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Prenuptial Agreements in India: Should Indian Law Recognize Private Contract Between Spouses

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ABSTRACT

This article examines whether Indian family law should recognise prenuptial agreements. It analyses their legal status under the Indian Contract Act, 1872, relevant judicial decisions and matrimonial legislation, while considering the approaches adopted in the United States and England and Wales. In India, the enforceability of prenuptial agreements remains uncertain because there is no comprehensive statutory framework governing such agreements, and their validity may depend on contractual principles, applicable personal laws and public policy. Although prenuptial agreements can promote financial transparency, clarify the ownership of premarital assets and reduce uncertainty, unrestricted enforcement may expose a financially weaker spouse to coercion or injustice and may undermine statutory protections, including maintenance rights. The article argues that India should adopt a clear legislative framework that recognises fair and voluntarily executed prenuptial agreements, subject to safeguards such as full financial disclosure and judicial scrutiny. Such a framework should respect individual autonomy while preserving equality, fairness and the protective objectives of family law.

Keywords: *Prenuptial Agreements, Family Law, Indian Contract Act, 1872, Public Policy, Matrimonial Rights, Personal Laws, Comparative Law*

I. INTRODUCTION

Marriage is a culturally and socially recognised union between spouses that carries both legal and social obligations. It creates kinship and is usually formalised through a legal contract, a religious ceremony or both, and its obligations extend to property, financial support and family responsibility. According to the Wex legal encyclopedia of the Legal Information Institute at Cornell Law School, a prenuptial agreement, "also known as antenuptial agreement, premarital agreement, or prenup," is "a contract entered into prior to marriage setting the terms for

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separation." The same entry adds: "In general, provisions that tend to unreasonably encourage divorce or separation are unenforceable on grounds of public policy."[1]

Prenuptial agreements deal with the ownership of property before and after marriage, the distribution of property in the event of divorce, the handling of debts and, where possible, the financial relationship between the spouses. By providing for these matters, prenuptial agreements aim to reduce the financial confusion that arises when a marriage is dissolved.

People today enter marriage with money, debts and employment, and it is increasingly important to consider what will happen to these financial interests. A prenuptial agreement can help future spouses discuss their finances and decide how their property and debts are to be shared and distributed, thus reducing stress if the marriage is dissolved. There are also concerns, among others, about coercion into signing an agreement and about inequality in the distribution of wealth. All these factors make the legality of prenuptial agreements a live question of family law.

II. Legal Position of Prenuptial Agreements in India

The legal status of prenuptial agreements in India is not well settled, as no comprehensive law governs their validity and consequences across the nation. In jurisdictions with legislation dealing explicitly with premarital agreements, enforceability is determined by the enacted law. In India, it depends on the personal law, marriage law, contract law and legal precedent applicable to the parties.

A. Indian Contract Act, 1872

The Indian Contract Act, 1872 supplies the general test for whether a prenuptial agreement is valid as a contract. Section 10 provides that agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void.[2] Section 23 then makes an agreement void if its consideration or object is forbidden by law, would defeat the provisions of any law, is fraudulent, involves or implies injury to the person or property of another, or is regarded by the court as immoral or opposed to public policy.[3]

[1] *Prenuptial Agreement*, Wex, Legal Information Institute, Cornell Law School, https://www.law.cornell.edu/wex/prenuptial_agreement (last visited Nov. 4, 2026).
[2] The Indian Contract Act, No. 9 of 1872, India Code (1872), § 10.
[3] *Id.* § 23.

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These rules mean that two people may sign a document even though its contents have no legal significance. A prenuptial agreement might state what each person expects about money, but that does not mean that the law will enforce it.

The court will need to decide whether the requirements of a contract exist and whether the terms are consistent with marriage.

An agreement that refers to property a spouse owned before marriage, however, raises a different issue from whether that spouse can seek maintenance, whatever the circumstances. A clause dealing with a specific estate may be different from one that seeks to frustrate matrimonial law or to force a separation.

Farooq Ahmad Mir argues that prenuptial agreements can be recognised under the general principles of Indian contract law: they do not differ from general contracts, no provision of law declares them unenforceable, and each agreement has to be tested on the principles of validity in the Indian Contract Act and the enactments governing personal law.[4]

Nevertheless, any case for such recognition must also take account of the decisions of the courts that certain contracts are against public policy.

B. Judicial decisions and public policy

Indian courts have traditionally had reservations about agreements concerning marital duties or separation. Two commonly cited cases are *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*[5] and *Krishna Aiyar v. Balammal*.[6] While these cases are significant, their facts differ from those of an agreement that deals only with financial arrangements or premarital assets.

In *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*, the marriage itself was made in accordance with an agreement under which the husband was to stay on in the home of his wife's parents and could not take her away to another place.[7] The Calcutta High Court was not prepared to hold such an agreement binding, as it was contrary to public policy and to the rights and responsibilities of husband and wife under the Hindu law that governed the parties.[8] The case shows that courts have traditionally been unwilling to recognise private arrangements that modify the incidents the law attaches to marriage.

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[4] Farooq Ahmad Mir, *Legal Validity of Pre-nuptial Agreements in India: An Analysis*, 1 CENTRAL UNIVERSITY OF KASHMIR LAW REVIEW 22, 57, 59 (2021), https://doi.org/10.66498/CUKLR.1.2021.22-59.
[5] *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*, (1901) I.L.R. 28 Cal. 751 (India).
[6] *Krishna Aiyar v. Balammal*, (1911) I.L.R. 34 Mad. 398 (India).
[7] *Tekait Mon Mohini Jemadai*, *supra* note 5.
[8] *Id.* at 763 (duty to reside as a rule of Hindu law).

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Krishna Aiyar v. Balammal concerned a post-marriage agreement, not a prenuptial one, and the agreement provided for the possibility of future separation. A suit for restitution of conjugal rights was compromised on terms that the parties would live together, with a payment to be made if the wife later chose to live separately.[9] When the husband later sued for restitution, the Madras High Court observed that, on its strict terms, the agreement did not apply because the wife had never rejoined him. Resting its decision on a broader ground, the court doubted whether Hindu law permitted any agreement between husband and wife to live apart, said that such an agreement might well be deemed forbidden by that law and that this one fell within no exception, and held that, even apart from Hindu law, the agreement was opposed to public policy and therefore not enforceable.[10]

These cases remain important because they show the potential hazards of assuming that private contractual arrangements between prospective spouses should be treated in exactly the same way as a commercial transaction. Marriage is a legal relationship that legislation and, where relevant, personal law may regulate. Contractual arrangements that erode core marital rights or frustrate the operation of the law may be distinguished from agreements confirming existing property ownership.

However, these cases should not be taken as establishing that every conceivable prenuptial agreement is unenforceable. They concerned agreements that either restricted rights arising from marriage or provided for the future separation of the spouses. They do not directly dictate the effect of agreements relating to the ownership of property, contracts to disclose financial accounts or other lawful financial arrangements. In *Sm. Sandhya Chatterjee v. Salil Chandra Chatterjee*, the Calcutta High Court itself later read *Tekait Mon Mohini Jemadai* as confined to a pre-nuptial agreement and as an authority against agreements for future separation, not against agreements for present separation, and it enforced a maintenance agreement made by spouses during their marriage for present separation.[11] There is no statutory scheme on the subject.

The core problem is therefore not merely whether to endorse or denounce such agreements. It is whether Indian law can distinguish arrangements that are part of sound financial planning from those that frustrate statutory duties, breach protected rights or result in significant injustice.

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[9] *Krishna Aiyar*, *supra* note 6.
[10] *Id.* at 401.
[11] *Sm. Sandhya Chatterjee v. Salil Chandra Chatterjee*, AIR 1980 Cal 244 (India), https://indiankanoon.org/doc/486982/, ¶¶ 9, 12, 24, 26.

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III. Interaction with matrimonial laws and statutory rights

The issue becomes more complex when prenuptial agreements interact with matrimonial rights. Under Section 25 of the Hindu Marriage Act, 1955, a court can award alimony and maintenance in appropriate situations.[12] Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 provides for maintenance in specified situations.[13] The Protection of Women from Domestic Violence Act, 2005 offers remedies that may include residence-related relief, subject to the statutory conditions.[14]

These laws show that the financial arrangements of a couple are not regulated solely by contract. A prenuptial agreement does not preclude the availability of a remedy or prevent a court from exercising its statutory powers.[15]

The enforceability of a clause has to be determined according to the appropriate statute and the relevant legal principles.

For example, a clause stating that both spouses will never seek maintenance might seem to provide financial security on the wedding day. Over time, however, the lives of the parties can change dramatically. One might give up work to have children, lose a job and become financially dependent, or experience a significant change in earnings. What might seem reasonable before marriage can later cause real hardship.

This does not mean that all agreements about maintenance should be dismissed out of hand. It illustrates the importance of differentiating between financial terms to which the courts might rightly have regard and clauses that seek to exclude mandatory safeguards without regard to the circumstances. A statutory mechanism should allow these matters to be taken into account without removing the powers of the courts or statutory protections.

IV. Personal laws and the position of Goa

India's family-law structure comprises a variety of matrimonial statutes as well as personal-law codes. Depending on the law that applies to the parties, no single conclusion can therefore be drawn. The approach of the law to marriage, maintenance and property differs.

Goa is a helpful analogy, because the Portuguese Civil Code, 1867, which continues to apply there, treats matrimonial property differently from the general law. In *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, a succession appeal, the Supreme Court considered the

[12] The Hindu Marriage Act, No. 25 of 1955, India Code (1955), § 25.
[13] The Bharatiya Nagarik Suraksha Sanhita, No. 46 of 2023, India Code (2023), § 144.
[14] The Protection of Women from Domestic Violence Act, No. 43 of 2005, India Code (2005), § 19.
[15] Mir, *supra* note 4, at 57 & n.135 (a prenuptial agreement "cannot be in derogation of law").

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application of this civil-law system.[16] The Court observed that a married couple in Goa jointly holds the assets owned before or acquired after marriage, and that the law permits pre-nuptial agreements providing for a different system of division of assets.[17] The decision helps explain that system, but it does not rule on whether prenuptial agreements can be enforced.

This single case cannot be used to describe the whole of India. The fact that one state has such a system does not mean that all of India follows the same rules. It shows instead that matrimonial property arrangements can differ with the applicable legal regime, and it supports the argument for clearer laws.

There is therefore no consistent set of Indian legal rules governing prenuptial agreements.

V. Comparative Position: The United States and England and Wales

The United States is a jurisdiction in which prenuptial agreements are permitted through state laws and court decisions, and the rules differ from state to state. The Uniform Law Commission promulgated the Uniform Premarital Agreement Act in 1983[18] and later the Uniform Premarital and Marital Agreements Act in 2012.[19] These are models that individual states may adopt. They offer a framework for examining matters such as whether an agreement was entered into voluntarily, whether financial disclosure was made and whether the agreement may be enforced.[20] The American experience shows that people may make such agreements, subject to rules designed to prevent unfairness.

England and Wales offer another example. In *Radmacher (formerly Granatino) v. Granatino*, the majority of the Supreme Court of the United Kingdom advanced this proposition: "The court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement."[21] The decision did not hold that every agreement must be upheld. It treated such agreements as important, while leaving courts to examine whether they are fair.

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[16] *Jose Paulo Coutinho v. Maria Luiza Valentina Pereira*, Civil Appeal No. 7378 of 2010 (S.C.) (Sept. 13, 2019), ¶¶ 1, 18, 34 (India), *reported at* 2019 SCC OnLine SC 1190, (2019) 12 SCALE 338.

[17] *Id.* ¶ 21 (noting that portions of the Code were replaced by the Goa Succession, Special Notaries and Inventory Proceedings Act, 2012).

[18] Unif. Premarital Agreement Act (Unif. L. Comm'n 1983), https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=02d20192-80cd-7b52-4c5d-78ef6d3d8c9f&forceDialog=1.

[19] Unif. Premarital & Marital Agreements Act (Unif. L. Comm'n 2012), https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=f5d36125-9433-c7d8-28ec-6244f4a316e6&forceDialog=0.

[20] Unif. Premarital Agreement Act, *supra* note 18, § 6; Unif. Premarital & Marital Agreements Act, *supra* note 19, § 9.

[21] *Radmacher (formerly Granatino) v. Granatino*, [2010] UKSC 42, ¶ 75 (appeal taken from Eng.).

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The importance of *Radmacher* lies in its emphasis on respecting the autonomy of the parties without turning every agreement into a binding contract.[22] Where and how the agreement was entered into, the knowledge of the party and the fairness of enforcing it all remain relevant.[23]

These approaches can assist India. A statute could provide that agreements entered into voluntarily and with financial disclosure are valid, while allowing courts to examine whether an agreement was made under pressure or would be seriously unfair. India need not copy the rules of another jurisdiction. It can frame rules that fit its own marriage laws, personal laws and principles of fairness.

VI. Arguments for and against legal recognition

Whether Indian family law ought to acknowledge prenuptial agreements is a balancing act between freedom of contract and the humanitarian function of family law. While prenuptial agreements may promote financial transparency, there is a risk that enforcing them unduly could put one spouse at an extreme disadvantage vis-à-vis the other. A prudent legal approach will take both their benefits and their drawbacks into account.

A. Arguments in favour of recognition

First, adults may lawfully wish to take informed control of their property and personal financial positions. Premarital contracts and records of pre-existing debt could serve a proper purpose, since parties may wish to agree in advance about an asset that one of them may later seek to dispose of. To refuse to acknowledge all pre- and post-nuptial arrangements would deprive spouses of the means to manage their financial affairs where an agreement was freely entered into and is not inconsistent with the statutory legal order. Recognition would not make marriage an ordinary commercial transaction.

Second, a prenuptial agreement can lead prospective spouses to reveal their assets, liabilities, income and financial obligations before marriage. It can facilitate an *ex ante* comparison and identify issues likely to cause dissension later on. For instance, a person who owns a company before the wedding might want that ownership to be clarified, and the other spouse might want existing loans or other financial obligations to be clarified. An agreement between them might record their position before the marriage and so deter disputes over particular assets, although it should not be assumed to do away with disputes entirely.

Third, such agreements can protect both men and women. Prenuptial agreements should not necessarily be considered an exclusive means of protecting the interests of wealthy husbands.

[22] *Id.* ¶¶ 74, 78.
[23] *Id.* ¶¶ 68, 71–72, 75.

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They may, depending on their terms, protect either party. A woman who owned property or businesses before the union may seek such protection for her pre-existing interests, and a man who has accumulated assets or has pre-existing financial liabilities may do the same. It can be argued that a spouse with fewer resources can also benefit from an express financial commitment, as long as it is fair and consistent with the law.

Fourth, some financial conflicts may be avoided. Matrimonial disputes often arise over how property is to be divided, who owes what to whom and how much one person is entitled to receive from another. An agreement negotiated and executed with full transparency and independently understood may serve to defuse potential disputes and enable them to be settled more easily, although it cannot be said with certainty that no case will proceed to litigation.

Finally, legislation could enhance certainty. Currently the treatment of such contracts is unpredictable, and couples contemplating marriage may be uncertain whether any of their terms will be legally valid. Legislation could clarify the topics that can validly be included, define the formalities and set out what defeats validity. Such clarification would help spouses, lawyers and judges.

B. Arguments against unrestricted recognition

First, there is the lack of bargaining power. The most critical factor is that the parties might not be in a position to bargain on equal terms. The financially stronger spouse or that spouse's family may pressure the other party into signing a poorly drafted contract, and time constraints, social pressures, emotional attachment and wedding commitments can all prevent the parties from freely reaching a deal. The mere signing of an agreement should not be sufficient to prove consensus.

Second, there is the potential for financial injustice. An arrangement that seems fair when it is executed might become unfair after many years of marriage, for example if one party has given up work for a number of years to look after children, to enable the other to focus on a career or to run the house. If the marriage breaks down, that party may be significantly less well off, with less future earning potential. Rigidly binding that party to the original agreement would be harsh.

Third, there is the potential renunciation of statutory rights. Prenuptial agreements may include provisions that seek to exclude the right to maintenance, remedies for domestic violence or other legal protections. To permit parties to contract out of statutorily mandated rights would be to ignore the purpose of legislation, which is to protect persons in disadvantaged situations.

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Recognition should therefore be limited by the relevant legislation, and such rights should not be displaced by an agreement signed before marriage.

Fourth, individuals cannot be sure about the future, including the future of children. Prospective spouses cannot foresee everything that can happen in a marriage: illness, accident or death, changes in income, caregiving needs or any other factor that may affect the needs of a couple. Above all, no one can predetermine the interests of children yet to be born. The interests of children should not be definitively settled by an agreement made before their birth.

Fifth, there is a real concern that contractual negotiations over marriage may commercialise it, making it a monetary arrangement and undermining the social concept that marriage entails mutual commitments. This concern should not be ignored, especially in a society where marriage may place heavy demands on extended families and culture. But financial planning does not necessarily undermine the personal or social importance of marriage. The more pertinent question is whether an agreement is confined to financial matters and leaves the commitments of marriage intact.

The objections to recognition thus provide compelling reasons to regulate prenuptial agreements, but they do not require the law to deny effect to all agreements. The concerns about duress and unconscionability can be mitigated by formalities, financial disclosure and judicial review. Such an approach would allow lawful financial planning and protect vulnerable parties, without allowing agreements to be used as tools of economic domination.

VII. Conclusion

Indian family law should recognise prenuptial agreements through a clear law with defined rules, rather than treating them as either always valid or always invalid. The current position, based on contract law, personal law and past court decisions, does not provide the full and clear framework that couples need. At the same time, unrestricted recognition could put less wealthy people at a great disadvantage and undermine statutory protections.

The examples of the United States and of England and Wales show that recognition can work when there are rules on financial disclosure and courts review fairness.

India could use a similar method, adapted to its own legal and social conditions.

Properly regulated, prenuptial agreements can bring financial clarity and protect both spouses, without allowing private agreements to override statutory rules.

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The answer to whether Indian family law should recognise prenuptial agreements is therefore yes, but only under a law that balances the ability to make choices with fairness, equality and the goals of family law.

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