
PRE-NUPTIAL AGREEMENTS IN INDIA: EXAMINING THE LEGAL STATUS OF MARRIAGE CONTRACTS

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Table of Abbreviations

Abbreviations	Full Form
§	Section
ADR	Alternative Dispute Resolution
BGB	Bürgerliches Gesetzbuch (German Civil Code)
UPAA	Uniform Premarital Agreement Act
SCC	Supreme Court Cases
AIR	All India Reporter
SC	Supreme Court
UK	United Kingdom
US	United States
L.J.	Law Journal
Int'l	International
Rev.	Review
Anr.	Another
V.	Versus

Index of Authorities

SR. NO.	BOOKS
1.	Dário Moura Vicente, <i>The Scope and Structure of Civil Codes</i> 319 (Springer, 2013).
2.	Duleep C. Deosthale, Charles B. Hennon, <i>Families in a Global Context</i> (Routledge 2008).
3.	Gavin W. Jones, Kamalini Ramdas, <i>(Un)tying the Knot: Ideal and Reality in Asian Marriage</i> , (Singapore: Asia Research Institute, 2004).
4.	Kailas Nath Katju, <i>Codification of Hindu Law</i> , 42 ALLAHABAD L.J. 87 (1944).
5.	Lettmaier Saskia, Schulz Moritz-Philipp, <i>Family and Succession Law in Germany</i> 216 (Kluwer Law International 2022).
6.	Neelam Tyagi, <i>Women, Matrimonial Litigation and Alternative Dispute Resolution (ADR)</i> 21, (Springer, 2021).
7.	Sharon Thompson, <i>Research Handbook on Marriage, Cohabitation and the Law</i> 418 (ElgarOnline 2024).
8.	Vatuk, Sylvia, <i>A Rallying Cry for Muslim Personal Law: The Shah Bano Case and Its Aftermath, Islam in South Asia in Practice</i> 352, (Princeton University Press, 2010).

SR. NO.	CASES
1.	Abdul Kadir v. Salima (1886)
2.	Krishna Aiyar v. Balammal (1911)
3.	Mohd. Ahmed Khan v. Shah Bano Begum (Shah Bano Case, 1985)
4.	Navtej Singh Johar v. Union of India (2018)
5.	Radmacher v. Granatino (2010, UK)

6.	Rajesh R. Nair v. Meera Babu (2013)
7.	Shayara Bano v. Union of India (2016)
8.	Tekait Mon Mohini Jemadai v. Basanta Kumar Singh (1901)

INTRODUCTION

Background & Context

Historically, in Indian society, marriage has been an important part of a religious practice¹, cultural² and legal traditions³. Marriage in India⁴ is very rarely considered as a mere social contract between two people but it is viewed as a sacred bond⁵ that extends to families of both the parties. Over time, the legal developments⁶ and changes in society have influenced the nature of marriage and marital relationships. With recent changes, debate and discussion regarding the legal framework⁷ that deals with marriage, its sanctity, and its contractual nature have gained prominence⁸.

In India, marriage is mostly recognized in law according to personal laws⁹ based largely on religious customs¹⁰. Marriage among various communities in India is governed by four Acts: the Hindu Marriage Act, 1955¹¹; the Muslim Personal Law (Shariat) Application Act, 1937¹²;

¹ Booth, Alan, David R. Johnson, Ann Branaman, and Alan Sica, Belief and Behavior: Does Religion Matter in Today's Marriage?, 3 Journal of Marriage and Family 661, 661–671 (1995).

² Randolph R. Calvo, *The Impact of Culture in Marriage Cases*, 55 CANON L. SOC'Y AM. PROC. 108 (1993).

³ Maggie Gallagher, What is Marriage For - The Public Purposes of Marriage Law, 62 LA. L. REV. 773 (Spring 2002).

⁴ Minakshi Vishwakarma, Chander Shekhar, Akhilesh Yadav, Variations in Marriage Squeeze by Region, Religion, and Caste in India, 50 Journal of Comparative Family Studies 47.

⁵ Naheed Mustafa, Significance and importance of marriage under family laws in India: A critical study, 6 International Journal of Multidisciplinary Education and Research 20-27 (2021).

⁶ Shyam Prakash Pandey, Changing Dimensions of Institutions of Marriage in India: A Socio-Legal Evaluation, 4 INT'L J.L. MGMT. & HUMAN. 58 (2021).

⁷ Mohana Rao Pedada, Concept of Marriage, Matrimonial Causes in Conflict of Laws - Issues and Challenges, 2 INDIAN J.L. & LEGAL RSCH. 1 (June-July 2021).

⁸ Vaibhav Gwalani, Prenuptial Agreements: Their Legality and Scope in India, 2 INDIAN J.L. & LEGAL RSCH. 1 (2021).

⁹ Robertson, Frederick, The Relations between the English Law and the Personal Law of Indians in England with Special Reference to the Marriage Law, 18 Journal of Comparative Legislation and International Law 242, 242–59, (1918).

¹⁰ Joan L. Erdman, Marriage in India: Law and Custom, 5 UPDATE ON L. RELATED EDUC. 22 (1981).

¹¹ Ritwick Singh, Hindu Marriage Act, 1955: A Critical Analysis, along with a Peek into Its History, 2 INDIAN J.L. & LEGAL RSCH. 1 (2021).

¹² Ahmad, Sk Ehtesham Uddin, MUSLIM PERSONAL LAW IN PRACTICE: COURT JUDGEMENTS ON CIVIL DISPUTES 1875-1900, 70 Proceedings of the Indian History Congress 657, 657–666, (2025).

the Indian Christian Marriage Act, 1872¹³; and the Special Marriage Act, 1954¹⁴. While Hindu and Christian laws have traditionally regarded marriage as a sacrament¹⁵, Islamic law has always recognized marriage as a contract¹⁶, with distinct rights and obligations. Current discourse on marriage within India today is the product of continuing legal reform and changing attitudes toward marriage, in which traditional notions collide with modern realities.

Evolution of Marriage as a Legal and Social Institution in India

Marriage in India has undergone tremendous changes¹⁷, both legally and socially. Traditionally, Hindu laws had regarded marriage as an indissoluble union¹⁸ for the requirements of religion and society. In contrast, Islamic marriage has always had the character of a contract with its provisions of prenups¹⁹ (similar provision) and divorce²⁰ under certain situations. Legislative changes over time-including the codification of Hindu law²¹ and judicial interpretation in several cases-have led to a gradual recognition of their contractual elements vis-a-vis marriage in various religions²².

Shayara Bano v. Union of India²³ and subsequent cases involving Navtej Singh Johar v. Union of India²⁴ (2018) show increasing incidence of judicial intervention for changing marriage laws in response to modern times. The Special Marriage Act, 1954 allows interfaith marriages²⁵ and

¹³ Thou Ngaoni, INTERRELIGIOUS MARRIAGES: TRANSCENDING THE LIMITS OF THE INDIAN CHRISTIAN MARRIAGE ACT, 1872 3, Religious dialogue and cooperation 81, 81-99, (2016).

¹⁴ Harshal Shah, Breaking Barriers, Building Bridges - Special Marriage Act, 1954, 16 SUPREMO AMICUS 103 (2020).

¹⁵ Agius, Emmanuel, Marriage as sacrament : baptism or the practice of faith of the spouses?, 71 Melita Theologica, 1-18 (2021).

¹⁶ Shahnaz, Transition of Marriage from Sacrament to Contract: Comparative and Critical Reflections on Women's Rights in Hindu and Muslim Laws, 17 J. INT'L L. ISLAMIC L. 228 (2021).

¹⁷ Duleep C. Deosthale, Charles B. Hennon, Families in a Global Context (Routledge 2008).

¹⁸ Narendra Subramanian; Making Family and Nation: Hindu Marriage Law in Early Postcolonial India, 69 Journal of Asian Studies 771, 771-798 (2010).

¹⁹ Jasleen Kaur, Implications and Legal Validity of Prenuptial Agreements in India, 4 JUS CORPUS L.J. 242, 120-127 (2023).

²⁰ Ahmad, Furqan, UNDERSTANDING THE ISLAMIC LAW OF DIVORCE, 45 Journal of the Indian Law Institute, 484-508 (2025).

²¹ Kailas Nath Katju, Codification of Hindu Law, 42 ALLAHABAD L.J. 87 (1944).

²² Vaibhav Uniyal, Hindu Marriage in India: Social Sacrament and Legal Contract, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022).

²³ Herklotz, Tanja, Shayara Bano versus Union of India and Others. The Indian Supreme Court's Ban of Triple Talaq and the Debate around Muslim Personal Law and Gender Justice, 50 Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America, 300-311(2025).

²⁴ Manisha Kumari Gupta, Navtej Singh Johar & Ors. v. Union of India: Interpreting Section 377 of IPC 1860, 4 INT'L J.L. MGMT. & HUMAN. 205 (2021).

²⁵ Nabilah Rahman & Rishav Raj, The Significance of Special Marriage Act, 1954: An Insightful Analysis of the Challenges of Implementation, 4 INT'L J.L. MGMT. & HUMAN. 169 (2021).

thus begins a movement toward a more secular, contractual understanding of marriage; accelerated by economic liberalization²⁶, globalization²⁷, and urbanization²⁸, all of which have affected individual choice and societal expectations concerning marriage.

Marriage: Sacrament v. Contract

In India, an age-old controversy pertains to whether marriage should be an institution having its basis on sacrament pathways or contractual endowments. The ancient and traditional Hindu view²⁹, which regards marriage as a sacred, lifelong bond, already comes into conflict with the present evolving perspective, which seems to emphasize the legal and contractual aspects of marriage³⁰. The inherent contention, therefore, creeps into the debates regarding prenuptial agreements, divorce, and financial settlements.

In Hindu law, historically, marriage was held as sacrament and divorce was a taboo³¹ therein. Legal changes have brought the scope for dissolution into the institution much in line with contractual principles. Recognition of marriage as contract under Muslim law entitles the parties to enter into agreements prior to the marriage which highlights the difference in perception between religious systems on matrimonial rights and obligations. Recognition and acceptance of the idea of prenuptial agreements³² and their application in regard to defining the interests of spouses is a clear indication toward a shift in Indian society towards recognizing marriage as contractual relations.

Increasing Financial Independence and Marital Disputes³³ in Modern India

In the fast-changing contemporary Indian society, one of the most significant transformations has been in the area of women's economic independence. With this greater focus on educating

²⁶ Sidhant Jain, Bhawna Chuphal, Mallikarjun Shakarad, The Effect of Financial Independence of Indian Women on Their Marriage Decisions, 22 Social Evolution & History, 123-142 (2023).

²⁷ Kanth, B., Krishnan, A. and Sen, D., Premarital Romance, Dating, and Arranged Marriages in India: The Intersection of Tradition and Globalization, 26 Emerald Publishing Limited, 149-178 (2024).

²⁸ Damodaran M.P., Reddy P. Govinda, Urbanisation of Social Institutions in Indian Context, 7 The Asian Man, 37-44 (2013).

²⁹ Meghal Panchori, Marriage: An Institution under Hindu Law and Its Changing Notions in India, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023).

³⁰ Mamit Kumar, Hindu Marriage no More Left Sacramental & Ceremonial, It's totally Became Contractual, 3 International Journal of Research in Humanities & Social Sciences, 5-9 (2015).

³¹ Shivani Srivastava, Divorce under the Hindu Marriage Act, 1955, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023).

³² Rushabh Gurav, Prenuptial Agreements in India: An Analysis, 30 SUPREMO AMICUS [488] (2022).

³³ Annapurna Pattnaik & Narayan Charan Pattnaik, Marital Dispute as a Problem in India, 6 INT'L J.L. MGMT. & HUMAN. 568 (2023).

and pursuing careers to develop skills, their roles have also changed in households and marriages. Self-earned income has motivated many women to either find aspirations that go against traditional gender expectations or demand equality in marital relationships.

Apart from the above changing psychology, financially independent women are also more willing to leave spiteful and exploitative marriages attributing to increasing divorce rates among Indian women³⁴. While divorce still does not find favour under the noses of various sections of society, legal remedies and changing attitudes have made separations in some situations more acceptable. Moreover, the emerging alternative dispute resolution³⁵ methods such as Mahila Panchayats³⁶ and mediation centres³⁷ enable women to seek justice outside the ambit of conventional judicial proceedings.

Modernization has percolated even to the expectations within the marriage. The greater importance women give to compatibility and rights in respect of responsibilities, the increasing importance prenuptial agreements assume in India³⁸, having had hardly any importance in the past. This still does not make them legally recognized within Indian law, but attitudinal changes such as these could very well make them part of the new marriage understanding: a partnership with precisely defined legal and financial liabilities.

The institution of marriage in India is at a crossroads where sacramental views coexist with the emerging interpretations of law and contract. Financial independence³⁹ seen now coexists, gender role changes, and legal reforms to have made significant changes to the institution of marriage. Societal evolution needs to identify the future of those changes with respect to a changing legal framework on marriage, which will also have to be reshaped according to contemporary needs but with the respect of culture and religion.

³⁴ Dommaraju, Premchand, Divorce and Separation in India, 42 Population and Development Review, 195–223 (2016).

³⁵ J. O. Abusomwan, *Prospects and Challenges of Resolving Marriage Disputes through Alternative Dispute Resolution Mechanisms*, 5 IRLJ 146 (January 2023).

³⁶ Sylvia Vatuk, The “women’s court” in India: an alternative dispute resolution body for women in distress, 45 The Journal of Legal Pluralism and Unofficial Law, 76–103 (2013).

³⁷ Lovely Singh & Anku Anand, Mediation: In Divorce & Other Family Matters, 1 INT’L J.L. MGMT. & HUMAN. 90 (2018).

³⁸ Akanksha Ghatol, Priyanka Unde, Tana Anmol, THE EMERGING IMPORTANCE OF PRENUPTIAL AGREEMENT IN INDIAN SOCIETY, 54 ANVESAK, 22-31 (2024).

³⁹ Gavin W. Jones, Kamalini Ramdas, (Un)tying the Knot: Ideal and Reality in Asian Marriage, (Singapore: Asia Research Institute, 2004).

Theoretical Framework: Marriage Contracts & Pre-Nuptial Agreements

Conceptual Understanding

Pre-nuptial agreements⁴⁰ and marriage contracts are legal instruments that define the rights and responsibilities/duties of spouses before or during marriage⁴¹. If we consider the marriage contract as a broad category, it would include agreements made by the spouses considering property rights, financial responsibilities, and personal obligations. A pre-nuptial agreement is a contract that is generally referred to as a prenup, entered into before marriage; it is usually about terms of division should the asset⁴² of the other party become involved during spousal maintenance and the other relevant aspects regarding a separation or divorce.

Although prenuptial agreements are duly recognized within the jurisdictions of the United States⁴³, Canada⁴⁴, and Australia⁴⁵, they have a different legal status in India regarding prenups. The enforceability of such agreements in India is primarily determined by general contract law principles rather than explicit statutory recognition. Courts worldwide often scrutinize these agreements to prevent coercion, fraud, or significant inequality in bargaining power, ensuring fairness and voluntariness in their execution.

Most of the clauses defined in a pre-nuptial agreement will, however, concern financial, custodial, and personal obligations between both spouses. The financial clauses chiefly deal with issues like the division of assets, that is, ownership of property, spousal maintenance, and also financial responsibilities during and after marriage⁴⁶. The custodial clauses would include arrangements for the custody of children, visitation rights, and child support, but such clauses are always subject to the jurisdiction for scrutiny in order to determine whether they serve the best interest of the child⁴⁷.

⁴⁰ Matisa Majumder, Prenuptial Agreement: Enforcing Marriage in the eyes of Law, 3 International Journal of Law and Legal Jurisprudence Studies, 467-475 (2015).

⁴¹ Doris Bonora, *Prenups: A Plan for Failure or Simply Smart Planning*, 34 LAWNOW 35 (2010).

⁴² Peter T. Leeson, Joshua Pierson, *Prenups*, 45 The Journal of Legal Studies Volume, 45 (2016).

⁴³ Anita Mackay, *Who Gets a Better Deal? Women and Prenuptial Agreements in Australia and the USA*, 7 U.W. SYDNEY L. REV. 109 (2003).

⁴⁴ Sheetala Hegde, *A Study on Prenuptial Agreements as Contracts in India and USA*, 3 LEGAL LOCK J. 15 (2023).

⁴⁵ Neha Bhuraney, *Status and Scope of Prenuptial Agreements in India with Special Reference to Personal Laws in Australia*, 4 INT'L J.L. MGMT. & HUMAN. 734 (2021).

⁴⁶ Sam Margulies, *The Psychology of Prenuptial Agreements*, 31 J. PSYCHIATRY & L. 415 (2003).

⁴⁷ Sahid Ahamed & Aliza Zaidi, *Prenuptial Agreements: Status & Validity*, 3 JUS CORPUS L.J. 738 (2022).

Personal obligation clauses would thus relate to non-financial aspects of marriage such as household duties, the religious upbringing of children, and conditions related to marital conduct. Courts in many countries attached to India hardly endorse enforcement of personal clauses that transgress fundamental rights or public policy; this is because they consider marriage to be something beyond a mere contractual arrangement.

Global Perspectives & Theories

In many respects, the differing treatments of marriage contracts are indicative of the basic legal traditions of common law and civil law systems present in different jurisdictions. Since the early history of courts in the United Kingdom, United States, and Canada, common law countries have upheld pre-nuptial agreements with some scepticism, even diminishing the true capacity of the courts to protect this sacred institution. In the UK, the case of *Radmacher v. Granatino*⁴⁸ (2010) has opened the door for the acceptance of prenuptial agreements.

Similarly, the Uniform Premarital Agreement Act⁴⁹ (UPAA) in the US has lent support to the cause. Acceptance by these courts comes with the requirement that marriages are upon a fair set of terms and entered into voluntarily, under circumstances that do not put one party to a significant disadvantage.

On the contrary, civil law countries such as France, Germany and India with reference to the Goa Civil Code⁵⁰ consider marriage to be a contract in most instances and, hence, recognize pre-nuptial agreements far more readily. The Portuguese Civil Code, guiding marriage laws in Goa, permits any marriage to incorporate property agreements before matrimony, thus creating a legal point of reference in modeling contractual obligations around property rights in marriage. While other parts of India, where personal laws delineate marriage rights and obligations, present a legal landscape in Goa closer to European civil law traditions, which allows legal sanction for prenuptial agreements.

Theoretically, pre-nuptial agreements and marriage contracts can be analyzed through contractarian and traditionalist perspectives. According to the contractarian view, marriage is

⁴⁸ Jens M. Scherpe, *Fairness, Freedom and Foreign Elements - Marital Agreements in England and Wales after Radmacher v Granatino*, 23 CHILD & FAM. L. Q. 513 (2011).

⁴⁹ Amberlynn Curry, *The Uniform Premarital Agreement Act and Its Variations throughout the States*, 23 J. AM. ACAD. MATRIMONIAL LAW. 355 (2010).

⁵⁰ Advait Shah, *Goa Civil Code: An Evident Hoax to Uniformity and Gender Equity in Goa*, 3 INDIAN J.L. & LEGAL RSCH. 1 (2021).

a private contract between two consenting adults, and spouses ought to be entitled to define their entitlements and obligations themselves⁵¹, i.e. the placement of spouses' rights and obligations into a contract. This view is vociferously upheld by proponents, who argue that individuals ought to be allowed to create their own marital organizations, not the state or religious establishments.

The traditionalist view posits that the institution of marriage extends beyond the private contract existing between spouses, being social and religious. This perspective argues that enforcement of prenuptial agreements would diminish the stability of marriage by promoting the view that marriage is rather a temporary arrangement, or simply a commercial transaction, instead of a commitment for a lifetime.

Additionally, the economic aspect also greatly influences the situation concerning the law and the ideology concerning prenuptial agreements⁵². Autonomy theory states that it is in the best interest of spouses to determine their contract for marriage-a privilege denied to both courts and state intervention⁵³. This line-of-thought demonstrates a burgeoning recognition of individual choice and contractual freedom in personal relationships⁵⁴.

The theory of economic rationality tells us that marriage as an economic partnership essentially means both parties wanting to maximize benefits from their union. In this sense, prenuptial agreements become risk management, reducing uncertainty and transaction costs in disentanglement. In contradiction, the opposing view claims that agreements may work against the wealthy spouse to achieve more contracts, thus damaging power balances between the spouses and leaving the financially weaker party at even a higher set of consequences upon separation.

To some extent, the above theoretical outlook on marriage contracts and pre-nuptial agreements encompasses legal traditions, economic considerations, and changing societal norms. The type of recognition that some jurisdictions have given to marriage as a contract stands in contrast

⁵¹ M. Neil Browne & Katherine S. Fister, *The Intriguing Potential of Postnuptial Contract Modifications*, 23 HASTINGS WOMEN'S L.J. 187 (2012).

⁵² Antony W Dnes, *Applications of economic analysis to marital law: concerning a proposal to reform the discretionary approach to the division of marital assets in England and Wales*, 19 International Review of Law and Economics, 533-552 (1999).

⁵³ Thompson, Sharon, *Pre-nuptial agreements – A good route to autonomy?*, 2 Financial Remedies Journal 2024 (2), 163-167 (2024).

⁵⁴ Faun M. Phillipson, *Fairness of Contract vs. Freedom of Contract: The Problematic Nature of Contractual Obligation in Premarital Agreements*, 5 CARDOZO WOMEN'S L.J. 79 (1998).

with those that accord primary importance to its social and moral characteristics-the duality of perspectives has intensified tension between autonomy and protection, even as this tension continues to inform legal discourse, notably in regard to India, where marriage is deeply woven into religious and cultural notions.

As much as economic independence and individual choice are becoming focal in modern marital relations, increasing demand for clarity in legal exposition of prenup agreements will not decrease until intervened further by rulings and acts.

Legal Status of Pre-Nuptial Agreements in India

A pre-nuptial agreement is a legal agreement established by two people prior to marriage that details the specifics of how the couple will manage and distribute their financial and property rights during and after the marriage. While prenuptial agreements are mostly common in many Western countries; their legality in India is disputed as it is widely believed in the country that marriage is a sacrament rather than a legal transaction or a contract⁵⁵. Therefore, the Indian judicial system has historically been hesitant to accept pre-nuptial agreements. Nevertheless, the growing financial autonomy of spouses and changing social mores have sparked debates over whether India should create a legal framework to accept such contracts, striking a balance between the preservation of marriage duties and contractual freedom.

Hindu Law Perspective: Sacramental View and Judicial Precedents

Hindu law perceives marriage as a very sacred and a bond that would last lifetime rather than it being a mere contractual relationship. At present, the Hindu Marriage Act, 1955, does not recognize the concept of pre-nuptial agreements⁵⁶, and courts have consistently ruled against their enforceability. Cases from the past show that judges strongly want to protect the holy nature of marriage, which means that private deals that try to change marital duties are not acceptable.

One of the earliest cases on this issue, *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*⁵⁷ (1901), established that agreements restricting the rights and obligations of spouses in a Hindu

⁵⁵ Rushabh Gurav, *Prenuptial Agreements in India: An Analysis*, 30 SUPREMO AMICUS [488] (2022).

⁵⁶ Bhaavika Pillalamarri, *Validity of Prenuptial Agreements in India*, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023).

⁵⁷ Jasleen Kaur, *Implications and Legal Validity of Prenuptial Agreements in India*, 4 JUS CORPUS L.J. 242, 120-127 (2023).

marriage are void as they contradict the fundamental nature of the marital bond and thus a pre-nup agreement is invalid at its very core⁵⁸. Similarly, in *Krishna Aiyar v. Balammal*⁵⁹ (1911), the Madras High Court held that any pre-marital contract attempting to override personal laws governing marriage and inheritance would not be enforceable. These rulings reflect how the judiciary has strictly adhered to the traditional view of Hindu marriage, making it difficult for couples to rely on contractual arrangements for financial and property matters.

Muslim Law Perspective: Nikahnama as an Enforceable Contract

Unlike Hindu law, Muslim law treats marriage as a civil contract, allowing couples to enter into contractual stipulations before marriage. A Nikahnama⁶⁰ serves as an enforceable agreement⁶¹, permitting spouses to include provisions related to dower (Mehr), maintenance, and conditions for divorce, provided they do not violate Islamic principles. This contractual approach offers greater flexibility in determining the rights and responsibilities of spouses, making Muslim law more receptive to pre-marital agreements. Judicial pronouncements have consistently upheld the contractual nature of Muslim marriage. In *Abdul Kadir v. Salima* (1886), the Allahabad High Court recognized that a Muslim marriage is essentially a contract and that stipulations agreed upon by the parties should be enforceable. Additionally, the landmark *Shah Bano Case*⁶² (1985) (*Mohd. Ahmed Khan v. Shah Bano Begum*) highlighted the importance of contractual rights within marriage, particularly concerning maintenance obligations. Although not directly addressing pre-nuptial agreements, this case reinforced the principle that Muslim marriage contracts can include legally binding provisions. However, despite this contractual flexibility, Indian courts remain cautious about enforcing pre-nuptial agreements that conflict with statutory protections for spouses⁶³.

Special Marriage Act, 1954: Scope for Contractual Provisions

The Special Marriage Act, 1954, provides a secular framework for interfaith marriages⁶⁴,

⁵⁸ Sahid Ahamed & Aliza Zaidi, *Prenuptial Agreements: Status & Validity*, 3 JUS CORPUS L.J. 738 (2022).

⁵⁹ Sahid Ahamed & Aliza Zaidi, *Prenuptial Agreements: Status & Validity*, 3 JUS CORPUS L.J. 738 (2022).

⁶⁰ Amrita Ghosh & Pratyusha Kar, *Prenuptial Agreements in India: An Analysis of Law and Society*, 12 NUJS L. REV. 217 (2019).

⁶¹ Mengia Hong Tschalaer, *Competing Model–Nikahnamas: Muslim Women’s Spaces within the Legal Landscape in Lucknow*, 3 Journal of Law & Social Research, 65-80 (2012).

⁶² Vatuk, Sylvia, *A Rallying Cry for Muslim Personal Law: The Shah Bano Case and Its Aftermath*, Islam in South Asia in Practice 352, (Princeton University Press, 2010).

⁶³ Rushabh Gurav, *Prenuptial Agreements in India: An Analysis*, 30 SUPREMO AMICUS [488] (2022).

⁶⁴ Mohammad Taha Yadi, *The Rise of Secular Legislation in India concerning Marriages & Divorce*, 3 JUS CORPUS L.J. 388 (2022).

treating marriage more as a civil contract than a religious sacrament. This creates a potential avenue for incorporating pre-nuptial agreements, especially concerning financial matters. However, the Act does not explicitly recognize pre-marital contracts⁶⁵, and courts have not definitively ruled on their enforceability within this legal framework⁶⁶.

Although no landmark cases directly address pre-nuptial agreements under the Special Marriage Act, judicial trends suggest that agreements concerning property distribution and maintenance may be considered if they do not contravene statutory protections. Given the evolving nature of matrimonial disputes⁶⁷ and financial independence of spouses, the Special Marriage Act could serve as a foundation for future legal recognition of pre-nuptial agreements, provided legislative amendments or judicial interpretations support their enforceability.

Indian Contract Act, 1872: Public Policy and Enforceability

If prenuptial agreements are viewed as contracts, they must comply with the stipulations of the Indian Contract Act, 1872⁶⁸. Nonetheless, courts have repeatedly ruled that agreements that violate public policy⁶⁹ or personal laws related to marriage are null and void.

The main concerns regarding enforceability include:

Consideration and Free Consent: Pre-nuptial agreements should be made willingly, free from coercion, deceit, or excessive pressure⁷⁰. Courts examine if both parties possessed equal negotiating strength and were thoroughly aware of the agreement's consequences.

Invalid Due to Public Policy: According to Section 23 of the Indian Contract Act, agreements that undermine statutory rights or are against public policy are considered void⁷¹. Because

⁶⁵ Kumar, Vijender, *QUEST FOR PRENUPTIAL AGREEMENT IN INSTITUTION OF MARRIAGE: A SOCIO-LEGAL APPROACH*, 60 *Journal of the Indian Law Institute*, 406–26 (2018).

⁶⁶ Sahid Ahamed & Aliza Zaidi, *Prenuptial Agreements: Status & Validity*, 3 *JUS CORPUS L.J.* 738 (2022).

⁶⁷ Neelam Tyagi, *Women, Matrimonial Litigation and Alternative Dispute Resolution (ADR) 21*, (Springer, 2021).

⁶⁸ Jasleen Kaur, *Implications and Legal Validity of Prenuptial Agreements in India*, 4 *JUS CORPUS L.J.* 242, 120-127 (2023).

⁶⁹ Walter Gellhorn, *Contracts and Public Policy*, 35 *COLUM. L. REV.* 679 (May 1935).

⁷⁰ Allison A. Marston, *Planning for Love: The Politics of Prenuptial Agreements*, 49 *STAN. L. REV.* 887 (April 1997).

⁷¹ Patra, Atul Chandra, *HISTORICAL BACKGROUND OF THE INDIAN CONTRACT ACT, 1872*, 4 *Journal of the Indian Law Institute*, 373–400 (1962).

marriage encompasses legal and ethical responsibilities, any contract that seeks to alter fundamental spousal responsibilities could be considered unenforceable.

Maintenance and Alimony Agreements: Courts in India have determined that statutory rights to maintenance⁷² cannot be relinquished by private contracts. In *Rajesh R. Nair v. Meera Babu*⁷³ (2013), the Kerala High Court determined that maintenance regulations from personal laws and the Criminal Procedure Code cannot be surpassed by a pre-marital agreement.

Although pre-nuptial agreements are still legally ambiguous in India, changing social norms and financial independence of partners underscore the necessity for a formal legal system. Until reforms are implemented, the enforceability of these agreements remains restricted, primarily influenced by personal laws and court precedents rather than contract principles.

Empirical Research: Attitudes Towards Pre-Nuptial Agreements in India

Gender-Based Comparison

A significant gender disparity exists in awareness and willingness to sign pre-nuptial agreements. 64% of male respondents have heard of pre-nups, whereas only 28% of females are aware of them, and for non-binary individuals, awareness is even lower at 25%. This suggests that discussions about pre-nups might be more common among men, possibly due to their involvement in financial planning or legal matters, or a general societal tendency to associate financial security discussions with men. Conversely, women's lower awareness could stem from a lack of exposure to such conversations or a perception that pre-nups are unnecessary for them.

When it comes to actually signing a pre-nup, females exhibit the highest level of uncertainty, with 44% stating that their decision would depend on the circumstances. This suggests that women might consider the emotional and social aspects of marriage more than just financial implications. Meanwhile, 28% of women firmly reject the idea, and an equal 28% are willing to sign one. In contrast, men are evenly split, with 36% unwilling, 36% saying it depends, and

⁷² Ira Singhal, *Spousal Maintenance in India: An Analysis*, 5 INDIAN J.L. & LEGAL RSCH. 1 (2023).

⁷³ Anil Malhotra & Ranjit Malhotra, *Marriage and Divorce - Complete Constitutional Justice*, 2015 INT'L SURV. FAM. L. 121 (2015).

28% willing. The notable difference here is that men are more likely to take a decisive stance, either rejecting or accepting pre-nups, whereas women show a higher degree of hesitation. For non-binary individuals, 50% prefer a situational decision, 25% are willing, and 25% are unwilling, which aligns more closely with women in terms of uncertainty but differs in the acceptance-rejection ratio.

Marital Status and Pre-nup Awareness & Willingness

Marriage experience plays a crucial role in pre-nup awareness. Among divorced individuals, 100% have heard of pre-nups, whereas only 46% of married individuals are aware. This could be because those who have gone through a divorce have had firsthand experience with legal financial settlements, making them more conscious of pre-nups. Among single individuals, 58% are unaware of pre-nups, possibly because they have not yet encountered legal aspects of marriage. Meanwhile, widowed individuals have a higher awareness level (67%), likely because they may have had to deal with asset division, wills, or post-marriage legal matters.

The willingness to sign a pre-nup varies significantly across marital status. All divorced individuals (100%) stated that their decision would depend on circumstances, which implies that having experienced the dissolution of a marriage, they recognize the practical value of pre-nups but are cautious about committing outright. Among married individuals, 38% are unwilling, 31% are uncertain, and 31% are willing—indicating that nearly two-thirds of married individuals either reject or hesitate regarding pre-nups. This may be due to the common belief that marriage is built on trust and love, making financial contracts seem unromantic. Single respondents are more open, with 47% saying it depends, 26% unwilling, and 26% willing. Their responses suggest that without prior marital experience, they are more flexible in their opinions. Widowed individuals are evenly split across all three choices (33% each for yes, no, and depends), indicating that their views are not strongly influenced by their past marital experiences.

Urban-Rural Divide in Awareness and Willingness

The geographical divide in awareness is striking. Only 33% of rural respondents have heard of pre-nups, compared to 53% in semi-urban areas and 48% in urban areas. This suggests that legal literacy and financial planning awareness remain relatively low in rural regions, where traditional marriage norms might dominate over legal contract-based considerations. The

relatively higher awareness in semi-urban areas suggests increasing access to legal and financial knowledge.

When it comes to signing pre-nups, rural respondents show 66% uncertainty, 33% unwillingness, and no outright willingness. This hesitation may stem from a lack of exposure to legal instruments such as pre-nups or cultural norms that place a greater emphasis on trust and social obligations over legal protections. In semi-urban areas, 42% say it depends, 37% are unwilling, and 21% are willing, indicating slightly more acceptance but still a notable degree of skepticism. Urban respondents are the most open, with 40% willing, 32% uncertain, and 28% unwilling, showing that urban individuals are more familiar with pre-nups and more likely to consider them as a viable option.

Comparative Analysis: Pre-Nuptial Agreements in Other Jurisdictions

Across jurisdictions, the legal enforceability and acceptance of pre-nuptial agreements vary, shaped by differing legal philosophies, cultural attitudes, and historical perspectives. A comparative analysis of the pre-nuptial landscape in the U.S., U.K., France, Germany, China, Japan, and Singapore provides valuable insights for India's evolving legal framework on marriage contracts.

United States & United Kingdom: The Common Law Perspective

In jurisdictions governed by Common Law, pre-nuptial agreements are recognized as enforceable⁷⁴ legal instruments, albeit with conditions ensuring fairness and voluntary consent. The U.S. and U.K., both following Common Law traditions⁷⁵, exhibit distinct approaches to these agreements.

In the United States, pre-nuptial agreements are primarily governed by state laws⁷⁶, leading to a varied legal landscape. Most states follow the Uniform Premarital Agreement Act⁷⁷ (UPAA), which establishes standardized criteria for enforceability. Courts rigorously examine whether

⁷⁴ SC Ifemeje, A case for global enforceable prenuptial agreements, 1 African Journals Online, 151-157 (2016).

⁷⁵ Ford W. Hall, *The Common Law: An Account of Its Reception in the United States*, 4 VAND. L. REV. 791 (1951).

⁷⁶ Hedieh Nasheri, *Prenuptial Agreements In the United States: A Need For Closer Control?*, 12 International Journal of Law, Policy and the Family, 307-322 (1998).

⁷⁷ Amberlynn Curry, *The Uniform Premarital Agreement Act and Its Variations throughout the States*, 23 J. AM. ACAD. MATRIMONIAL LAW. 355 (2010).

both parties entered the agreement voluntarily, ensuring that there was no coercion or undue influence. Additionally, while parties have broad discretion in drafting terms, courts may intervene if provisions are deemed unconscionable. A fundamental requirement for validity is full and fair disclosure of assets and liabilities⁷⁸, which ensures transparency and prevents unjust financial arrangements.

In contrast, the United Kingdom has historically been skeptical of pre-nuptial agreements, considering them contrary to public policy. However, the landmark case of *Radmacher v. Granatino*⁷⁹ (2010) reshaped this stance, establishing that pre-nups should be upheld unless they are unfair or fail to meet the needs of one party. While pre-nups are now persuasive, courts retain the authority to override terms if they cause significant hardship. Additionally, courts scrutinize whether agreements were entered freely, without duress, and with full financial transparency. Provisions affecting child support remain subject to independent judicial scrutiny to protect the welfare of children.

France & Germany: The Civil Law Framework and Marital Property Regimes

Continental European jurisdictions, primarily governed by Civil Law traditions, approach pre-nuptial agreements within the broader context of marital property regimes—predefined legal structures that dictate asset division upon marriage and divorce.

In France, couples may choose from different matrimonial regimes before marriage, with the default being the community of property regime⁸⁰. However, pre-nuptial agreements allow couples to opt for alternative arrangements, such as separation of property, where each spouse retains ownership of their pre-marital and post-marital assets. Alternatively, couples may opt for a universal community property regime, where all assets, regardless of acquisition date, are jointly owned. French courts prioritize contractual freedom while ensuring that pre-nups align with fundamental legal principles, particularly those protecting the financially weaker spouse.

⁷⁸ Neil S. Cohen & Stephen W. Schlissel, *Thinking through the Tax Ramifications of a Prenup*, 33 FAM. ADVOC. 43 (2011).

⁷⁹ Newman, H., *The increasing importance of nuptial agreements in light of recent cases and statutory developments*, 3 Journal of Huddersfield Student Research, 130-140 (2017).

⁸⁰ Alan Macdonald, *The French Law of Marriage and Matrimonial Regimes*, 1 International and Comparative Law Quarterly, 313–324 (1952).

Germany follows a structured legal framework for marital property division under its Bürgerliches Gesetzbuch (BGB)⁸¹. The default regime, Zugewinnngemeinschaft (community of accrued gains)⁸², stipulates that assets acquired during marriage are equally shared upon dissolution. However, pre-nuptial agreements allow couples to modify or exclude this arrangement. Courts assess whether the agreement disproportionately benefits one party and ensure that no spouse is left destitute. Provisions that waive spousal support entirely may be deemed unenforceable if they result in extreme financial hardship. Furthermore, agreements executed under undue pressure or misrepresentation are subject to annulment, demonstrating a balance between contractual autonomy and judicial oversight.

China, Japan & Singapore: Asian Perspectives on Contract-Based Marriages

Asian jurisdictions approach pre-nuptial agreements with varying degrees of acceptance, influenced by cultural values, societal norms, and legal principles.

In China, pre-nuptial agreements are permitted under the Marriage Law, but judicial attitudes remain cautious. While courts recognize the contractual validity of asset division clauses, agreements contradicting public policy or violating spousal rights may be struck down. The importance of family reputation and harmony plays a significant role in judicial interpretation, making enforcement of pre-nups unpredictable.

Japan's Civil Code allows for pre-nuptial agreements, but default marital property rules often render them unnecessary. Traditionally, courts prioritize post-marital contributions over pre-existing wealth, ensuring financial fairness in divorce settlements. The concept of kaishaku (interpretative fairness)⁸³ guides judicial discretion, ensuring that neither party faces undue hardship due to an imbalanced agreement.

Singapore, with its hybrid legal system, recognizes pre-nuptial agreements under the Women's Charter⁸⁴. Courts are inclined to uphold these agreements if they meet the following criteria: voluntary execution without coercion or duress, full financial disclosure, and reasonableness.

⁸¹ Lettmaier Saskia, Schulz Moritz-Philipp, Family and Succession Law in Germany 216 (Kluwer Law International 2022).

⁸² H. R. Hahlo, *A Note on Deferred Community of Gains: The Theory and the Practice*, 21 MCGILL L. J. 589 (1975).

⁸³ Akio Hoshi, *Interpretation of Corporate Acquisition Contracts in Japan: A Legal Transplant through Contract Drafting*, 16 Asian Journal of Comparative Law, 106–123 (2021).

⁸⁴ Debbie S. L. Ong, *Time Restriction on Divorce in Singapore*, 2003 SING. J. LEGAL STUD. 418 (2003).

Agreements that undermine statutory protections for spouses and children are subject to judicial scrutiny. Singapore's pragmatic stance reflects an increasing reliance on pre-nuptial agreements to navigate modern matrimonial relationships while safeguarding legal rights.

Lessons for India: Prospects and Challenges

India's legal system, deeply influenced by personal laws rooted in religion and tradition, does not explicitly recognize pre-nuptial agreements. However, with changing socio-economic dynamics and evolving jurisprudence, a reconsideration of contract-based matrimonial arrangements is warranted.

A key lesson from foreign jurisdictions is the need for statutory recognition of pre-nups. India can introduce a uniform legal framework, drawing inspiration from the UPAA model (U.S.) or matrimonial regimes (France & Germany). Judicial oversight, similar to the approach in the U.K. and Singapore, could ensure fairness and prevent exploitation. Additionally, mandating financial transparency at the time of agreement execution would help prevent fraudulent arrangements. Child support and spousal maintenance protections, akin to Germany's judicial fairness model, should also be incorporated.

Despite these potential adaptations, significant challenges exist in adopting a contract-based approach to marriage in India. Religious and cultural barriers present a primary obstacle, as India's diverse personal laws may hinder uniform enforcement of pre-nuptial agreements. Furthermore, lack of awareness and societal perception of marriage as a sacred, lifelong bond may discourage contractual agreements. Without strict legal safeguards, there is also a risk of potential exploitation, where pre-nups could be used to financially disadvantage vulnerable spouses.

Socio-Legal & Policy Implications

The debate on whether prenuptial agreements can guarantee some level of financial security⁸⁵, streamline the division of assets, and prevent legal disputes in divorce has been ongoing for some time. Traditionally a "Western" idea, it is becoming more accepted in other

⁸⁵ Annie L. Zagha, *As Long as You Love Me: The Effects of Enforcing Prenuptial Agreements on Intimate Partner Violence*, 22 CARDOZO J. CONFLICT RESOL. 293 (2021).

legal systems, even among societies that historically have considered marriage an eternal and sacred bond.

While all agree that prenups can help clarify financial costs and prevent litigation, there are lingering concerns about their role in the institution of marriage⁸⁶, implications for gender equality, and societal values related to marriage. Analysis of survey results provides important information about public attitudes, barriers to adoption, and the potential for policies to address the complexities of pre-nuptial agreements.

The Need for Legalizing Pre-Nuptial Agreements: Key Arguments

One of the most compelling reasons in support of prenuptial agreements is that they can help avoid lengthy legal fights over money⁸⁷. According to survey results, 38% of those questioned thought pre-nups might alleviate court backlog by resolving disputes without the need for litigation. Enforceability of pre-nups ensures that financial arrangements and the distribution of assets are decided in advance, thus narrowing the grounds for bitter legal battles after divorce.

Nations with well-developed pre-nuptial legislation, like the United States and France, have indicated a reduction in litigation rates among prenup couples, implying that they provide an effective legal tool to minimize the workload on family courts. The main purpose of prenuptial agreements is to protect assets⁸⁸, which was the most common reason for seeking a pre-nup in the survey.

40% of the respondents mentioned that the major function of a pre-nup is to protect financial resources, avoiding conflicts over property division. This is especially true in marriages where one of the partners has much higher income or inherited wealth, as a pre-nup avoids wealth accumulation disputes in the event of divorce.

There is also an increasing recognition of their use in gender-neutral asset distribution. Whereas customary divorce settlements tended to benefit one of the spouses, typically the economically

⁸⁶ Peter T. Leeson, Joshua Pierson, *Prenups*, 45 The Journal of Legal Studies Volume, 45 (2016).

⁸⁷ Susan Weiss, *Prenups Meant to Solve the Problem of the Agunah: Toward Compensation, Not 'Mediation'*, 31 Nashim: A Journal of Jewish Women's Studies & Gender Issues, 61–90 (2017).

⁸⁸ Jeffrey G. Sherman, *Prenuptial Agreements: A New Reason to Revive an Old Rule*, 53 CLEV. ST. L. REV. 359 (2005-2006).

dependent one, pre-nups enable couples to agree on equal terms right from the beginning.

As cross-border marriages gain popularity, legal complexities in divorce cases are rapidly increasing⁸⁹. Differences in national laws governing matrimonial property, maintenance of spouse, and custody of children frequently lead to confusion in the law. Prenuptial agreements act as a protection mechanism against such misunderstandings by creating well-defined terms that override the differences in jurisdictions.

Survey evidence shows an increasing awareness of this necessity, as 26% of the respondents highlighted legal uncertainty as the foremost impediment to adopting pre-nups in India. Inter-imperial standardization of these arrangements across jurisprudential systems via bilateral or international recognition treaties would facilitate the settlement of cross-frontier matrimonial conflicts considerably. But the success of pre-nups relies on their enforceability.

26% of the respondents highlighted the need for judicial review to ensure equity, which means that legal scrutiny is important in avoiding exploitative provisions. Another 36% favored protection against coercion as a primary consideration in writing pre-nup legislation, supporting the argument that such contracts should not unfairly favor one spouse over the other.

Undermining the Institution of Marriage: A Transactional Approach?

Perhaps the most enduring criticism of pre-nuptial agreements is that they devalue the sanctity of marriage⁹⁰. 20% of those questioned had concerns that pre-nups promote a transactional approach to marriage, leading couples to approach marriage with an escape plan in mind instead of a commitment to a lifelong partnership⁹¹. This view is based on the notion that pre-nups move marriage from being an emotional and social institution to a contractual agreement with built-in escape clauses.

Sociologists contend that this perception is deeply rooted in cultural narratives in which marital longevity is equated with success, while planning for potential separation is regarded as

⁸⁹ Arun Barkat, Rehana Anjum, Asif Ali Jatoti, *Cross Border Issues in International Divorce: A Legal Understanding*, 6 JDSS, 518-528 (2025).

⁹⁰ Angela Marie Caulley, *Policing the Prenup: When Love at First Sight Deserves a Second Look*, 39 WOMEN'S RTS. L. REP. 1 (Fall 2017).

⁹¹ Romo, L.K., Czajkowski, N., *An Examination of Redditors' Metaphorical Sensemaking of Prenuptial Agreements*, 43 J Fam Econ Iss, 1-14 (2022).

pessimistic. Pre-nup supporters, however, retort that the new reality of increasing divorce rates calls for sensible financial planning. Although a prenuptial agreement does not preordain the emotional commitment of a marriage, it does create legal certainty in the event of unwanted surprises⁹².

Another major issue with pre-nups is the risk of coercion⁹³, particularly where there is a disparity in power between partners. In most instances, the economically weaker spouse, usually women, might be coerced into agreeing to disadvantageous terms. 32% of people surveyed expressed fears that pre-nups would be detrimental to women's rights, especially in restricting access to spousal maintenance and financial security after a divorce.

The question thus arises: Do prenuptial agreements serve to safeguard or injure women? In one way, pre-nups bring women financial safety by guaranteeing that the dividing of assets happens in advance rather than at the mercy of the courts, where there is potential for prejudice or a lag behind legal reforms. 22% of those asked agreed with the opinion that pre-nups were useful to women, especially in instances where women secure equitable money arrangements prior to marriage.

Still, the catch is in those situations where pre-nups only benefit the financially stable spouse while depriving the other of a fair share. To reduce these risks, respondents noted that critical safeguards include mandatory pre-signing legal advice (23%) and complete financial disclosure (14%) to provide transparency. These practices would deter exploitation and allow parties to sign the agreement with clear understanding and consent.

Even though pre-nups have legal advantages, they are strongly opposed in most societies, especially in societies where marriage is perceived as a divine union and not a contract. 52% of the interviewees confessed they had never even heard of a prenuptial agreement, reflecting a lack of understanding and acceptance. Religious institutions, especially in India, tend to reject pre-nups because they go against the spirit of lifelong commitment and family cohesion. The belief that pre-nups are a sign of distrust among partners also perpetuates social resistance.

⁹² Sharon Thompson, *Research Handbook on Marriage, Cohabitation and the Law* 418 (ElgarOnline 2024).

⁹³ Fox O'Mahony, L., 2014. Property outsiders and the hidden politics of doctrinalism. *Current Legal Problems*, 67(1), pp.409-445.

24% of those surveyed cited social stigma as a significant disincentive to the use of pre-nups. Where marriage is closely linked to family honor, talking about asset division prior to marriage is perceived as inappropriate or even offensive. These obstacles must be overcome through a change in societal attitudes, as well as through legal literacy programs to inform people about the advantages and constraints of prenuptial agreements.

With the mixed images and possible pitfalls of pre-nups, policy makers have the task of trying to balance law enforcement with shielding vulnerable parties. 26% of the responses indicated that educational programs in legal literacy would provide the best approach to raising the level of consciousness, so couples are aware of their rights and responsibilities prior to signing such arrangements. Moreover, the incorporation of judicial protections—like compulsory independent legal representation and judicial monitoring (36%)—may avoid coercion and ensure that pre-nups are used for their intended purpose without facilitating financial exploitation.

Policy Recommendations

Considering the ambivalent attitudes and possible dangers of pre-nups, policymakers have to find a balance between legal enforceability and safeguarding vulnerable parties. 26% of the respondents indicated that legal literacy programs would be the best means of raising awareness, making sure that couples are aware of their rights and responsibilities prior to entering into such agreements. Also, the incorporation of judicial protections—such as obligatory independent legal advice and court supervision (36%)—may avert coercion and guarantee that pre-nups work as intended without facilitating financial exploitation.

FACTOR	MOST COMMON RESPONSE	PERCENTAGE
Awareness of Pre - Nups	No	52%
Willing to Sign Pre - Nups	Depends on Circumstances	40%
Primary Purposes of Pre - Nups	Protection of Assets	40%
Main concern About Pre - Nups	Social Stigma	24%
Pre Nups' Impact on Women	Might harm maintenance claims	32%

Key factor in drafting Pre - Nups Law	Protection against Coercion	36%
Barrier to Pre - Nups in India	Legal Ambiguity in marriage laws	26%
Do Pre-nups Reduce Court Backlog?	Yes	38%
Best way to raise awareness?	Legal literacy programs	26%

Legislative & Judicial Reforms: The Way Forward

The non - presence of a clear and precise legal framework governing pre-nuptial agreements in India builds ambiguity regarding their enforcement⁹⁴. At the present time, Indian courts have been hesitant to upload such kinds of agreements due to the sacramental nature of marriage in Hindu law as well as concern about public policy under the Indian Contract Act, 1872⁹⁵.

However, as societal norms emerge and financial independence increases, a proper, detailed legal approach is needed to balance autonomy with equity. One method could be explicit recognition of pre-nuptial agreements under the Indian Contract Act, 1872 by creating a particular exception to the public policy doctrine. This would ensure that such agreements are not invalidated solely but instead looked out for fairness and willingness.

Moreover, potential amendments to the Hindu Marriage Act, 1955⁹⁶, and the Special Marriage Act, 1954⁹⁷ could institute provisions that permit contractual agreements emphasizing financial and property matters while protecting necessary marital obligations. A more progressive approach might involve drafting a separate ‘Marital Agreement Act’ customized to Indian Socio - legal conditions, drawing from global best practices and domestic judicial trends⁹⁸.

Having the potential of coercion and the imbalance of bargaining power in marital agreements, judicial oversights become mandatory. The Courts across India could take the inspiration from

⁹⁴ Amrita Ghosh & Pratyusha Kar, *Prenuptial Agreements in India: An Analysis of Law and Society*, 12 NUJS L. REV. 217 (2019).

⁹⁵ Amrita Ghosh & Pratyusha Kar, *Prenuptial Agreements in India: An Analysis of Law and Society*, 12 NUJS L. REV. 217 (2019).

⁹⁶ Diwan, Paras, *The Hindu Marriage Act, 1955*, 6 International and Comparative Law Quarterly, 263–272 (1957).

⁹⁷ Nabilah Rahman & Rishav Raj, *The Significance of Special Marriage Act, 1954: An Insightful Analysis of the Challenges of Implementation*, 4 INT'L J.L. MGMT. & HUMAN. 169 (2021).

⁹⁸ Kumar, Vijender, *QUEST FOR PRENUPTIAL AGREEMENT IN INSTITUTION OF MARRIAGE: A SOCIO-LEGAL APPROACH*, 60 Journal of the Indian Law Institute, 406–26 (2018).

Anglo - American principles of Fairness in the enforcement of contract⁹⁹, while courts examine whether pre - nuptial agreements are unconscionable, coercive, made under undue influence or if in accordance with the fundamental rights inspired by the Uniform Premarital Agreement Act¹⁰⁰ in the United States, permitting courts to validate pre - nuptial agreements unless proven unconscionable at the time of enforcement.

Moreover, installing a mandatory “cooling - off period”¹⁰¹ Post-signing would amplify the principle of informed consent and provide the parties (couples) potential options to rethink their decision before entering into the marriage. Judicial guidelines can also invoke protocols such as financial disclosure requirements¹⁰², independent legal counsel, and tests to examine if the agreements remain just and appropriate at the time of termination of marriage.

Apart from legally recognizing pre-nuptial agreements in India, the success depends on the wide acceptance from multiple strata of society and effective implementation¹⁰³. The biggest challenge regarding this situation remains in the emerging social stigma¹⁰⁴, where agreements like this are always misunderstood as eroding the validity and sanctity of marriage. Legal awareness camps as well as educating this into legal education would definitely play an important role in restructuring the notions, focusing that pre - nuptial agreements are instruments of financial prudence than the indicators of marital uncertainty.

Family courts and the centre for mediation¹⁰⁵ should be trained to be equipped to register and verify such agreements, ensuring compliance with procedural safeguards and reducing litigations. Furthermore, pre-marital legal counseling, emphasized and mandated for parties (couples) opting for pre-nuptial agreements, could serve as a protective step against coercion and disputes. Moreover, the inclusion of pre-nuptial agreements within religiously governed marriages remains a major concern for the law framework.

⁹⁹ Ralph A. Newmant, Renaissance of Good Faith in Contracting in Anglo-American Law, 54 Cornell L. Rev. 553 (1969).

¹⁰⁰ Barbara Ann Atwood, *Ten Years Later: Lingering Concerns about the Uniform Premarital Agreement Act*, 19 J. Legis. 127 (1993).

¹⁰¹ Anita Mackay, *Who Gets a Better Deal? Women and Prenuptial Agreements in Australia and the USA*, 7 U.W. SYDNEY L. REV. 109 (2003).

¹⁰² Nancy Schembri, *Prenuptial Agreements and the Significance of Independent Counsel*, 17 St. John's J. Legal Comment. 313 (2003).

¹⁰³ Divy Thakur, *Spousal Property Law in India: A Solace to Spouses*, 3J. Integrated Rsch. L. 1 (2023).

¹⁰⁴ Vaibhav Gwalani, *Prenuptial Agreements: Their Legality and Scope in India*, 2 INDIAN J.L. & LEGAL RSCH. 1 (2021).

¹⁰⁵ Nivedita NAir, *Scope of Mediation in Matrimonial Disputes in India*, 8 NUALS L.J. 154 (2014).

While Muslim law allows contractual elements through the nikahnama, Hindu marriages lack similar contractual flexibility. A uniform legal approach, while recognizing religious sensitivities, would ensure all individuals having access to financial security and contractual clarity within marriage. Consequently, striking the right balance between contractual freedom and fairness will determine the effectiveness of pre-nuptial agreements as tools for empowerment rather than sources of exploitation.

Conclusion

The legality of marriage contracts in India, and specifically within the context of pre-nuptial agreements, is a controversial and developing jurisprudence area¹⁰⁶. Although Indian marriage has hitherto been regulated by religious personal laws¹⁰⁷ that prioritize sacramental and customary requirements over contractual ones, the complexity of contemporary relationships demands a review of this approach. With changing economic independence, inter-faith marriages, and international influences transforming matrimonial expectations, enforceability of pre-nuptial agreements becomes relevant.

Indian courts at present do not per se enforce pre-nuptial agreements as legally binding, mainly due to the fact that they are considered to be against public policy in terms of the Hindu Marriage Act, Muslim Personal Law, and other marriage-enacting statutes. Nevertheless, contractual principles under the Indian Contract Act, 1872, do offer a possible framework for their enforceability.

If a pre-nuptial agreement satisfies the fundamental requirements of a valid contract—free consent, legal object, and no coercion or fraud—it can have persuasive force in matrimonial disputes, particularly concerning financial settlements, property distribution, and alimony. This has been seen in cases where courts have treated pre-nuptial agreements as direction documents and not legally binding contracts. Among the major issues against the acceptance of pre-nuptial agreements in India is that they are said to compromise the sanctity of marriage by antecedently deliberating on the dissolution of the same.

¹⁰⁶ Akanksha Ghatol, Priyanka Unde, Tana Anmol, *The Emerging Importance of Prenuptial Agreement in Indian Society*, 54 ANVESAK, 22-31 (2024).

¹⁰⁷ Sampak Garg, *Law and Religion: The Divorce Systems of India*, 6 Tulsa J. Comp. & Int'l L. 1 (1999).

The reasoning is parallel to the socio-legal perception that considers marriage as a solemn lifelong commitment as opposed to being a contractual marriage. Yet, as divorce and money disputes become more common, there is a compelling need to reconcile conventional values with realistic legal protection. The United States, the United Kingdom, and Australia have all accepted pre-nuptial agreements as a means of financial transparency and dispute resolution.

India, also, could use a systematic legal framework that recognizes marriage contracts without protecting against coercion or exploitative conditions. Another important concern is gender equality. In India, economic and social inequalities tend to disadvantage women after divorce. A properly worded pre-nuptial agreement would provide economic security to both spouses, especially when one spouse has foregone career opportunities for domestic duties. Enforcing pre-nuptial agreements under family law, with judicial intervention to avoid unconscionable clauses, could empower women's rights instead of undermining them.

To progress towards legal recognition of pre-nuptial agreements, India may embrace a hybrid model that incorporates them within the current matrimonial regime while maintaining public policy interests. The Law Commission or the legislature might look at amending marriage laws, formally recognizing pre-nuptial agreements under controlled circumstances. Judicial precedents may also change to accept such agreements as valid unless they are proven to be exploitative or contrary to public interest.

Overall, the changing nature of personal relationships, economic interdependence, and the need for certainty in the law require a rethinking of marriage contracts in India. Although pre-nuptial agreements continue to lack statutory recognition, their growing significance in matrimonial law indicates a change in the attitude of the law. A balanced approach—one that supports both contractual liberty and social justice—can possibly lead to a systematic, legally valid framework that suits the requirements of modern Indian marriages.

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Questionnaire

Section 1: Demographic Information

1. Age:

- ☐ Below 25
- ☐ 25-35
- ☐ 36-45
- ☐ 46 and above

2. Gender:

- ☐ Male
- ☐ Female
- ☐ Other

3. Marital Status:

- ☐ Single
- ☐ Married
- ☐ Divorced
- ☐ Widowed

4. Profession:

- ☐ Student
- ☐ Legal Professional
- ☐ Businessperson

- ☐ Government Employee
- ☐ Private Sector Employee
- ☐ Other (please specify) _____

5. Place of Residence:

- ☐ Urban
- ☐ Semi-Urban
- ☐ Rural

Section 2: Awareness and Perceptions

6. Have you heard of pre-nuptial agreements before?

- ☐ Yes
- ☐ No

7. What, in your opinion, is the primary purpose of a pre-nuptial agreement? (Select all that apply)

- ☐ Financial security
- ☐ Protection of assets
- ☐ Clarity in case of divorce
- ☐ Prevention of disputes
- ☐ Other (please specify) _____

8. Would you consider/would have considered signing a pre-nuptial agreement before marriage?

- ☐ Yes
- ☐ No
- ☐ Depends on circumstances

9. What concerns, if any, do you have about pre-nuptial agreements? (Select all that apply)

- ☐ It undermines trust in marriage
- ☐ It may be used unfairly against women
- ☐ Social stigma
- ☐ Legal enforceability is unclear
- ☐ Other (please specify) _____

Section 3: Legal Feasibility & Social Attitudes

10. Should pre-nuptial agreements be enforceable under Indian law?

- ☐ Yes, with conditions (e.g., fairness, voluntary consent)
- ☐ No, as marriage should not be contractual
- ☐ Not sure

11. How do you perceive the enforceability of pre-nuptial agreements under the Indian legal system?

- ☐ Strongly Enforceable
- ☐ Somewhat Enforceable

- ☐ Not Enforceable

12. Do you think pre-nuptial agreements would reduce the burden of litigation in divorce cases?

- ☐ Yes
- ☐ No
- ☐ Not Sure
- ☐ Would increase the burden instead

Section 4: Comparative & Policy Perspectives

13. What factors should be considered while drafting a law on pre-nuptial agreements in India? (Select all that apply)

- ☐ Gender neutrality
- ☐ Protection against coercion
- ☐ Financial disclosure requirements
- ☐ Role of family courts in enforcement
- ☐ Other (please specify)

14. What are the biggest barriers to introducing pre-nuptial agreements in India? (Select all that apply)

- ☐ Societal perception and stigma
- ☐ Religious opposition
- ☐ Legal ambiguity in marriage laws
- ☐ Potential for misuse and coercion

☐ Other (please specify) _____

15. Do you believe pre-nuptial agreements could help reduce the backlog of family law cases in Indian courts?

☐ Yes, by reducing litigation in divorce settlements

☐ No, they may lead to more disputes over enforceability

☐ Not Sure

Section 5: Socio-Legal & Policy Implications

16. What are the strongest arguments in favor of legalizing pre-nuptial agreements in India? (Select all that apply)

☐ Financial security & reduced litigation in divorce cases

☐ Greater gender neutrality in asset division

☐ Legal certainty for cross-border marriages

☐ Strengthening marital autonomy

☐ Other (please specify) _____

17. What are the main arguments against legalizing pre-nuptial agreements in India? (Select all that apply)

☐ Undermining marriage as a lifelong commitment

☐ Potential for coercion & inequality

☐ Social stigma & resistance from religious institutions

☐ Increased difficulty in ensuring fairness

☐ Other (please specify) _____

18. What would be the impact of pre-nuptial agreements on women's rights and family law in India?

- ☐ They would protect women by ensuring financial security
- ☐ They might harm women by reducing maintenance claims
- ☐ No major impact
- ☐ Not sure

Section 6: Legislative & Judicial Reforms: The Way Forward

19. What conditions should be mandatory for a pre-nuptial agreement to be legally enforceable in India? (Select all that apply)

- ☐ Full financial disclosure by both parties
- ☐ Independent legal counsel for both spouses
- ☐ No coercion or undue influence
- ☐ Review by a judge before marriage
- ☐ Other (please specify) _____

20. Should India mandate pre-marital legal counseling for couples considering a pre-nuptial agreement?

- ☐ Yes, to ensure informed decision-making
- ☐ No, it should be optional
- ☐ Not Sure

Section 7: Public Awareness & Implementation

21. How familiar are people in your community with the concept of pre-nuptial agreements?

- ☐ Very Familiar
- ☐ Somewhat Familiar
- ☐ Not at all Familiar

22. What is the best way to raise awareness about pre-nuptial agreements in India? (Select all that apply)

- ☐ Legal literacy programs
- ☐ Inclusion in pre-marital counseling
- ☐ Social media and public campaigns
- ☐ Incorporation into school/university curricula
- ☐ Other (please specify) _____