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Judicial Trends on Marital Agreements: Scope for Recognizing Prenuptial Contracts in India

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ABSTRACT

Prenuptial agreements occupy an ambiguous position in Indian law. No specific legislation governs their formation, validity or enforcement, and their status must be determined by reference to Section 23 of the Indian Contract Act, 1872, which renders void agreements whose object or consideration is opposed to public policy. Early cases such as Tekait Mon Mohini Jemadai v. Basanta Kumar Singh and Krishna Aiyar v. Balammal reflect a near-complete judicial refusal to enforce agreements that interfered with cohabitation or conjugal rights, or that facilitated separation, because these were treated as core incidents of marriage that could not be recast by anticipatory bargain. Indian courts have nonetheless been more accommodating towards postnuptial settlements, mediated financial arrangements and transparent financial planning, suggesting that the judicial stance is one of differentiated, rather than absolute, non-recognition. This paper submits that provisions on property division, maintenance and the relinquishment of future rights should be assessed under both contract law and matrimonial law, and that a blanket waiver of maintenance should not take precedence over the court's statutory oversight. It advances a fairness-based model of limited recognition grounded in free consent, independent legal advice, full financial disclosure and judicial review at the stage of enforcement, and proposes that prenuptial practice, including in NRI and cross-border marriages, be given certainty through incremental judicial recognition and express legislation.

Keywords: Prenuptial Agreement, Marital Agreement, Public Policy, Indian Contract Act, Maintenance and Alimony, Family Settlement, Waiver of Rights, NRI Marriage, Gender Justice, Matrimonial Law Reform

I. INTRODUCTION

Marital agreements are private agreements by which parties seek to control the financial and legal consequences of marriage, and prenuptial agreements are the most visible form of such planning. In India, however, these contracts are contentious, because marriage is rarely treated

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as a matter of purely personal choice; it is regarded as an institution shaped by personal law, state policy and statutory matrimonial remedies.¹

A classic normative conflict lies in the background of the debate. On one side stands the older judicial conception of marriage, especially in early Hindu-law thinking, as a sacramental status with prescribed incidents of cohabitation, consortium and mutual obligation; on the other is the modern reality that marriage carries serious financial consequences for property, maintenance and the settlement of disputes.²

The research problem lies here: Indian law has no special statutory regime that expressly recognises prenuptial contracts as a distinct and uniformly enforceable category. Their status must instead be derived from the general law of contract, particularly Section 23 of the Indian Contract Act, 1872, and from matrimonial law, which reserves to the courts the power to award alimony and maintenance, as under Section 25 of the Hindu Marriage Act, 1955 and Section 37 of the Special Marriage Act, 1954.³

This paper asks whether Indian courts are moving away from almost complete non-recognition of prenuptial contracts towards acceptance of some marital contracts in narrowly defined circumstances. It analyses the traditional public-policy objection, distinguishes between the various types of marital agreement, evaluates the enforceability of property and maintenance provisions, considers the NRI and cross-border dimension, and proposes a fairness-based model of limited recognition through doctrinal development and legislative amendment.⁴

The approach is doctrinal and case-law based. It rests mainly on statutory interpretation, on close reading of the leading authorities, *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh* and *Krishna Aiyar v. Balammal*, and on more recent material showing how Indian courts oversee alimony, settlement and mediation in matrimonial disputes.⁵

The scope of the paper is limited to the Indian legal position, with a short comparative reference to foreign jurisdictions to inform reform. It does not attempt an empirical sociological

¹ Amrita Ghosh & Pratyusha Kar, *Pre-Nuptial Agreements in India: An Analysis of Law and Society*, 12 NUJS L. REV. 217, 218–20 (2019); Indian Contract Act, 1872, § 23 (India); *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*, (1901) ILR 28 Cal 751 (Cal. HC).

² *Krishna Aiyar v. Balammal*, (1911) ILR 34 Mad 398 (Mad. HC) (decided May 6, 1910); *Tekait Mon Mohini*, *supra* note 1; Ghosh & Kar, *supra* note 1, at 222–25; *Rinku Baheti v. Sandesh Sharda*, 2024 INSC 1014.

³ Ghosh & Kar, *supra* note 1, at 220–25; Indian Contract Act, 1872, § 23 (India); Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India).

⁴ Ghosh & Kar, *supra* note 1; *Should NRIs Sign a Prenuptial Agreement in India?*, MATRIMONIAL ADVOCATES (Mar. 12, 2026), <https://matrimonialadvocates.com/nri-sign-prenuptial-agreement-india/>; *Rinku Baheti*, *supra* note 2; Indian Contract Act, 1872, § 23 (India); Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India).

⁵ *Tekait Mon Mohini*, *supra* note 1; *Krishna Aiyar*, *supra* note 2; *Rinku Baheti*, *supra* note 2; Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India).

investigation of matrimonial bargaining; it examines the interaction of the doctrinal principles of contract, family law and public policy in the Indian context.⁶

II. CONCEPTUAL AND LEGAL FRAMEWORK

The expression “marital agreement” is broader than “prenuptial agreement”. It covers prenuptial agreements, postnuptial agreements, family settlements, consent terms recorded in matrimonial litigation, and undertakings on maintenance given between spouses or their families.⁷

These arrangements are not typical commercial agreements, because they operate within a status relationship rather than a purely market-based exchange. A commercial agreement ordinarily rests on the independence of the parties and on exchange, whereas a marital agreement concerns rights and obligations that Indian courts have traditionally regarded as fixed, in part, by law, particularly where cohabitation, consortium and maintenance are in play.⁸

The first statutory point of reference is the Indian Contract Act, 1872. Section 23 provides that the consideration or object of an agreement is unlawful if, among other things, it is forbidden by law, is of such a nature that, if permitted, it would defeat the provisions of any law, or is regarded by the court as immoral or opposed to public policy, and that every agreement of which the object or consideration is unlawful is void. This provision has long grounded judicial suspicion of agreements affecting the legal incidents of marriage.⁹

Matrimonial statutes point in the same direction. Section 25 of the Hindu Marriage Act, 1955 allows the court to order permanent alimony and maintenance having regard to the income and property of the parties, their conduct and the other circumstances of the case, and Section 37 of the Special Marriage Act, 1954 confers a similar power. Post-marital financial support is therefore not left solely to private ordering.¹⁰

The wider doctrinal question is thus whether a marital agreement may be evaluated simply as a contract, or whether it must also satisfy the demands of family law for fairness and judicial oversight. The better view is that both tests apply, since a clause that appears formally sound

⁶ Ghosh & Kar, *supra* note 1, at 241–58; *Prenups for NRIs: Can NRIs Get a Prenuptial Agreement in India?*, PRENUP INDIA (May 27, 2025), <https://prenupindia.com/blog/prenups-nris-can-get-india-how-protects-assets-future/>.

⁷ Ghosh & Kar, *supra* note 1, at 220–25, 258–84; Rinku Baheti, *supra* note 2.

⁸ Indian Contract Act, 1872, § 23 (India); *Tekait Mon Mohini*, *supra* note 1; *Krishna Aiyar*, *supra* note 2; Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India).

⁹ Indian Contract Act, 1872, § 23 (India); Ghosh & Kar, *supra* note 1, at 222–25.

¹⁰ Hindu Marriage Act, 1955, § 25 (India); *Section 25, Hindu Marriage Act, 1955 – Permanent Alimony and Maintenance*, VKEEL (Mar. 16, 2023), <https://www.vkeel.com/legal-blog/section-25-hindu-marriage-act-1955-permanent-alimony-and-maintenance>; Special Marriage Act, 1954, § 37 (India).

under contract doctrine may still fail if it seeks to frustrate statutory maintenance rights or to weaken the protective framework of matrimonial law.¹¹

III. PUBLIC POLICY AND THE EARLY JUDICIAL APPROACH

In its early stages the Indian judiciary was markedly uneasy with private bargains that appeared to alter the essential incidents of marriage. This reflected the view that marriage, at least as understood in classical Hindu-law interpretation, was not a purely personal transaction and could not be substantially reconstituted through an anticipatory contract.¹²

In *Sheonarain v. Paigi* (1885), the husband had agreed before the marriage to live with his wife in his mother-in-law's house, but later left the house and lived with another woman. He then sued for restitution of conjugal rights. The wife pleaded that, having broken the agreement on the faith of which she had married him, he could not enforce his conjugal rights. The Allahabad High Court dismissed that plea as "absurd", although it made the decree conditional on the husband's restoration to caste. The case showed that the prenuptial agreement could not prevail over the husband's rights under personal law.¹³

Bai Fatma v. Ali Mahomed Aiyab (1912) concerned an agreement between a Muslim husband and his wife providing maintenance for the wife in the event of a future separation. The Bombay High Court held the agreement void under Section 23 of the Contract Act, reasoning that an agreement which provides for, and therefore encourages, future separation between spouses is opposed to public policy.¹⁴

In *A.E. Thirumal Naidu v. Rajammal alias Rajalakshmi*, the wife sued for restitution of conjugal rights and the husband pleaded in answer an agreement between them to live separately. Noting the English rule but doubting that it was a proper guide in Indian conditions, and relying on *Tekait Mon Mohini* and *Krishna Aiyar*, the Madras High Court held that, since marriage under Hindu law is a sacrament and not merely a contract, such an agreement was no bar to the wife's suit, and it read the earlier authorities as drawing no distinction between prenuptial and postnuptial agreements.¹⁵

Sribataha Barik v. Musamat Padma followed *Tekait Mon Mohini*. The husband had allegedly agreed, at the time of the marriage, to live in his wife's parental home; when he later left and

¹¹ Ghosh & Kar, *supra* note 1, at 222–28; *Tekait Mon Mohini*, *supra* note 1; *Krishna Aiyar*, *supra* note 2.

¹² Ghosh & Kar, *supra* note 1, at 222–28; *Tekait Mon Mohini*, *supra* note 1; *Krishna Aiyar*, *supra* note 2.

¹³ *Sheonarain v. Paigi*, (1886) ILR 8 All 78, ¶¶ 3, 8–9 (All. HC) (decided Dec. 18, 1885); Ghosh & Kar, *supra* note 1.

¹⁴ *Bai Fatma v. Ali Mahomed Aiyab*, (1912) 14 Bom LR 1178, ¶¶ 1–3 (Bom. HC); Ghosh & Kar, *supra* note 1.

¹⁵ *A.E. Thirumal Naidu v. Rajammal alias Rajalakshmi*, AIR 1968 Mad 201, (1967) 2 MLJ 484 (Mad. HC).

offered to maintain his wife in his own house, the magistrate ordered maintenance for her in her parents' house. The Orissa High Court set the order aside as contrary to Hindu law and to public policy, and allowed maintenance only for the child.¹⁶

The leading case is *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*. A deed executed at the time of the marriage, when the husband was a minor, bound him to live permanently in his wife's family home, never to take his wife to his own house, and to obey his mother-in-law. The Calcutta High Court held the arrangement contrary both to the incidents of marriage under Hindu law and to public policy.¹⁷

The reasoning in *Tekait Mon Mohini* was significant in two related ways. First, the Court treated the rights of the spouses, in particular the rights of residence and cohabitation, as deriving from the personal law that governed the marriage rather than from agreement. Second, it invoked Section 23 of the Contract Act directly, holding that an agreement which would defeat those incidents could not be enforced as a valid private arrangement.¹⁸

Krishna Aiyar v. Balammal reflects an equally restrictive approach. The agreement there was not strictly prenuptial: after an earlier suit for restitution of conjugal rights, the parties compromised on terms that they would live together, but that the husband would pay the wife a fixed sum if she later chose to leave him. The Madras High Court held the agreement unenforceable. It doubted whether Hindu law permitted any agreement between husband and wife to live apart, and held that, in any event, an agreement that anticipated and encouraged the future separation of the parties, instead of preserving the marriage, was opposed to public policy.¹⁹

These cases share a common thread. Early courts were opposed to contracts that inhibited cohabitation, qualified conjugal rights, encouraged later separation, or commercialised marriage in a manner inconsistent with the governing conception of the institution.²⁰

The older judicial approach may thus be characterised as one of almost complete non-recognition in the prenuptial context. Courts did not develop a nuanced doctrine of conditional enforcement; they tended to view such agreements with suspicion and relied on public policy as the principal doctrinal instrument for declining direct enforcement.²¹

¹⁶ *Sribataha Barik v. Musamat Padma*, AIR 1969 Ori 112 (Ori. HC).

¹⁷ *Tekait Mon Mohini*, *supra* note 1; Ghosh & Kar, *supra* note 1, at 223, 226–27.

¹⁸ *Tekait Mon Mohini*, *supra* note 1; Indian Contract Act, 1872, § 23 (India).

¹⁹ *Krishna Aiyar*, *supra* note 2; Ghosh & Kar, *supra* note 1, at 224, 227.

²⁰ *Tekait Mon Mohini*, *supra* note 1; *Krishna Aiyar*, *supra* note 2; Ghosh & Kar, *supra* note 1, at 222–28.

²¹ Ghosh & Kar, *supra* note 1, at 222–28; Indian Contract Act, 1872, § 23 (India); *Tekait Mon Mohini*, *supra* note 1; *Krishna Aiyar*, *supra* note 2.

IV. CASES WHERE PRENUPTIAL AGREEMENTS WERE UPHELD OR PARTLY GIVEN EFFECT

There have been instances in which courts have accepted prenuptial agreements, in whole or in part, in settling matrimonial and family disputes. In *Gobinda Rani Dasi v. Radha Ballabh Das*, the Calcutta High Court accepted, following *Tekait Mon Mohini*, that a husband's antenuptial promise never to remove his wife from her parental home would not be enforced, but held enforceable an implied antenuptial understanding under which the father-in-law took his son-in-law into the family as a *gharjamai* and undertook to maintain him, his wife and their children, finding "nothing in Hindu Law or in public policy" to render it unenforceable. A later Division Bench read the decision as holding such antenuptial contracts "valid and binding", while distinguishing marriage-brokerage contracts as opposed to public policy.²²

In *Pran Mohan Das v. Hari Mohan Das*, the bride's father had promised before the marriage to give his daughter a house, and the bridegroom agreed to the marriage on that promise. When the father later sued to recover the house, the defendants relied on the antenuptial promise. The Calcutta High Court upheld the promise as a valid contract for which the marriage itself was the consideration, held that it was not a marriage-brokerage contract opposed to public policy, and applied the doctrine of part-performance to defeat the father's claim despite the unregistered gift.²³

In *Sayad Abbas Ali v. Nazemunnessa Begum*, a Muslim marriage case, the Calcutta High Court upheld a stipulation in a kabinnama that the husband would pay his wife separate maintenance in the event of disagreement between them, holding that it was not opposed to public policy. The decision sits uneasily with the Bombay High Court's approach in *Bai Fatma*, discussed above, and points to a judicial divide on the issue.²⁴

In *Bai Appibai v. Khimji Cooverji*, the husband had deserted his wife, and she sued for separate maintenance and residence and to enforce promises he had made before the marriage to give her ornaments and to pay her debts; he had also promised to live with her in Bombay. The Bombay High Court granted separate maintenance and residence on the ground of desertion, provided there was no reasonable doubt about her chastity, observing that Hindu law did not permit a husband to abandon his wife, deny the marriage and then defeat her claim. On the

²² *Gobinda Rani Dasi v. Radha Ballabh Das*, (1910) 15 CWN 205, 7 Ind. Cas. 118 (Cal. HC) (decided July 5, 1910); see *Pran Mohan Das v. Hari Mohan Das*, AIR 1925 Cal 856, ¶¶ 7–8 (Cal. HC) (describing the decision as holding antenuptial contracts valid and binding, and distinguishing marriage-brokerage contracts).

²³ *Pran Mohan Das*, *supra* note 22, ¶¶ 5–9.

²⁴ *Sayad Abbas Ali v. Nazemunnessa Begum*, 43 CWN 1059 (Cal. HC); see *Buffatan Bibi v. Sheikh Abdul Salim*, AIR 1950 Cal 304, ¶ 2 (Cal. HC) (describing the holding).

antenuptial promises, it held that an agreement to live in Bombay after the marriage did not offend public policy because it did not bind either spouse to live there permanently, and that an antenuptial agreement followed by marriage is valid, marriage being a valuable consideration; the promise of ornaments failed for want of certainty, not on grounds of policy.²⁵

V. EVOLVING JUDICIAL TREATMENT

Indian case law does not treat all marital agreements as a single category. A helpful distinction is between prenuptial agreements, entered into before marriage, and postnuptial arrangements, settlements or compromises, entered into after the marriage or during litigation. The latter are more readily seen as dispute-resolution mechanisms than as an anticipatory redefinition of the marriage itself.²⁶

The distinction matters because courts appear to regard negotiated arrangements as institutionally more natural when they are formed under the court's own supervision. The Supreme Court's 2024 decision in *Rinku Baheti v. Sandesh Sharda* shows the Court's active engagement with mediation, financial claims and the quantification of alimony when deciding how complete justice could be done in a matrimonial case, reflecting a settlement-oriented rather than categorical approach to private financial arrangements.²⁷

A second distinction is between agreements relied on as enforceable obligations and agreements relied on as evidence. In NRI and cross-border cases a prenuptial agreement does not necessarily bar statutory remedies in India, but it can be used as an indicator of disclosure, of pre-existing financial knowledge, of the location of assets, and of the parties' expectations as to property and support.²⁸

Sunita Devendra Deshp Prabhu v. Sitadevi Deshp Prabhu (2016) was essentially a family property dispute. In the course of it the Bombay High Court noted a prenuptial agreement executed in 1951, by which the spouses had agreed to a regime of separation of assets. The parties were Goan, and the agreement was made under the Portuguese Civil Code of 1867, then in force in Goa, which permits spouses to settle their property regime by an antenuptial agreement. The Court did not consider whether such an agreement would be enforceable under the general law of India; it noted the agreement as part of the background facts while ruling on the procedural question before it. The case therefore does not establish the enforceability of prenuptial

²⁵ *Bai Appibai v. Khimji Cooverji*, AIR 1936 Bom 138, (1936) 38 Bom LR 77, ¶¶ 15–20 (Bom. HC).

²⁶ Ghosh & Kar, *supra* note 1; *Tekait Mon Mohini*, *supra* note 1; *Krishna Aiyar*, *supra* note 2; *Rinku Baheti*, *supra* note 2.

²⁷ *Rinku Baheti*, *supra* note 2.

²⁸ *Should NRIs Sign a Prenuptial Agreement in India?*, *supra* note 4; Ghosh & Kar, *supra* note 1.

agreements. At most, it shows that such an agreement can form part of the factual record in a property dispute, without displacing statutory entitlements or the settled principles of matrimonial law.²⁹

In a 2023 matter, a Family Court in Mumbai observed that although a prenuptial agreement cannot be upheld as a binding contract in India, it may be taken into consideration to understand the intention of the parties, particularly their outlook at the time of the marriage. The court granted divorce on the ground of cruelty under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, treating the prenuptial agreement as one of the materials corroborating the other evidence.³⁰

This development suggests that Indian law may be moving from rejection towards partial and contextual acceptance. The movement is not from invalidity to full contractual enforceability, but towards differentiated treatment based on timing, subject matter, fairness and the degree of judicial supervision.³¹

VI. ENFORCEABILITY OF CLAUSES ON PROPERTY, ALIMONY AND MAINTENANCE

The question of enforceability is best approached clause by clause. A sweeping statement that all marital agreements are valid, or that all are void, obscures the more useful doctrinal position: property clauses, maintenance clauses, custody clauses and waiver clauses carry distinct policy implications and should be evaluated differently.³²

Property-allocation clauses tend to be the least objectionable form of marital planning. Provisions identifying premarital assets, recording ownership rights or defining financial contributions may be more defensible than provisions dictating where the spouses must reside or contemplating that one spouse will leave the other, since the older cases were centrally

²⁹ *Sunita Devendra Deshpabhu v. Sitadevi Deshpabhu* (Bom. HC) (decided Oct. 4, 2016); Ghosh & Kar, *supra* note 1 (noting that the Portuguese Civil Code, 1867, art. 1096, as applied in Goa, permits prenuptial agreements on property); see also Preeti Singh, *Pre-Nuptial Agreements in India: An Idea Ahead of Its Time or a Practical Necessity?*, LIVE LAW (Feb. 3, 2026), <https://www.livelaw.in/law-firms/law-firm-articles/-pre-nuptial-agreements-in-india-an-idea-ahead-of-its-time-or-a-practical-necessity-521648>.

³⁰ Amisha Shrivastava, *Prenuptial Agreements Not Enforceable in India but Can Be Considered to Determine Parties' Intent: Mumbai Court*, LIVE LAW (Oct. 10, 2023), <https://www.livelaw.in/news-updates/prenuptial-agreement-in-india-marriage-divorce-239698>.

³¹ Ghosh & Kar, *supra* note 1; *Rinku Baheti*, *supra* note 2; Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India).

³² Ghosh & Kar, *supra* note 1; Indian Contract Act, 1872, § 23 (India); Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India).

concerned with residence, separation and conjugal control rather than with financial record-keeping as such.³³

Maintenance and alimony provisions stand on a different footing, because the legislation expressly preserves judicial discretion. Section 25 of the Hindu Marriage Act and Section 37 of the Special Marriage Act both place permanent support in the hands of the court, which implies that a prior private arrangement settling or excluding maintenance cannot be treated as absolutely binding in the way an ordinary civil debt is.³⁴

This statutory structure undermines blanket waiver clauses. A provision by which one spouse prospectively waives all future maintenance or support is vulnerable, since it is in effect an attempt to circumvent the very provisions that empower the courts to inquire into need, means, conduct and circumstances at the time of the claim.³⁵

The same caution applies to provisions that seek to preclude recourse to the courts or to make future matrimonial remedies non-justiciable. Under Section 23, an agreement whose object would defeat the provisions of any law, or which the court regards as opposed to public policy, is void, and a private term that attempts to contract out of the court's protective jurisdiction over maintenance is therefore doctrinally questionable.³⁶

A limited middle position is nevertheless available. Courts may decline to treat such clauses as decisive while still allowing them to serve as one circumstantial factor in the eventual grant of relief, particularly where the agreement is transparent, voluntarily entered into and confined to financial planning rather than the reconsideration of fundamental marital commitments.³⁷

Clauses relating to custody demand even greater care. The materials examined here say more about maintenance than about custody, but the logic of Indian matrimonial adjudication indicates that child-related provisions cannot be enforced as a simple bargain where the court's assessment of the child's welfare is paramount.³⁸

³³ *Tekait Mon Mohini*, *supra* note 1; *Krishna Aiyar*, *supra* note 2; *Ghosh & Kar*, *supra* note 1; *Should NRIs Sign a Prenuptial Agreement in India?*, *supra* note 4.

³⁴ Hindu Marriage Act, 1955, § 25 (India); *Section 25, Hindu Marriage Act, 1955 – Permanent Alimony and Maintenance*, *supra* note 10; Special Marriage Act, 1954, § 37 (India).

³⁵ Indian Contract Act, 1872, § 23 (India); Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India); *Navigating Prenuptial Agreements in India: Legal Insights for 2025*, LEGALKART (Jan. 3, 2026), <https://www.legalkart.com/en/legal-blog/navigating-prenuptial-agreements-in-india-legal-insights-for-2025>.

³⁶ Indian Contract Act, 1872, § 23 (India); Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India).

³⁷ *Should NRIs Sign a Prenuptial Agreement in India?*, *supra* note 4; *Ghosh & Kar*, *supra* note 1; *Rinku Baheti*, *supra* note 2.

³⁸ *Rinku Baheti*, *supra* note 2; Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India).

VII. NRI MARRIAGES, FOREIGN LAW AND COMPARATIVE INFLUENCE

Intercountry marriages complicate the analysis, since a prenuptial agreement signed in one country may not be accepted in India. In NRI cases Indian courts retain the power to examine the agreement against domestic public policy, statutory matrimonial protections and the rules governing the recognition of foreign decrees.³⁹

The practical implication is that a foreign prenuptial agreement may be persuasive before an Indian court, but it does not operate automatically. It may help to establish premarital assets, the intentions of the parties, or the validity of their marriage under the law of the place where it was celebrated, but its effect on maintenance, fairness and public policy will still be governed by Indian law.⁴⁰

Comparative material is useful here not because foreign rules should be imported wholesale, but as evidence that limited recognition can coexist with judicial review. Ghosh and Kar's comparative survey, read with the fairness-focused approach of the Supreme Court of the United Kingdom in *Radmacher v. Granatino*, supports the reform thesis that enforceability can be linked to voluntariness, disclosure and substantive fairness rather than to freedom of contract in its absolute form.⁴¹

VIII. CONDITIONS FOR LIMITED RECOGNITION IN INDIA

If Indian law is to move towards recognising prenuptial agreements, the model should be one of controlled validity rather than unconditional contractual freedom. Such a model would preserve the historical objection to the commercialisation of marriage while acknowledging that contemporary marriages raise real issues of asset planning, financial clarity and dispute prevention.⁴²

Free and informed consent, independent legal advice and full financial disclosure should be the first minimum safeguards. These requirements matter particularly because matrimonial bargaining is rarely conducted at arm's length and may be shaped by asymmetric information, family pressure, emotional dependence and long-term economic vulnerability.⁴³

³⁹ *Should NRIs Sign a Prenuptial Agreement in India?*, *supra* note 4; Indian Contract Act, 1872, § 23 (India).

⁴⁰ *Should NRIs Sign a Prenuptial Agreement in India?*, *supra* note 4; *Prenups for NRIs: Can NRIs Get a Prenuptial Agreement in India?*, *supra* note 6; Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India).

⁴¹ Ghosh & Kar, *supra* note 1, at 241–58; *Radmacher v. Granatino* [2010] UKSC 42, [2011] 1 AC 534 [75] (appeal taken from Eng.).

⁴² Indian Contract Act, 1872, § 23 (India); Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India); *Tekait Mon Mohini*, *supra* note 1; *Krishna Aiyar*, *supra* note 2; Ghosh & Kar, *supra* note 1.

⁴³ Ghosh & Kar, *supra* note 1; *Should NRIs Sign a Prenuptial Agreement in India?*, *supra* note 4; *Prenups for NRIs: Can NRIs Get a Prenuptial Agreement in India?*, *supra* note 6.

The second safeguard should be a review of fairness at the time of enforcement, not merely at the time of execution. Circumstances change during a marriage, and an arrangement that seemed rational before it may become oppressive once illness, child-care demands, unemployment or economic dependency arise. Judicial review at the stage of enforcement is therefore better suited to the structure of Indian maintenance law.⁴⁴

The third safeguard should be a rule that no private clause may eliminate the minimum statutory protection provided by the law of maintenance or the dignity interests of the weaker spouse. Both judicial interpretation and legislative clarification are therefore needed; ideally, legislation should prescribe the formal safeguards, the permissible scope of financial provisions and the non-waivable core of statutory protection.⁴⁵

IX. FINDINGS AND CONCLUSION

The doctrinal position that emerges from the Indian materials is qualified but reasonably clear. Indian courts have not embraced prenuptial contracts as a generally binding category, and the older cases treated such agreements as contrary to marital policy where they disturbed cohabitation, residence or future conjugal duties.⁴⁶

At the same time, Indian law can no longer be characterised as wholly hostile to marital agreements. Courts are more willing to engage with postnuptial settlements, mediated agreements and financial understandings that are open to judicial scrutiny, and cross-border practice indicates that prenuptial agreements can at least play an evidentiary and persuasive role where full enforcement is not granted.⁴⁷

Three conclusions follow. First, clauses dealing with fundamental marital obligations remain highly vulnerable; second, maintenance rights should not be capable of unconditional waiver in advance where the statutes preserve judicial discretion; and third, if Indian law adopts a fairness-based model resting on consent, independent advice and review at the time of enforcement, limited recognition should be extended to financial clauses.⁴⁸

The present legal framework is therefore inadequate only to a degree. Section 23 of the Contract Act and the maintenance provisions of matrimonial legislation allow courts to strike down

⁴⁴ Rinku Baheti, *supra* note 2; Hindu Marriage Act, 1955, § 25 (India); *Section 25, Hindu Marriage Act, 1955 – Permanent Alimony and Maintenance*, *supra* note 10; Special Marriage Act, 1954, § 37 (India).

⁴⁵ Indian Contract Act, 1872, § 23 (India); Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India); Ghosh & Kar, *supra* note 1.

⁴⁶ Tekait Mon Mohini, *supra* note 1; Krishna Aiyar, *supra* note 2; Ghosh & Kar, *supra* note 1.

⁴⁷ Rinku Baheti, *supra* note 2; *Should NRIs Sign a Prenuptial Agreement in India?*, *supra* note 4; Ghosh & Kar, *supra* note 1.

⁴⁸ Indian Contract Act, 1872, § 23 (India); Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India); Ghosh & Kar, *supra* note 1.

oppressive or policy-defeating terms, but the absence of a clear statutory framework for prenuptial agreements creates uncertainty and leaves the area over-reliant on old public-policy cases decided in a very different social context.⁴⁹

The better direction for reform is therefore gradual recognition, neither outright denial nor unrestricted validation. Indian law should permit transparent and equitable financial planning between intending spouses, bar clauses that defeat maintenance or dignity, and preserve the court's final supervisory role, so that individual autonomy and the protective functions of matrimonial law can be reconciled.⁵⁰

X. AUTHOR CONTRIBUTIONS

Subuhi Khan: conceptualisation, resources and writing of the original draft. Dr. (Prof.) Naseem Ahmed: supervision and review.

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⁴⁹ Indian Contract Act, 1872, § 23 (India); *An Exposition of Section 23 of the Indian Contract Act, 1872: Lawful Considerations and Objects*, CASEMINE (May 13, 2025), <https://www.casemine.com/in/column/an-exposition-of-section-23-of-the-indian-contract-act%2C-1872%3A-lawful-considerations-and-objects/view>; Tekait Mon Mohini, *supra* note 1; Krishna Aiyar, *supra* note 2; Ghosh & Kar, *supra* note 1.

⁵⁰ Ghosh & Kar, *supra* note 1; Indian Contract Act, 1872, § 23 (India); Hindu Marriage Act, 1955, § 25 (India); Special Marriage Act, 1954, § 37 (India).