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**MODERN MATRIMONY: NAVIGATING THE LEGAL AND SOCIAL
TERRAIN OF PRENUPTIAL AGREEMENTS IN INDIA**

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Abstract

The way that marriage is viewed in the modern world is different from what it was in the past. The days of needless compromise to save a marriage are long gone. Though the scenes behind the scenes paint a very different picture, people today are far more concerned with their identity than with the phoney appearance of having a stable relationship. It is becoming more and more crucial to address the parties' post-divorce circumstances as divorce rates rise globally. This study examines prenuptial agreements across continents and around the world. The study then shifts its focus to India and investigates whether prenuptial agreements could be upheld by Indian courts. The validity, significance, and complications of prenuptial agreements will all be examined in this paper. In this paper, the researcher will try to address the issue of ambiguity surrounding prenuptial agreements in India and offer recommendations while taking into consideration the variety of personal laws that regulate marriage and divorce in the nation.

Keywords: Marriage, Prenuptial Agreements, Legalising, Societal Attitude, India

INTRODUCTION

A prenuptial agreement is a legal document that a prospective bride and groom sign before marriage. Divorces can cause spouses to spend a lot of time and money arguing in court over matters like child custody, maintenance, and asset distribution because of the emotional and financial toll they take.¹ Despite not being planned at the time of forming a marital bond, ending a marriage is a likely possibility in modern

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¹ Robert H. Mnookin & Lewis Kornhauser, Bargaining in the Shadow of the Law: The Case of Divorce, 88(5) Yale Law Journal 950-997 (1979)

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times, and couples planning to get married should consider this. To prepare for such a scenario, prenuptial agreements can be extremely helpful.

RESEARCH METHODOLOGY

To complete the research paper, the researcher employed an exclusively doctrinal research approach. The researcher makes use of data that has previously been obtained by another individual and has been subjected to legal precedents and legislative provisions. The researcher incorporates an analytical analysis of the secondary sources. As a result, the data collection method is secondary.

The researcher's sources include the Hindu Code, Amrita Ghosh and Pratyusha Kar's Prenuptial Agreements in India: An Analysis of Law and Society, and significant court rulings that will be cited where necessary. Books, research articles, statutes, reports, journals, international conventions, and recommendations are also included in the sources. This approach is used because the idea being discussed is popular among Indian couples, and it will be analysed to determine if it benefits or affects them. Data from mass media, such as newspapers, bulletins, and newsletters, is one of the secondary sources. Popular law periodicals, semi-professional journals, and specialised journals are the sources of the study papers. Among the other resources used in the study were dictionaries and case laws. Computer databases and the Internet have been widely used as primary and secondary sources of information.

SCOPE OF RESEARCH:

In our global village, compatibility determines a marriage's stability, displacing legal and customary considerations. We must carve out a new route through perplexing personal laws and competing jurisdictions as the requirements of matrimonial alliances evolve. The prenuptial agreements of today are comparable to the traditional practice in India, where the bride and groom's families specify the allocation and distribution of assets, rights, obligations & liabilities before or during the union. However, societal opposition to modern prenuptial agreements stems from the belief that they are "alien" and a sign of marriage's eventual failure. The idea of "prenuptial agreements" is discussed in this essay, which also assesses the spouses' rights about money, child rights, property, maintenance, etc. The researcher has made an effort to evaluate the advantages prenuptial agreements can offer Indian couples.

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and to use them as a tool for marriage management. The international laws about prenuptial agreements are attempted to be outlined in this paper.

This paper is limited to the scope of Hindu law and will not address the idea of "prenuptial agreements concerning Muslim and Christian laws.". Additionally, this study will not focus on prenuptial agreements in same-sex marriages. The necessity of legalising prenuptial agreements in India as a whole has only been the subject of a few prior studies. Though no thorough analysis has been completed yet, attempts have been made to work on the history and evolution of law regarding these agreements and societal attitudes toward them. Over time, the judiciary has also produced new, advantageous developments based on this idea. Research and analysis of "Prenuptial Agreements in India" is therefore necessary.

LEGAL STANDING AND PRACTICAL IMPLICATIONS OF PRENUPTIAL AGREEMENTS IN INDIA

In India, marriage is regarded as a spiritual concept rather than a contract or agreement between two parties, which is one of the main reasons why prenuptial agreements are invalid. As a result, they lack legal validity and enforceability. By Section 10 of the Indian Contract Act 1872, a prenuptial agreement must be a legitimate contract to be upheld in a court of law. Section 23 of the Indian Contract Act is violated by the key provisions of the prenuptial agreement, which deal with "separation clauses" and "no child clauses," rendering the agreement null and void. The stability of such agreements is not yet balanced, though, because the Indian courts have not yet established what precisely constitutes "public policy.". Under The Special Marriages Act 1954, if a prenuptial agreement is filed with the registrar along with the necessary paperwork, it is deemed legally binding if the marriage is solemnized under the Special Marriages Act 1954.

Section 40 of the Divorce Act of 1869 is the only part of the law that states the District Court will consider "the existence of pre-marital or post-marriage agreements" before deciding to end the union. The only state with a unified civil code - Goa, allows prenuptial agreements for land distribution under family law. The uniform civil code of Goa is based on the Portuguese Civil Code of 1867. A prenuptial agreement for the division of property is recognized by Goan family law and permitted by Articles 1108 and 1096 of the Portuguese Civil Code. In the absence of an agreement, it is assumed that they were married under the communion of assets rules. The wife's right to an equal share of the assets both

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spouses brought into the marriage is protected and granted by the communion of property. Many people value the legal position established by the Goa Civil Code, as demonstrated by the Supreme Court of India's ruling in the *Damodar Ramnath Alve v. Ramnath Gokuldas Alve*.² Noting that the Portuguese Civil Code has protected the interests of widows and children, strengthening the "basic unit of society—the family." Prenuptial agreements are difficult to amend or revoke under Goa Civil Code.

VOID AND UNENFORCEABLE PRENUPTIAL AGREEMENTS: LEGAL PITFALLS AND CHALLENGES

Courts have rejected any agreement that encourages separation or modifies the principles of personal law. In the cases of *Tekait Man Mohini Jemadi v. Basanta Kumar Singh*³ and *Krishna Aiyar v. Balammal*⁴ that the courts agreed and ruled that prenuptial agreements are null and void because they violate public policy. However, not every prenuptial agreement is viewed by the courts as being against public policy. In a few instances, prenuptial agreements were examined by the courts, which concluded that they were not against public policy because they were neither restrictive nor encouraging separation, nor connected to marriage. Regarding *Paigi v. Sheonarain*⁵, a prenuptial agreement stipulated that the husband and wife would live in his mother-in-law's home. He later left the house, though, and wouldn't come back. The husband was permitted to exercise his marital rights by the Allahabad High Court. In *Thirumal Naidu vs. Rajammal Alias Rajalakshmi*⁶, the court held that the terms of the couple's agreement to live apart were against public policy and, as a result, a contract that was void and unenforceable. Although there is no universally accepted definition of "public policy," courts examine the purpose or consideration of contracts to determine whether or not they violate public policy, as this definition varies from generation to generation and occasionally.

According to the Allahabad High Court in *Income-Tax Commissioner V/s Smt. Shanti Meattle*⁷, a husband and wife who have decided to live apart after marriage, are not allowed to harass or meddle with one another or file a lawsuit to restore their conjugal rights. Because it terminates all of the marital rights that a husband has over his

²Damodar Ramnath Alve v. Gokuldas Ramnath Alve, 1996 SCC OnLine Bom 47 : (1997) 4 Bom CR 653.

³Tekait Man Mohini Jemadi v. Basanta Kumar Singh (1901)ILR 28CAL751

⁴Krishna Aiyar v. Balammal, ILR (1911) 34 Mad 398. 35

⁵Paigi v. Sheonarain and Sribataha (1886)ILR 8ALL78

⁶A.E. Thirumal Naidu vs Rajammal Alias Rajalakshmi (1967)2MLJ484

⁷Commissioner of Income-Tax V/s Smt. Shanti Meattle 1971 1973 90 ITR 385

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wife, the High Court ruled that such an agreement is unenforceable. In this instance, *Mst. Mohammed Khan v. Shamali*⁸, a prenuptial agreement was approved by the couple in which the spouse agreed to live in his father-in-law's house and agreed to pay a certain sum of money to cover the cost of the wedding. The husband refused to meet the requirements of the marriage and fled for four years. According to the High Court of Jammu and Kashmir, it did not go against either Muslim rule or public policy. The legality of the contract was then acknowledged by the court. Therefore, prenuptial agreements that contain provisions attempting to supersede rights and privileges granted by Hindu personal law and custom, as well as provisions that promote future separation, are invalidated on the grounds of public policy.

LEGALLY RECOGNIZED PRENUPTIAL AGREEMENTS: CRITERIA AND ENFORCEMENT IN INDIA

Prenuptial agreements cannot be enforced or enforceable in a court of law. They may, however, at most serve as a sign of the parties' intentions. A prenuptial agreement containing the clause about the division of assets was signed by the husband and wife in *Sunita Devendra Deshprabhu V/s Sita Devendra Deshprabhu*.⁹ Where both had passed away. Given the prenuptial agreement, it was argued that there were no pre-existing rights. They had consented to the asset separation regime, it was argued. Therefore, in this instance, the Court took into account the prenuptial agreement when determining the matter concerning the parties' asset division. The ruling, however, made no mention of the prenuptial agreement's legality.

In *Appibai v. Khimji Cooverji*¹⁰, because it did not place a restrictive obligation on either spouse to live in Bombay permanently, the Bombay High Court ruled that a prenuptial agreement that required the couple to live in Bombay after marriage was not against public policy. Additionally, a different prenuptial agreement between the couple that stated the wife would receive ornaments if she married the husband was deemed to be by public policy, even though it was unenforceable due to uncertainty. A prenuptial agreement followed by marriage is deemed valid and enforceable by the Bombay High Court in this case, with marriage serving as the consideration for the agreement.

⁸Mohammed Khan v Mst. Shamali 1970 SCC OnLineJ&K 7: AIR 1970 J&K 154

⁹Sunita Devendra Deshprabhu V/s Sita Devendra Deshprabhu 2016 SCC Online Bom 9296

¹⁰Appibai v. Khimji Cooverji, 1934 SCC OnLine Bom 62: AIR 1936 Bom 138.

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In *Syed Abbas Ali v. Nazemunnessa Begum*¹¹, the Calcutta High Court ruled that a prenuptial agreement that provided for separate maintenance for a Mohammedan wife was not against public policy. Similarly, the Allahabad High Court ruled that *Muin-Ud-Din v. Jamal Fatima*.¹² a prenuptial agreement that provided for maintenance for the wife in the event of future separation was not against public policy.

Through an unregistered gift, the plaintiff's father transferred ownership of the residence in *Pran Mohan Das v. Hari Mohan Das*. For several years, the couple had kept the house before selling it to someone else. After that, the wife's father filed a lawsuit to reclaim the home. In this case, the plaintiff was prevented from recovering the property by the idea of "part-performance of a contract," and the Calcutta High Court ruled that the premarital agreement was good and valid. In *CIT v. Mansukhrai*¹³, the High Court of Calcutta ruled that it was appropriate to transfer property by the prenuptial agreement to fulfil commitments made.

There are differing opinions on the enforcement of prenuptial agreements because there are no particular laws or case laws addressing this topic. Interestingly, courts in India have adopted two approaches to interpreting prenuptial agreements as valid, even though they are not legally binding or executable. The first is by enforcing the terms of the prenuptial agreement alongside other legal principles, such as those about property law; the second is by creating exceptions within the larger framework of judicial precedents that have viewed prenuptial agreements as invalid because they conflict with public policy. Couples' intentions when they enter into a premarital agreement should be precisely documented and carefully crafted to avoid going against the general policy, public interest, or prevailing customs.

In September 2015, the Minister for Women and Child Welfare, led by Maneka Gandhi, convened to examine the feasibility of these agreements becoming legally binding. The relevant central government departments, according to sources, believe it is too early to submit prenuptial agreements that are compliant with the law.

¹¹Syed Abbas Ali v. Nazemunnessa Begum, 1939 SCC OnLine Cal 133 : (1938-39) 43 CWN 1059

¹²Mohd. Muin-Ud-Din v. Jamal Fatima, 1921 SCC OnLine All 38 : AIR 1921 All 152 : ILR (1921) 43 All 650

¹³CIT v. Mansukhrai (1988)75CTR(CAL)101

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PRENUPTIAL AGREEMENTS IN INDIA: LEGAL BENEFITS, CHALLENGES, AND CULTURAL PERSPECTIVES

The primary goal of a prenuptial agreement is to determine the distribution of assets and personal liabilities if the marriage fails and the couple eventually gets divorced. Prenuptial agreements allow couples to draft a "road map" that organises their money by a plan that has been agreed upon by both parties. Prenuptial agreements also allow a person to shield a particular piece of property or family business from potential claims by a former spouse. Prenuptial agreements are undervalued, particularly because of the misconception that marriages will last and the idea that talking about them would indicate marital uncertainty.

- On the impact on the sanctity of marriage: In India, marriage was regarded as a sacred institution that formed the foundation of the family and was therefore seen as essential to the existence of a civilised society.¹⁴ Prenuptial agreements may encourage couples to imagine ending their marriage before being legally bound by it. The legalisation of prenuptial agreements may lead to married couples believing that they have a simple way out in case something goes wrong.¹⁵
- On the possibility of emotional affinity being abused: Prenuptial agreements may emphasise that individuals who want to use marriage as a way to gain wealth may persuade their fiancés to sign clauses that provide for enormous compensation.
- Regarding the potential for exploiting weaker women: It might be considered overly optimistic to expect wives to understand all legal nuances in this regard. This may be particularly true for women from lower-income families or those living in rural areas, which would allow them to assess whether the husband's claim is true.
- Regarding public policy issues: Prenuptial agreements should not be seen as being against public policy in general; rather, it is important to oppose any potential oppressive clauses in them. Given the opposition to prenuptial

¹⁴ Kusum, Family Law Lectures: Family Law I, (4th ed., 2015).

¹⁵ Brian Brix, Bargaining in the Shadow of Love: The Enforcement of Premarital Agreements and How We Think About Marriage, 40 (1) William & Mary Law Review 169, 170 (1998).

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agreements, especially in light of Hinduism's religious position on marriage, we contend that prenuptial agreements themselves shouldn't be interpreted as disrespecting the religious concept of marriage.

PRENUPTIAL AGREEMENTS WORLDWIDE: NAVIGATING DIVERSE LEGAL REALMS AND CULTURAL NORMS¹⁶

The Jewish custom of Ketubah marriage gives the appearance of a legitimate prenuptial agreement.¹⁷ The Ketubah covers the rights of the wife, the duties of the husband to his wife, and the wife's claim to maintenance if the marriage is dissolved due to the husband's death or divorce. While there are specific provisions in the French Civil Code Articles, prenuptial agreements were enforceable in Australia in 2000 with the passage of the Family Law Amendment Act 2000, Part VIIIA of the Family Law Act 1387 and so on. (Mr.). Greece, Portugal, Spain, South Africa, Sweden, Russia, Taiwan, Thailand, and numerous other nations have also ratified these agreements.

CONCLUSION

It is estimated that prenuptial agreements are involved in over 20% of marriages in Indian cities like Delhi and Mumbai.¹⁸ According to a poll conducted by a lawyer, just 10% of married couples create a prenuptial agreement. A BBC report from 2016 stated that in the past three years, prenuptial agreements have increased, according to 63% of divorce lawyers. In India, just 13 out of 1000 marriages terminate in divorce.

When explaining the basic idea of private ordering, Professor Brian Bix said that "individuals know better than do other people (including those in government) what is in their own best interests."¹⁹ Various phrases about various parts of the relationship, divorce, etc., may be included in the contract. However, because there are no clear guidelines regarding how Indian courts will interpret prenuptial agreements, members of other communities—especially Hindus—are unable to benefit from the inclusion of such provisions in marital contracts because prenuptial agreements do not have uniform legal status among other communities in

¹⁶Ifemeje, S.C., 2010. A case for global enforceable prenuptial agreements. Nnamdi Azikiwe University Journal of International Law and Jurisprudence, 1, pp.151-157.

¹⁷ Akansha Ghose & Pallavi Agarwal, Prenuptial Agreement: A Necessity Of Modern Era, 2 International Journal Of Research And Analysis , 4-6 (2014),

¹⁸ Arunima Jha, Pre-Nuptial Agreement: A Death Knell for Marriage, A.P. Legal Services Pvt. Ltd.,

¹⁹ Brian Bix, Private Ordering and Family Law, 23 J Am Acad Matrimonial Law 251 (2010)

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India. According to his research on family law, Professor Robert Leckey concurs that the relational contract theory of marriage recognises "the potential for serious inequality in intimate relations."²⁰ The way society views marriage and divorce has also evolved significantly over time, making room for novel practices like prenuptial agreements.

Furthermore, there is no evidence that the potential for prenuptial agreement abuse will be higher than that of other current legal provisions or legal instruments. Rather than denying prenuptial agreements any legal validity, procedural protections might be created to reduce the likelihood of their exploitation. Additionally, it has been shown that prenuptial agreements can be drafted to avoid conflicts with settled law and are not inherently in opposition to established legal norms in India. Thus, the legalisation of prenuptial agreements in India has little effect on Indians' views on marriage.

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²⁰ Robert Leckey, Relational Contract and Other Models of Marriage, 40 Osgoode Hall Law Journal 7 (2002).
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