



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

## VALIDITY OF PRENUPTIAL AGREEMENT IN INDIA

Prenuptial agreements is an essential tool for protecting the rights of those preparing to enter into the sacred union of marriage. Pre-marital agreements, as they are often called, are legal agreements that specify how assets and obligations would be divided and deal with child custody issues in the case of a divorce.<sup>1</sup>

Although prenuptial agreements are not specifically addressed by law in India, it is important to acknowledge that they have a big influence on marriages.<sup>2</sup> These agreements have significance even though they are not enforceable. Although the Indian legal system may not require their implementation, courts do view them as useful resources for ascertaining the couple's intents.<sup>3</sup>

The Indian Contract Act, 1872, encapsulates the fundamental principle governing the legality of contracts, including premarital agreements, in India. Section 23<sup>4</sup> of the Indian Contract Act, 1872 states that if an agreement is found to have an illegal intent or to be against public policy, it is invalid. Prenuptial agreements are subject to this legal scrutiny since they are contractual agreements.

The legal system in India has made it clear that agreements pertaining to marriage, especially prenuptial agreements, are seen to be against public policy. They are thus not regarded as legitimate legal contracts. This strict stance stems from the conviction that such agreements are inherently at odds with the larger public interest.

---

<sup>1</sup> Pre-Nuptial Agreements & Succession Planning, Aasaanwill, (Mar. 23, 2023),

<https://www.aasaanwill.com/blog-posts/pre-nuptial-agreements-succession-planning>

<sup>2</sup> Prenuptial agreements in India, The Law Office of Jeremy D. Morley International Family Law,

<https://www.international-divorce.com/prenuptial-agreements-in-india>

<sup>3</sup> Anubhav Kumar Pandey, All you need to know about Prenuptial agreement in India, ipleaders, Mar. 5, 2017,

<https://blog.ipleaders.in/pre-nuptial-agreement-in-india-all-you-need-to-know/>

<sup>4</sup> Indian Contracts Act, 1872, § 23, No. 9, Acts of Parliament, 1872 (India).

Prenuptial agreements' alleged inconsistency with personal laws is one of the main grounds behind its classification as "contrary to public policy" in India.<sup>5</sup> Contracts that allow people to relinquish or compromise the rights bestowed upon them by personal laws are forbidden by the Indian Contract Act. Prenuptial agreements are perceived as an effort to get beyond these basic legal safeguards since they frequently involve issues about maintenance and asset split.

Prenuptial agreements' consideration of separation is another factor that makes them invalid in India. In contrast to several other legal systems where premarital agreements are regarded as a way for spouses to resolve possible conflicts peacefully, Indian law is skeptical of prenuptial agreements. The idea of pre-arranged divorce, even before entering the holy institution of matrimony, is viewed as incompatible with the social and cultural standards that support the institution of marriage in India.<sup>6</sup>

In decisions like *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*<sup>7</sup> and *Krishna Aiyar v. Balammal*<sup>8</sup>, the Indian Court has categorically ruled that pre-nuptial agreements are unenforceable in court. The courts now unequivocally declare that pre-nuptial agreements are neither tenable nor executable in a court of law, which has significant ramifications for couples engaging into such arrangements.

In Indian legal history, the case of *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh* is considered a turning point. Through this case, the courts have made it clear that prenuptial agreements are not legally enforceable. The court argues that trying to predetermine financial issues in the case of a divorce goes against the core values of marital relationships because of the intrinsic nature of marriage and the sacredness linked to it.

Pre-nuptial agreements are important contracts that express the wishes of the parties involved, even if they might not have legal standing in court. They are not legally binding, but they are an important record of the agreements and expectations that a couple made before to becoming married.<sup>9</sup>

---

<sup>5</sup> Prenuptial agreements in India, The Law Office of Jeremy D. Morley International Family Law, <https://www.international-divorce.com/prenuptial-agreements-in-india>

<sup>6</sup> Vikrant Rana , Devika Mehra and Avik Gopal, India: Validity Of Prenuptial Agreements In India- An Analysis, Mondaq, Nov. 1 2023, <https://www.mondaq.com/india/divorce/1385074/validity-of-prenuptial-agreements-in-india--an-analysis>

<sup>7</sup> *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh*, (1901) ILR 28 Cal 751

<sup>8</sup> *Krishna Aiyar v. Balammal*, (1911) ILR 34 Mad 398

<sup>9</sup> Pre-Nuptial Agreements & Succession Planning, Aasaanwill, (Mar. 23, 2023), <https://www.aasaanwill.com/blog-posts/pre-nuptial-agreements-succession-planning>

The judiciary upheld the precedent established by *Tekait Mon Mohini Jemadai v. Basanta Kumar Singh* in the *Krishna Aiyar v. Balammal* case. The court ruled that pre-nuptial agreements could not be sustained in a court of law because they are incompatible with the nature of married relationships. This reaffirmation demonstrates the judiciary's steadfast position on the subject.

These court rulings have consequences that go beyond their technicalities. Pre-nuptial agreements are becoming more common, but couples considering them need to understand that although they might convey their wishes, they are not legally binding. This change emphasises the need for partners to have open lines of communication and understanding because the legal system no longer acts as a safety net for prearranged financial agreements.

However, prenuptial agreements have been legalised in Goa by the Portuguese Civil Code of 1867. Furthermore, in order for prenuptial agreements, or prenups, to be deemed legally enforceable in marriages consummated under the Special Marriage Act of 1954, they must meet certain requirements. The existence of acceptable terms and conditions is necessary for these agreements to be enforceable in court.<sup>10</sup>

A prenuptial agreement's terms and conditions must be just and equitable to both parties in order for it to be deemed legal. Usually, the court evaluates whether the agreement was formed voluntarily or with undue influence or force. Furthermore, it is imperative that all financial holdings and obligations are fully and transparently disclosed; any attempt to withhold or distort this information might compromise the prenuptial agreement's legality.

---

<sup>10</sup> *Anubhav Kumar Pandey, All you need to know about Prenuptial agreement in India, ipleaders, Mar. 5, 2017, <https://blog.ipleaders.in/pre-nuptial-agreement-in-india-all-you-need-to-know/>*