that agreement it was stating that it would lead to divorce , so now the husband for the period of 4 year left them , and also there was no fulfilment of the contents of the agreement , so now the main contention here was that is this violative from the perspective of Muslim law and also from the view point of Public policy? , so court told that the Khana Damad" is very often here in Kashmir and even though it is very usual here it is entered basis on self , So the reimbursement of the money spent is not contrary to the Public policy , and also this agreement is not violative of the "Mohammedan Laws".

## 2. ACCEPTENCE BY OTHER COMMUNITIES:

The opinion of other communities and how is this concept of prenuptial agreement is received by communities, so in order to view that "Mozelle Robin Solomon v. Lt. Col. R.J. Solomon"<sup>32</sup> will be very helpful and also " The Indian Divorce Act 1869"<sup>33</sup> & "Goa Civil Code" from this we can get to know the legality of how the prenuptial agreements are positioned with respect to the other laws.

In the above mentioned case it was said that the marriage in Jews is not of a sacrament one but it is purely contract and also it was contended that the same should also be done for Muslims as for them also it contract , and if we take Christianity here there is no space or argument because it is fixed that in case of husband and wife get separated then prenuptial agreements entered by them are validated by Indian court , in case of giving the order for settling of properties under "Divorce Act"

The most important aspect is that knowing the scenario in Goa, why because it has "Uniform Civil Code" which is due to influence of "Portuguese Civil Code, 1867" because now there is no place for the personal laws manipulating here. If we take a close look in "Portuguese Civil Code" there is allowance of prenuptial agreement, and in the situation where there the agreement has not been one then it is assumed they have married under the communion of assets" Wife will be guaranteed her right to equal share in the property which is due to this

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<sup>31</sup>"Khana Damad" Muslim Personal Laws

<sup>32</sup>"Mozelle Robin Solomon v. Lt. Col. R.J. Solomon(1979) 81 BOMLR 578"

<sup>33</sup>"The Indian Divorce Act 1869"

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"communion" of the properties , and also it is interesting to note that the Goa's "Uniform Civil Code" is acknowledged by SC I.E. "Damodar Ramnath Alve v. Shri Gokuldas Ramnath Alve" <sup>34</sup>the judiciary told that the aspect of "Basic unit of society has been made stronger" <sup>35</sup>by this code by securing the interest of child and widows as whole.

### **3. POSSIBILITIES FOR ALL INDIA BASIS APPLICATION:**

We can see that there is no unity or uniform law to regulate this concept of prenuptial agreements, and also this is not even considered as an agreement under "Indian Contract Act 1872"<sup>36</sup> and not accepted under the "Hindu personal laws" as well, as a result of it even though other religion considered it valid the people from the Hindu religion has to wait for the judiciary to lay down the concrete guide lines accordingly.

This prenuptial agreement is like the "MOU"<sup>37</sup> entered by the couples because of their commitment towards each other and the basis on which their marriage takes place, so it expected that in India Judiciary gives a go for it which in turn importance will be attached to the contents in that agreement.

Irrespective of whether it is considered or not it is more like allows both husband and wife to be more open and their future commitment towards each other which also we can say that it strengthens the connection between them.

### **4. REPECT TO ASSET:**

It is a known factor that the assets which are in nature both movable and immovable are most important element of the property, and during their marriage both husband and wife having separate property if any become common as they pool it.

for common holding and also its use and not only that they can buy a car jointly and may buy a property and they enjoy during their course of Martial life with happy, but in future if any problems arise i.e., misunderstanding between them, or if any one among them dies or in the scenario of divorce, this may become reality where either one of them has contributed more to the properties which is often used by everyone.

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<sup>34</sup>."Damodar Ramnath Alve v. Shri Gokuldas Ramnath Alve" 1997 (4) BomCR 653

<sup>35</sup>"Basic unit of society has been made stronger" by CJI YJ.Chandrachud

<sup>36</sup>"Indian Contract Act 1872"

<sup>37</sup> "MOU" *Memorandum of Understanding*

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In order to look out that these type of problems are not created with regard to titles , distributing , to possesses the property which is either acquired via marriage or after that in time may be of joint or single , it is well advised to make a prenuptial agreement which makes a clear distinction about the rights over that acquired property , this can be done in case involving the nature of separation i.e. divorce , so what can be done here is that if the wife is wishing for not giving her individual property to the common property , they can make a clause in the prenuptial agreement itself , so that it also provides the information of the assets which had been with them before they enter into marriage i.e. their individual property.

And also one more thing is that either of them i.e. husband or wife should make sure that they have not used anything from the common property , for example , B has one house in Delhi and he / she does not intend to make it a common property so there will be loan on that house , so now if the common property is used to payoff that loan then there is high risk of that asset becoming a common property and now this can be claimed by either of them since there is a use of common property also.

One should make sure that Prenuptial agreement must look into the methods of acquiring that asset i.e. via gifting , may be via inheritance or via the law , because the individual property can be later after the marriage can be easily turned into common property through mutual acceptance between them as a result of it is very vital to include the clause related to the method by which that asset is distributed in the scenario when there is increase in the value of the property at the moment of division.

An example; A scenario where the couples buy the famous art which amounts to nearly 40 lakh and both of them invest, husband give 15 lakh and wife pays the remaining amount, and later her husband take the responsibility of the repairs and also maintains that and in the future i.e. later after 20 yrs. they want to get separate and the amount of that art got extended i.e. 1 car so now in these cases it cause confusion and also very unclear to whom this asset must go and even if they decide to sell and take the money of their share then also it is very difficult so in the absence to the prenuptial agreement there will be no clear cut distinction , both of them can make their own claims i.e. more if done more the another will get less , so

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this type of problem will not arise if there is prenuptial agreement i.e. with respect to the separation of property and how to distribute if the agreement has been done by them.

## **5. PRENUPTIAL AGREEMENTS FROM THE VIEW OF UNIFORM CIVIL CODE;**

We all know that the right we get and the lawful solutions are having the same source i.e. "Constitution of India" and in this regard personal laws are not exception for it, it is ensured via "Article 25 till Article 28"<sup>38</sup> and in our country as of now Goa is the only state to have "Uniform civil code" considering this the laws relating to family matters will also come under the ambit of "Uniform Civil Code", if we look at the origin of the "UCC" in Goa earlier it was known from the name of "Portuguese Civil Code of 1867" now known as "UCC", when Goa got freedom the "Goa, Daman and Diu Administration Act, 1962, Section 5(1)"<sup>39</sup> said that all the laws which governed that territory till now will continue to do so.

The concept of prenuptial agreement is considered under the law of Goa i.e., regarding the distribution of property.

As we saw above that how there are many hurdles that the prenuptial agreement face yet only some of them are successful in breaking that, but in case of Goa it is completely different, because there is legal space for these types of agreements to exist and when this agreement is complete before their marriage later at any point of time, they cannot back out of it or T&C cannot be changed.

The laws relating to the family matters are not yet non-operational"<sup>40</sup> they are still used which are under this code, and also it is worthy to note that this code even though it is applied it comes under exception which is drawn out from all of the laws mentioned below

"Indian Succession Act 1925"

"Hindu Succession Act 1956"

"Muslim Personal Law (Shariat) Application Act, 1937"<sup>41</sup> and also includes other laws dealing with religious matters.

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<sup>38</sup>"Article 25 & Article 28" of the Indian Constitution.

<sup>39</sup>"Goa, Daman and Diu Administration Act, 1962, Section 5(1)"

<sup>40</sup>"Ghosh, Amrita, and Pratyusha Kar. "Prenuptial Agreements in India: An Analysis of Law and Society." *NUJS L. Rev.* 12 (2019): 217".

<sup>41</sup>"Indian Succession Act"

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This is one of the main case regarding the property succession under the "UCC" , the contention was that can a person belonging to Goa who is living outside Goa does he comes under the ambit of "Portuguese Civil Code of 1867"<sup>42</sup> or in this scenario "Indian Succession Act" comes into picture ? and the answer to this contention was that the "Portuguese Civil Code" will come into picture here , and also told that even though it is having the influence of foreign now this a part of our Law system.

## 6. CASE STUDY:

### 6.1. "Jose Paulo Coutinho vs. Maria Luiza Valentina Pereira"<sup>43</sup>

So here this individual i.e., "Joaquim Pererira, lived in Bombay and when he was living there a property was purchased by him and this was given by him to his daughter {among 3, last one received} and in turn he gave sum of three thousand to remaining daughters and Bombay HC granted the "Probate of the will" and they were made aware of this.

As per the contention it should come under the ambit of "Indian Succession Act" not the "Civil Code".

The most important is to note that all of the property cannot be given via "Will" it is the rule which is in the "Civil Code", and there is division in those also i.e., under one of the division it can be done via will, gift, etc. and other division is such that as per the "Article 1784 of the Civil Code *Legitim means the portion of the properties that the testator cannot dispose of, because it has been set apart by law for the lineal descendants or ascendants*"<sup>44</sup>

Another feature of this code is that a court order has to be obtained after the death for the sake of proceeding for the partition, and in these instances the elder person from the family will become administrator as per the court's order, and the work for him is the preparation of "Inventories" for the property which has to be shared as per the "Civil Code". and under ordinary circumstances if he is having any child then half of the property can be disposed by him via "will" or else "Gift" and now the left out should be allotted as per the Code, if there

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"Hindu Succession Act 1956 Act no. 39 of 1925."

"Muslim Personal Law (Shariat) Application Act, 1937

<sup>42</sup>"Portuguese Civil Code of 1867"

<sup>43</sup>"Jose Paulo Coutinho vs. Maria Luiza Valentina Pereira 2019 SCC Online SC 1190"

<sup>44</sup>"Article 1784 of the Civil Code *Legitim means the portion of the properties that the testator cannot dispose of, because it has been set apart by law for the lineal descendants or ascendants*"

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are any "Bequests" which is made by the person who is dead then some adjustments have to be made as per how much the property is available.

Finally, the court said that granting of the "Probate" has no relation with the concept of inheritance, its job is to find out whether the will is valid or not, it does not mean that if it is genuine, it becomes valid, and it has to follow the rules and law which deals with the inheritance, and we can see that in this scenario it is not happening, and in the end the court said that the Civil code" should be followed with regards to succession and also with inheritance with respect to that of the people of Goa even though their property is outside the Goa.

## **7. CONCLUSION & SUGGESTIONS;**

As we saw from the beginning that how much confusions and inconsistency the prenuptial agreements face in the name of public policy and also other legal problems, but when we saw the "UCC"<sup>45</sup> in Goa we can see that how the same can be applied in other parts of India also i.e. in many instances which were mentioned above the judiciary did not even try to accept this concept and rejected it by giving the reasons of the public policy, but in case of Goa it was totally different, because of this the problems of long standing disputes regarding the division of assets etc. may be solved at the earliest, and also litigation related to matrimonial aspect where couples investing lots of time, money etc., by adopting the prenuptial agreement all these issues can be solved at the earliest, how is that possible? prior entering to the bond of marriage in the prenuptial agreement there is disclosure of properties, and if in case of future divorce the amount to be paid and also the division of property etc., can easily solve all these problems as the courts can give their verdict based on this agreement.

So in this regard the courts also have to take smooth position rather than the harder one, and also the right to enter into agreements should also be considered as they are adults and also the role of judiciary is very important they should guide in this regard, and also analyse the malice's in the agreement and suggest the alternatives, they are basically assumptive in nature because they come into picture only when there is unfortunate break in the marital life and acts as a safety service in case of any unfortunate events.

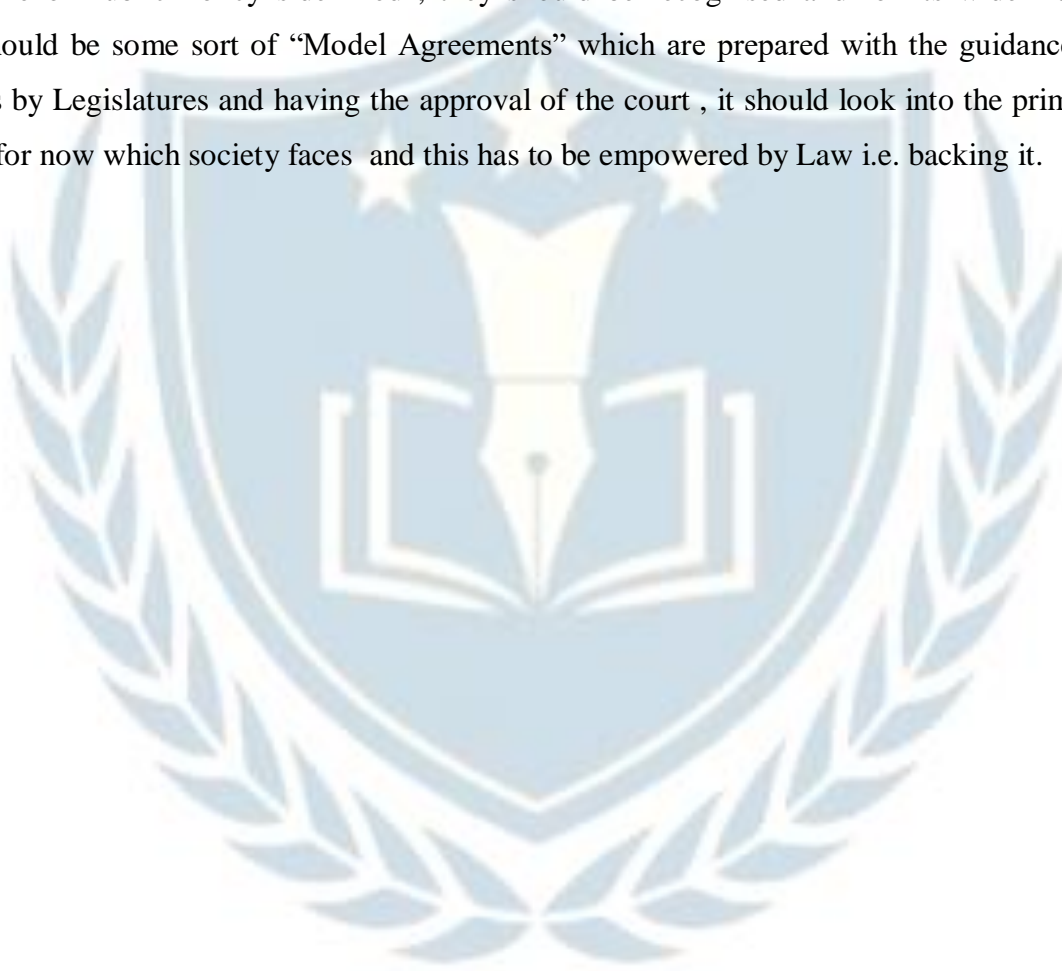
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<sup>45</sup> "UNIFORM CIVIL CODE 1966" known as Portuguese Civil Code

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The main thing is that there should be a successful attempt to implement the Uniform Civil Code as we saw in the case of Goa where it is clear that Civil Code would prevail which would not create any confusions among the people and also there should be attempt for the removal of the obstacles that are in the way of Prenuptial agreements because by doing that many of the complex issues with regard to division of assets after their divorce or else maintenance etc. all can be easily resolved if these agreements are present because they create no ambiguity and also there will be a clear cut line , these agreements should not be in the name of Public Policy side-lined , they should be recognised and for its wider reach there should be some sort of “Model Agreements” which are prepared with the guidance of experts by Legislatures and having the approval of the court , it should look into the primary issues for now which society faces and this has to be empowered by Law i.e. backing it.



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