ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

Volume 6
Issue I

August 2024

VIPS STUDENT LAW REVIEW

VIVEKANANDA INSTITUTE OF PROFESSIONAL STUDIES - TECHNICAL CAMPUS

Affiliated to GGSIP University, Delhi
Grade A++ Accredited Institution by NAAC & Recognized by Bar Council of India and AICTE,
Recognized under section 2 (f) by UGC, NBA Accredited for MCA Programme
An ISO 9001:2015 Certified Institution

Volume 6, Issue I August, 2024 ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)

TABLE OF CONTENTS

S. No. Title of the Paper/ Author **Page No.**

1. Deciphering the Complexities of Clubbing of Contraband under the Narcotic Drugs and Psychotropic Substances Act, 1985: Judicial Response
Adv. Vidit Anand & Adv. Shivani Chawla 1

2. Business and Human Rights: Need for A Legal Regulatory Framework in India
Dr. Honey Sharma 11

STUDENTS SECTION

3. Significance of Equity Principle in A Globalized World
Priyanshu Kumar 25

4. Women's Participation in the Labour Force and Feminist Theology
Kanika Garg 34

5. Corporate Governance and Chairmanship: The Legislative Lacuna Concerning The Position of Chairman in Indian Scenario
Mohit Mishra & Anand Vardhan Shrivastava 47

6. Transnational Justice to Extradition of Economic Offenders to India: An Odyssey of Millionaire Fugitives
Abhilash Aggarwal 63

7. Navigating Love and Finances: The Ins and Outs of Prenuptial Agreements
Nishant Kumar & Vikas Deep Singh 75

8. The Future of Electronic Payments: Regulations and Reforms
Anjali Sah 91

9. Emergency Arbitration and the Rule of Law: Examining Statutory Enforcement of Interim Orders
Maitreyi Choalla 102

10. Contemporary Analysis of the Transformativeness Criterion in the Age of Artificial Intelligence Re-Imaginative Tools in the Indian Creative Industry
Mehul Saravanan 111

11. Situating the Indian Constitution in the Originalism vs Living Constitutionalism Debate
Abhishek Saha 120

12. Merger of NSE IFSC & BSE INX: A Cosmic Match for Growth as a Capital Flourished Economy
Aayushi Tyagi & Arshi Verma 132

13. Unravelling the Intricacies of Intellectual Property Rights and Competition Law
Ishika Singh & Ujalambe Abhay Dayanand 147

14. Tax Avoidance Techniques by Multinational Companies
Gaargi Gour & Devashish Bodhankar 168

Navigating Love and Finances: The Ins and Outs of Prenuptial Agreements

Nishant Kumar*
Vikas Deep Singh**

VIPS Student Law Review
August 2024, Vol. 6, Issue 1, 75-90
ISSN 2582-0311 (Print)
ISSN 2582-0303 (Online)
© Vivekananda Institute of Professional Studies
https://vslls.vips.edu/vslr/

ABSTRACT

A debate on prenuptial agreements is a complex affair which often brings up contradictory views on the topic. Prenuptial agreements are not binding but can be influential on the decision of the court if found to be fair. In more urban, progressive, and forward-thinking members of society, prenuptial agreements are quickly becoming the norm. Traditional and conservative society, including many rural areas and older generations, view prenuptial agreements with some suspicion. In recent years, legislative and judicial actions have contributed to the acceptance and enforcement of prenuptial agreements. Courts have shown varying degrees of leniency, sometimes upholding prenuptial agreements and at other times pronouncing them void on the grounds of public policy. Stories of how prenuptial agreements have helped couples deal with issues and choices they faced, can contribute to a new perception of prenuptial agreements as being supportive of, rather than destructive to, marriage. Within the Christianity context, the trend of prenuptial agreements has taken root, more especially among the demographically youthful, cosmopolitan, and proficient population. Nevertheless, the structure of these precedents is constantly shifting, and prenuptial agreements still remain insignificant and non-existing within the Hindu population. Viewed this way, prenuptial agreements are a true resource for strengthening and protecting marriages today. Although, the older generation and ultra-orthodox communities may have doubts about the necessity of prenuptial agreements, their advantages are impossible to ignore. Misconceptions

* 2nd Year BBA LLB (Hons.) Student, Chanakya National Law University, Patna
** 2nd Year BBA LLB (Hons.) Student, Chanakya National Law University, Patna

can be addressed, and couples can share their positive experiences with prenuptial agreements. A number of socio-economic factors are also influencing the acceptance of prenuptial agreements. Post-nuptial agreements, entered into after marriage, function similarly to prenuptial agreements in terms of asset division and alimony. This clearly shows the ambivalence of the courts regarding prenuptial agreements.

Keywords: *Prenuptial Agreements, Asset Protection, Divorce and Alimony, Societal Attitudes.*

1. INTRODUCTION

A prenuptial agreement, commonly known as a *prenup or antenuptial, is a legally binding document which a couple fills out before their marriage with the aim of safekeeping each spouse's financial rights and responsibilities in case of any divorce or death of one partner*. These agreements cover alimony, property distribution, inheritance, and so much more, creating a just space for each individual if the matrimony comes to an end. The two parties to the agreement are not only about protection of assets; they can also cover other meaningful topics like joint debt responsibility, business ownership incidences, occasionally child custody and maintenance, and even matters arising from children from the previous relationship[1]. The advocates tend to look at prenuptial agreements as strategies aimed at opening discussions for financial issues and marital expectations, and may ultimately prevent any disagreements or conflicts in the future. Tending financial issues after that prenups can give couples the opportunity to hold conversations that are open on the subject of partners' expectations and duties in the marriage. While this is well and good, it is, however, very important for both sides to get separate legal counsel for fairness and lawfulness purposes while handling and negotiating terms of the agreement. Formerly having been an important component only of wealthier couples' prenuptial agreements, they are now quite common and useful for any couple looking forward to getting married[2].

In India, considering prenuptial agreements are not a prevalent phenomenon as compared to Western countries because of cultural and legal factors to a large extent.

1 Vikrant Rana, Devika Mehra and Avik Gopal, "Validity of Prenuptial Agreements in India – an Analysis" S.S RANA & CO., Nov. 01, 2023, *available at:* https://www.lexology.com/library/detail.aspx?g=27261455-6600-4bac-8f70-9f8ddaf0abbc. (last visited on May 29, 2024)

2 Mohd Aqib Aslam, "Legal Position on the Enforceability of Prenuptial Agreements in India", *Legal Services India*, *available at:* https://www.legalserviceindia.com/legal/article-7035-legal-position-on-the-enforceability-of-prenuptial-agreements-in-india.html (last visited on May 29, 2024)

Indian marriages are usually considered as the ceremonies that are very pious and hold close the extended family members, with a focus on communal properties rather than individual property. Urbanization, social norms, and also globalization are changing, and now people are becoming aware of and accepting prenups, particularly among specific group of the urban and young people. The growing rate of prenuptial agreements in today's time reveals the alteration in traditional values, with an increasing number of divorces.

Conversely, opponents might regard prenups as a form of attitude that expresses distrust or lack of commitment. There can be numerous prenuptial agreement provisions that can differ across various jurisdictions. Normally the courts enforce only the clauses that do not contradict with the public policy, like those proving the limitations for the couple's conduct within the marriage[3]. Pre-marriage contracts these days are seen by many as a practical means of protecting individual assets, clarifying financial matters, and preparing for the future in case of a divorce. However, these prenups are not yet as prevalent and legally binding as in some Western countries. But with the changing attitudes towards marriage and personal autonomy, India too is catching up, showing the acceptance of prenups.

Premarital agreements have been trending among the younger generations, with the number of lawyers getting this request from the millennials having over half on average. This tendency can be explained by more adults getting married at a later stage and possessing more assets before marriage. A debate on prenuptial agreements is a complex affair which often brings up contradictory views on the topic. The different aspects of their use are in the process of being changed in order to respond to the evolving patterns of societal views and the laws about marriage and divorce.

2. PRIMER ON ANTE-NUPTIAL AGREEMENTS IN INDIA

In India also, there is the growing trend of the individuals signing the prenups, often called premarital contracts, before they got married in order to set up the financial relations and secure the property in case of the possible marriage breakdown. These contracts address property split, child support or alimony, and child custody and visitation rights, in essence offering organization to the monetary sum of the couple. Before discussing social issues connected with prenups, it is essential to note that, unlike in some other countries, prenups are not legally enforceable in India but can act as a consideration if presented in court and

3 Prenuptial Agreement, *available at:* https://en.wikipedia.org/wiki/Prenuptial_agreement (last visited on May 29, 2024).

affect the judge's decision[4] However, the legal standing of the undertakings is not definite because there is no law on the subject to guide them, and therefore the judiciary may have different rulings on the similar undertakings.

Although prenuptial agreements can legally be superseded by the wedding vows of the couple, they are very helpful in giving the couple an opportunity to air their financial situations and their potential expectations and responsibilities when they get married. While Indian society is gradually opening to sharing information about personal and financial aspects of the daily life, focusing on marriage as an institution and as a legal bond, it is possible to notice the increase in the requests related to the amendments in the legislation to officially legally regulate prenuptial agreements. They could improve the outlook towards prenups and help protect people's property and best interests, as well as positively transform the existing laws of Indian family law.

3. JUDICIAL FRAMEWORK

The legal environment surrounding prenuptial agreements in India is rather complex and continuously evolving. Even though there isn't any legislation that bans prenuptial agreements, Indian law recognizes freedom of contract under the Indian Contract Act, 1872[5]. Courts will look at prenuptial agreements if they are legally sound and free of procedural injustice. Still, the absence of clear laws creates ambiguity and inconsistency in enforcement. In Goa, prenuptial agreements are recognized under the revised Goa Family Law, 2015. A prenuptial agreement would be valid if it meets the following conditions: registration, proportionality, appropriate reporting, being of sound mind, and that it complies with all legal standards.

The assistance of a lawyer specializing in Goa's family laws is imperative to ensure that all conditions are met and that both parties are protected. There is no direct legal framework elsewhere in India regarding prenuptial agreements. The Indian Contract Act of 1872, Hindu Marriage Act of 1955[6], and Muslim Personal Law (Shariat) Application Act of 1937[7] do not expressly contain the validity of such agreements. Courts have shown varying degrees of leniency, sometimes upholding prenuptial agreements and at other times pronouncing them void on the grounds of public policy.

4 *Ibid.*

5 Indian Contract Act, 1872 (Act 9 of 1872).

6 Hindu Marriage Act, 1955 (Act 25 of 1955).

7 Muslim Personal Law (Shariat) Application Act, 1937 (Act 26 of 1937).

For example, the Jammu & Kashmir High Court upheld a prenuptial agreement as valid under Muslim law, while the Calcutta High Court voided such agreements as opposed to public policy. This clearly shows the ambivalence of the courts regarding prenuptial agreements. Despite legal uncertainties surrounding prenuptial agreements in India, couples seeking to protect their financial interests have some other legal options: mutual consent divorce, post-nuptial agreements, trusts and estate planning. Mutual consent divorce allows for a less contentious and expeditious divorce process. Post-nuptial agreements, entered into after marriage, function similarly to prenuptial agreements in terms of asset division and alimony. Trusts and estate planning are more flexible and offer options for personalized financial management.

One of the biggest problems regarding prenuptial agreements in India is the cultural context of collective family support rather than individualistic discretion in marital decisions. It is often because of such a cultural ethos that courts generally refuse to enforce agreements that one feels are disproportionate to one spouse and hence breach a perceived marital value. In conclusion, while parties are allowed to enter into prenuptial agreements touching on issues of division of assets, financial obligations, and other marital issues, the legitimacy of such agreements is usually brought into question. Indian couples intending to enter into prenuptial agreements should always consider legal advice from experts in Indian family law to avoid pitfalls that might render the agreements unfair and even untenable in law.

4. DRAFTING AND EXECUTION

Nowadays, prenuptial agreements are widespread across the Indian territory, particularly in the urban environments; however, there is no clear legal classification of such contracts. Even though they are not prohibited under the statute law, it is possible to enter into prenups under the Indian Contract Act 1872. To enhance the chances of enforcement, prenuptial agreements should be drafted with careful regard to the laws and traditions of India, and most importantly, the couple should introduce full details of the assets and liabilities each possesses and deserves. Both parties shall enter into the agreement freely and without pressures of coercion or force, and the agreement could then be registered to provide further evidence of the true document's nature[8]. The agreements made prior to marriage can be accepted as the true reflection of the couple's intentions during marriage, but the prenuptial agreements for themselves are not legal and enforceable. Particularly,

8 Adv. Neha Batra, "Pre-Nuptial Agreements in India", *available at:* https://advnehabatra.com/pre-nuptial-agreements-in-india (last visited on May 29, 2024).

clauses that elaborate on maintenance and/or child support, if against public policy or the laws of India, cannot be enforced by the courts. It is advisable for parties interested in prenuptial agreements in relation to Indian family law to seek legal advice from qualified legal practitioners with expertise in the Indian legal system.

5. RECENT DEVELOPMENTS

Nowadays, prenuptial agreements are widespread across the Indian territory, particularly in the urban environments; however, there is no clear legal classification of such contracts. Even though they are not prohibited under the statute law, it is possible to enter into prenups under the Indian Contract Act, 1872. To enhance the chances of enforcement, prenuptial agreements should be drafted with careful regard to the laws and traditions of India, and most importantly, the couple should introduce full details of the assets and liabilities each possesses and deserves[9]. Both the parties shall enter into the agreement freely and without pressures of coercion or force, and the agreement could then be registered to provide further evidence of the true document's nature. The agreements made prior to marriage can be accepted as the true reflection of the couple's intentions during marriage, but the prenuptial agreements for themselves are not legal and enforceable. Particularly, clauses that elaborate on maintenance and/or child support, if against public policy or the laws of India, cannot be enforced by the courts. It is advisable for parties interested in prenuptial agreements in relation to Indian family law to seek legal advice from qualified legal practitioners with expertise in the Indian legal system.

6. FUTURE OUTLOOK

Several factors amount to bleak prognoses for prenuptial agreements in India in the near future, as they are not legally binding and are incongruous with civil laws in India and stereotypical Indian values regarding marriage. However, with the gradual change in attitude towards vital issues, and although, the rate of documented divorce cases is still relatively low, there has always been an increased interest over these so-called prenups in India. Although, the Indian courts had in the past referred to prenuptial agreements as void, as they tended to encourage separation and violate personal laws, recent case law suggests that there is a slow but positive change in the sentiments of the apex court. The Gujarat High Court in particular more specifically used words to the effect that prenuptial

9 Manmeet Kaur, Gurtejpal Singh and Gaurangi Khanna, "Pre-Nuptial Agreements: Validity in India" Karanjawal & Company, *Mondaq,* 18 August 2023, *available at:* https://www.mondaq.com/india/family-law/1356564/pre-nuptial-agreements-validity-in-india (last visited on May 29, 2024).

contracts are akin to an economic insurance against a divorce, which is likely to happen in the future. Further, with the increase in Indian income and per capita income, there are voices to urge Indian society to start seriously discussing and considering the possibility of legally permitting and regulating pre-nuptial agreements as an effective measure to avoid long-drawn out and bitter legal battles after a divorce, while incorporating desirable measures and checks to safeguard the interest of the spouse and the welfare rights of the other spouse. Nevertheless, there are certain legal merits which bar the enforcement of prenuptial agreements at present in India. In the present times, with the help of Section 23[10] of the Indian Contract Act, 1872, it has been explained that any contract which goes against the policy of Indian law, which is against the policy of any civilized nation, and any contract which takes away the rights of a person under the personal laws cannot be legally enforceable in any court as long as premarital agreements are not specifically mentioned and recognized in the Indian laws, there is uncertainty about the future of these contracts. There are nevertheless ways to safeguard the business and family wealth in the event of a divorce that business families in India might think of implementing[11]. For instance, family shareholdings can be moved to a family trust, and provisions can be made for the appointment of professional trustees as well as rules of the distribution of profit or dividends and so on that prevent the wife, to begin with, from getting her hands on the family business.

7. PRENUP AGREEMENTS IN DIFFERENT RELIGIONS

7.1 Among Hindus

In India, it is mostly not legal to sign prenups, or at least it is not acknowledged under the Hindu Marriage Act, 1955, applicable to Hindu marriages. Prenups are not necessarily legal agreements, but the couple can make them legal contracts in case some of the provisions encompass aspects pertaining to property division and spousal support. While not legal, they can act as such a legal means when it comes to presenting the evidence of rights infringement. Indian legal process recognizes the sanctity of marriage, and despite non-recognition of prenup agreements, Indian courts may refer to the prenup agreements in an attempt to ascertain the intentions of the disputants[12]. It is important to involve an attorney,

10 Indian Contract Act, 1872 (Act 9 of 1872), s. 2.

11 Kishan Dutt Kalaskar, "Prenuptial Agreeements: Enforceability and Case Laws", *Lawyers Club India*, 29 April 2020, *available at:* https://www.lawyersclubindia.com/articles/prenuptial-agreements-enforceability-and-case-laws-11231.asp (last visited on May 29, 2024).

12 Anubhav Kumar Pandey, "All You Need to Know About Prenuptial Agreements in India", *I-Pleaders*, March 5, 2017, *available at:* https://blog.ipleaders.in/pre-nuptial-agreement-in-india-all-you-need-to-know (last visited on May 29, 2024)

especially when making a claim, to prevent bias or one-sided decision making. It must be mentioned here that while the Hindus, especially, do not recognize nuptial agreements because of their religious perception of marriage. However, one could still enforce them through a legal remedy and an action under the Indian Contract Act, as they are recognized and binding if they fulfill the legal provisions and formalities, such as free consent, just and fair terms, and not being against public policy, to name a few, despite the social prejudices prevailing against the very principles. Regarding prenuptial agreements, Hindu families in India look at them from an unfavourable perspective. Any agreement that goes against the principles and beliefs that govern marriage, for them is null and void, especially if it hails from the Holy Spirit. Marriage in the Hindu law system may be described as a sacred link, which cannot be terminated, rather than a contract. Classical Type: Any kind of agreement that seems to support separation or violate Hindu personal law, is normally null and void by operation of law[13]. Currently, the Indian courts have not been conducive to recognizing and implementing prenuptial agreements as it is considered to infract the principles of public policy and permit both parties to opt out of statutorily or personally endowed rights. Some of the common-law decisions concerning prenups include the Indian case of *Krishna Aiyar v. Balammal* and the Indian case of *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh* in which it was held that prenups are invalid and have no legal force. The social factor has however come into play, with new dynamics contributing to increased cases of divorce and other courts offering a liberal interpretation of the prenuptial agreements. Contemplating the decision of the Calcutta High Court in the case of *Pran Mohan Das v. Hari Mohan Das*, it can be seen that the court endorsed the validity of a prenup clause, arguing that it was not a marriage brokerage contract and did not contravene public policy. In the same way, there was post nuptial agreement for separation and maintenance, hence the agreement was valid in *Sandhya Chatterjee v Salil Chandra Chatterjee*.

Nevertheless, the structure of these precedents is constantly shifting and prenuptial agreements still remain insignificant and non-existent within the Hindu population. The concept of marriage as a sacred bond remains firmly established in the society, and for this reason, prenups are viewed as premature wedding jinxes that are difficult to popularize. It is also important to note that communication regarding the use of prenuptial agreements is fraught with issues related to social expectations and distrust, where such agreements are often seen as unromantic and indicative of a couple's potential lack of commitment[14].

13 Alliah Bader and Brinda Gandhi, "Prenuptial Agreements – A Boon or A Curse", Chugh, *available at:* https://www.chugh.com/news/prenuptial-agreements-a-boon-or-a-curse (last visited on May 29, 2024).

14 Jeremy D. Morley, "Prenuptial Agreements Around the World", *The Law Office of Jeremy D. Morley - International Family Law*, *available at:* https://www.international-divorce.com/prenuptial-agreements-in-india (last visited on May 29, 2024).

Summarizing the points, it can be said that nowadays, prenuptial agreements, despite the lack of their recognition under the Hindu law, and resistance of the Hindu public, are considered in some courts as means to determine the purpose of people, who have entered into a marriage. However, there are vital changes in social attitudes towards the pairing and severing that in the future might help make prenups more popular.

7.2 Among Other Communities

Hindu law also shares a different perception towards prenuptial agreements and hence is distinct from the personal law followed by Muslims and Christians in the nation. To the Muslims, the Islamic law holds provisions for what is known as "Mahr," which is a paraphernalia payment desired from the bride's side by the groom at marriage. Although, it is not as close to prenuptial agreements, as it maintains the same point of guarding the wife's financial interests[15]. Some Muslims may include additional conditions in the marriage contract to regulate the financial relationship in the event of a divorce, similar to prenuptial agreements. This approach has come into force to emphasize the need for financial security, especially for the bride and does spell out how the assets in case of a divorce shall be divided.

Within the Christianity context, the trend of Prenuptial agreements has taken root, more especially among demographically youthful, cosmopolitan, and proficient population[16]. However, there seems to be a wide divergence as to whether these instruments are acceptable, and legally enforceable within the mainstream conservative and liberal Christian denominations. Some groups of Christians may consider prenups as mere practical measures of establishing an efficient approach to the regulation of the financial obligations and property, while other groups of Christians may consider prenuptial agreements as being sinful against the teachings of trust and faith in marriage[17]. The elementary aspect of welfare in the Christian communities of educated people is to accept Prenuptial agreement as a model of transparency and financial security.

In Sikh culture and especially in India, living together before marriage and signing

15 The Nyaaya Weekly "Prenuptial Agreements: Enforceable or Not", *Nyaaya*, March 21, 2022, *available at:* https://nyaaya.org/nyaaya-weekly/prenuptial-agreements-enforceable-or-not/ (last visited on May 29, 2024).

16 "Prenuptial Agreements in India: Protection Your Future Together" *Vidhikarya,* Nov. 30, 2023, *available at:* https://www.vidhikarya.com/legal-blog/prenuptial-agreements-in-india-protecting-your-future-together (last visited on May 29, 2024).

17 Sushant Murthy, "Prenuptial pacts: Guardian of Shareholder wealth" *Economic Times*, Dec. 27,2023, *available at:* https://economictimes.indiatimes.com/markets/stocks/news/prenuptial-pacts-guardian-of-shareholder-wealth/articleshow/106319625.cms?from=mdr. (last visited on May 29, 2024)

of prenuptial agreements are also not very popular, as it is seen in other cultures across the region. Still, it is possible that the acceptance of pathological gambling among such communities might be increasing gradually like in other communities, particularly among the youth and those living in urban centres. It, therefore, emerges that family and social aspect has a role to play in effectively determining the typical views of the Sikh community as regards to a prenuptial arrangement. Whereas, it may be considered unethical or cartoonish for those embracing traditionalist ideas of marriage to enter into prenuptial agreements, the modern, progressive, and urban Sikhs may see it as a way of insurance of their respective properties[18].

It is noted that, among married couples from different regions or with different religious backgrounds, views on prenuptial agreements may also vary significantly among Jains, Buddhists, and other communities. Family and cultural norms dealing with marriage and property may determine people's perceptions and reception to the use of prenuptial agreements, where some may see them as useful ways that ensure protection of property for those in marriage, while others may consider them as wrong, as they go against the true spirit of marriage. These communities might have different perceptions of the issue in question, because they are culturally and religiously different[19]. All in all, even though the idea of signing prenup agreements has not been popularized or legalized to the extent as they are in some of the developed countries of the west, at present, the Indian society is witnessing an upward trend of its uptake among the diverse communities or strata of societies especially those who want to be more financially responsible and independent from each other. The probability of prenup agreements being seen as more feasible is higher now that the Indian society is moving towards being more urbanized with enhanced literacy levels and especially younger generations who seem to place higher importance to issues of finance and self-governance.

18 Barkha Kumari, "Indians are Inquiring About Pre-Marital Agreements" *Deccan and Herald*, Nov. 20, 2021, *available at:* https://www.deccanherald.com/india/karnataka/bengaluru/indians-are-enquiring-about-pre-marital-agreements-1052498.html. (last visited on May 29, 2024)

19 Varsha, "Prenuptial Agreements: Navigating the Path to Marital Security", *B&B Associates LLP*, Sep. 21, 2023, *available at:* https://bnblegal.com/article/prenuptial-agreements-navigating-the-path-to-marital-security/. (last visited on May 29, 2024)

8. A GLOBAL OVERVIEW OF THE PRENUPTIAL AGREEMENTS

8.1 England

Cohabitation agreements in England are not enforceable without legal input; however, the courts may enforce them if they can be considered as being set based on some fairness criteria. The leading case of *Radmacher v Granatino (2010),* established that the courts should respect marital settlements entered willingly and with full understanding, unless terms are grossly unfair. For a prenuptial agreement to be upheld, it has to be in writing, drafted by a family law specialist, with both parties having independent legal advice, full disclosure, and mutual consent[20]. Despite the Law Commission's call for legislation for "qualifying nuptial agreements," such legislation has not been implemented. Prenuptial agreements are not binding but can be influential on the decision of the court, if found to be fair.

8.2 Australia

Prenuptial agreements in Australia are lawful under the Family Law Act, 1975[21]. The agreements outline the division of assets and the financial arrangements in the event of divorce and require both parties to have separate legal representation and full financial disclosure. Although the agreements may cover most financial matters, they cannot address issues of child custody or support. International prenuptial agreements are not recognized in Australia, making it important to develop a binding financial agreement locally[22]. Prenups offer financial security, prevent legal disputes, and can provide tax benefits.

8.3 USA

Initially, U.S. courts were skeptical of prenuptial agreements, fearing they might encourage divorce, but attitudes shifted with the move away from fault-based divorce in the 1970s. Now, all states recognize prenups, provided they meet procedural requirements and do not violate basic contract laws. Specific guidelines vary by state, considering factors like marriage duration, children, and fairness[23]. To reduce inconsistencies, 28 states and

20 "Are Prenuptial Agreements Valid in UK", *Quality Solicitors*, *available at:* https://www.qualitysolicitors.com/blog/are-prenuptial-agreements-valid-in-the-uk (last visited on May 29, 2024).

21 The Australia Family Law Act, 1975.

22 Jeremy D. Morley "Prenuptial Agreements in Australia", *The Law Office of Jeremy D. Morley - International Family Law, available at:* https://www.international-divorce.com/prenuptial-agreements-in-australia (last visited on May 29, 2024).

23 Gary A. Debele and Susan C. Rhode, "Prenuptial Agreements in the United States", *International Academy of Family Lawyers*, available at: https://www.iafl.com/media/1169/prenuptial_agreements_in_the_us.pdf (last visited on May 29, 2024)

the District of Columbia have adopted the Uniform Premarital Agreement Act (UPAA) or the Uniform Premarital and Marital Agreements Act (UPMAA). These acts standardize prenuptial agreement laws and offer a consistent framework for enforcement.

8.4 Canada

Prenuptial agreements, or marriage contracts, are legally enforceable and subject to provincial laws in Canada, such as the Family Law Act of Ontario. They protect individual assets, determine division of property, and set spousal support terms. For such an agreement to be valid, it must be voluntarily entered into with both parties seeking separate legal advice. Canadian courts enforce prenuptial agreements unless it would be unfair to do so or cause undue financial burden on a spouse[24]. Couples should have a thorough understanding of their rights and obligations under Canadian family law before entering into a prenuptial agreement.

9. THE PUBLIC'S PERSPECTIVE

Societal attitude towards prenuptial agreements in India is quite politically charged a mixture of tradition, culture, and contemporary principles. Generally speaking, they disagree with the concept of prenuptial agreement on the grounds that marriage is a sacred, lifelong union as well as being a legal contract as opposed to the contractual one, which draws controversies. This skepticism is most often felt in rural areas and among the older population, who believe that agreeing on financial aspects before marriage is considered unromantic and signals a lack of trust between spouses. Some of the most important factors include cultural and religious beliefs that many Indian families uphold. They view marriage as a sacred union and believe that requiring the couple to contribute financially towards their wedding offends the sanctity of marriage. The involvement of families in marital decisions strengthens this argument to the extent that many parents and elders despise recommending premarital agreements, because such agreements give them the impression of marital conflict and failure, which contributes to a culture of shame. Furthermore, cultural customs and conventions with regards to gender barriers are other factors that play a role in opposing prenuptial agreements because these agreements question these strict gender roles and norms regarding marriage. First and foremost, one cannot overlook the fact that there is a limited level of awareness about prenuptial agreements among the general public, accompanied by a plethora of myths and misconceptions regarding their use and functionality.

24 "The Importance Of Prenuptial Agreements For a Couple in Canada", *NANDA & Associate Lawyers*, Sep. 25, 2023, *available at:* https://www.nanda.ca/the-importance-of-prenuptial-agreement-for-a-couple-in-canada/. (last visited on May 29, 2024)

On the other hand, different sections of the modern Indian society, specifically those living in cities and supporting progressive views, are starting to understand the efficiency of prenuptial agreements. These changes, therefore, are due to several socio-economic factors that have transformed the society and people's perception of marriage and equality of individuals. Social changes which include increased rates of divorce especially among the urban settings have brought increased attention to the various processes involved in the dissolution of marriage. Prenuptial agreements are perceived as practical legal contracts that can reduce tension and help establish guidelines for spouses' financial assets in case of divorce, thus making the case less traumatic and dramatic. Another major factor is self-sufficiency, particularly female employment. More women are now embracing job opportunities and this in turn, makes people aware of the need to safeguard individual property and have adequate means to fend for themselves, which is possible through prenuptial agreements. Prenuptial agreement also enjoys the support of young generations because, due to cultural shifts, it sees marriage as partnership involving financial planning as well. Another reason which has come up due to global influences and improved legal education regarding the law is the acceptance of prenuptial agreements.

The problem here is how to reconcile what is regarded today as antediluvian and what is necessary at the present time. Although, the older generation and ultra-orthodox communities may have doubts about the necessity of prenuptial agreements, their advantages are impossible to ignore. Opinion is gradually changing, but such change is a slow process which needs constant and comprehensive information and persuasion about the benefits of such an agreement. Only through the combination of educational activities, lectures, and seminars, and campaigns in media can misunderstandings be eliminated, and prenuptial agreements viewed as tools of protection rather than betrayal. The media can play a major role in changing people's attitude to prenup agreements by talking about them in a positive way, especially social media influencers.

In conclusion, it is apparent that the consideration of prenuptial agreements in India is in its early stages of development taking on the societal perspective. Despite the ideas originated from religion and culture that remains prominent in many areas of this nation, there's an emergence of understanding of the utility values for such agreements. They are; urbanization, financial freedom, increased incidence of divorce and legalism. When the legal and cultural factors are properly addressed, prenuptial agreements can be seen as the way for enhancing financial prudency and, hence, the marriage in India.

10. JUDICIAL PRECEDENTS

Validity of prenuptial agreements thus is still limited under law in India. The Indian Contract Act also has provisions stating that the acts under personal laws cannot be waived or surrendered and accordingly contracts providing for separation are against public policy.

Thus, although prenuptial agreements are not generally admissible under Indian law, many courts have accepted their validity. This acceptance is often conditional, either by applying other legal provisions or principles, or by making overriding provisions to the rule of law that might otherwise render a prenuptial agreement null and void due to a violation of public policy. However, in rubric, they are still characterized as powerless agreements generally.

10.1 For Valid Prenuptial Agreements:

a. Sandhya Chatterjee v. Salil Chandra Chatterjee[25].

The Calcutta High Court analyzed the validity of post-nuptial agreement in *Sandhya Chatterjee v. Salil Chandra Chatterjee* case where rights of husband and wife to lead a separate life on the basis of agreed terms were highlighted. Even though, it had filed for a judicial separation suit in the past, the court allowed the agreement and the maintenance payments and held that those were not against public policy. This case brought a change of direction to the extent of sinking in marital agreements, regardless of the fact that it was post-nuptial to show a more liberal outlook on such contracts given that they fall within the legal principles and exceptions to the conventional views on public policy.

b. Mohd. Khan v. Mst. Shahmal[26].

Pertaining to the facts of the case of *Mohd. Khan v. Mst. Shahmal*, the husband agreed to be a *khana damad* in his wife's father's house on the condition that he would pack and leave, and that he would have to pay for the wedding bill. He eloped with his wife for four years. He came back and was told to cater for the wedding expenses. The Jammu & Kashmir High Court supported the agreement by referring to the *khana damad* and stating that it has no prohibition under Muslim Law because the husband was unable to meet his responsibilities.

25 1980 SCC OnLine Cal 67.
26 1971 SCC OnLine J&K 32.

10.2 For Invalid Prenuptial Agreements:

a. Krishna Aiyar v. Balammal[27].

In *Krishna Aiyar v. Balammal*, the husband wanted to file an action for restitution of conjugal rights after his wife decided not to cohabit with him anymore. She was glad having a prenuptial agreement which allowed her to live separately for some cash. It was first determined that the suit was time barred and dismissed it, however the Appellate court reversed this decision. The court considered the agreement ineffective in light of public policy and denying the husband his matrimonial right. It argued that the agreements that erode the institution of marriage and the rights of married persons are unlawful. The restoration of conjugal rights was allowed due to the recognition of marriage as the sacred union of two people, with respective rights of the parties.

b. Bai Fatima v. Ali Mahomed Aiyab[28].

In the case of *Bai Fatma vs. Ali Mahomed Aiyab*, certain maintenance whereunder a Muslim husband agreed to require his wife was made. There was a question as to whether this agreement was enforceable and legal. On this matter, the court analyzed the provisions of the agreement as well as its conformity with legal provisions. From this case, one gets to understand the legal avenues concerning prenuptial agreements, especially for Muslim marriages, and on the aspect of maintenance and support for the spouses. This judgement is important regarding the legal position of such agreements in the Indian legal system.

11. CONCLUSION

Prenuptial agreements help couples balance love and money in practical ways. Committing to each other and committing financial resources are both part of the marital equation. Not as intimidating as they seem, despite the legalese and technical process required for a valid agreement, prenuptial agreements are incredibly useful in clearly stating financial expectations and responsibilities for both parties. The key is understanding the reasons for, and underlying mechanics of, these agreements so that you can be fully open and willing to enter into an agreement that protects each party's interests. These are legal documents that require mutual understanding and voluntary agreement from both parties.

In recent years, legislative and judicial actions have contributed to the acceptance and enforcement of prenuptial agreements. Understanding how courts handle prenuptial

27 (1911) ILR 34 MAD 398.

28 (1913) ILR 37 BOM 280.

agreements and how laws are updated to protect rights of all parties, gives couples the peace of mind to move forward with a prenuptial as a useful tool in managing money during marriage. A number of socio-economic factors are also influencing the acceptance of prenuptial agreements. The increasing frequency of divorce, growing financial independence (particularly among women), and awareness of foreign customs and practices all lend to a more realistic view of marriage as a commitment between two people and the inevitable financial responsibilities that follow. Not all members of society are in agreement with the idea of prenuptial agreements. Traditional and conservative society, including many rural areas and older generations, view prenuptial agreements with some suspicion. The underlying principle of preserving the sanctity of marriage is often cited as the main reason for opposition to prenuptial agreements. Cultural and religious influences, the role of family in marital choices, and the classic division of roles between men and women, all contribute to this view. In more urban, progressive, and forward-thinking segments of society, prenuptial agreements are quickly becoming the norm. Increased legal literacy and international travel, in particular, expose young people to the many uses and benefits of prenuptial agreements. Far from being cynical instruments, prenuptial agreements can be fair and secure methods of creating transparency between partners while protecting each person's interests. Public education programs including seminars, workshops and media outreach can play a key role in influencing public opinion. Misconceptions can be addressed and couples can share their positive experiences with prenuptial agreements. Stories of how prenuptial agreements have helped couples deal with issues and choices they faced, can contribute to a new perception of prenuptial agreements as being supportive of, rather than destructive to, marriage.

In conclusion, love and money are both essential elements in any marriage. A valid and enforceable prenuptial agreement helps couples reconcile these elements by setting forth financial expectations, responsibilities, and procedures to follow in the event of a dispute. Prenuptial agreements are here to stay and with evolving social attitudes and changing legal landscapes, India and the rest of the world will likely see these agreements as an inseparable component of any marital union. This must be accompanied by a redefining of the balance between preservation of our rich culture and the necessity for change in order to meet modern day needs for transparency and security. In the final analysis, love and money are both essential in any twenty-first century relationship and prenuptial agreements help couples achieve both fairness and security for the future. Viewed this way, prenuptial agreements are a true resource for strengthening and protecting marriages today.