



Prenuptial Agreements and its Legality in India

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Date of Submission: 15-06-2023

Date of Acceptance: 30-06-2023

Abstract

Prenuptial Agreements is still an unknown concept to a lot of people in India. It is looked down upon in our society, and people judge it rather than considering as a practical agreement which it actually is. This research is to give the readers a basic idea of what actually is a prenuptial agreement, its advantages, disadvantages and most importantly creating awareness. It will bust any myths that you have about a prenuptial agreement. It also answers the question as to why is it not legal in India. I conducted a survey to get a view of people on whether it should be legalized in India or not. We as the upcoming generation of our country should talk and discuss such topics and slowly work towards upgrading the legal system of our country and also for the betterments of our lives.

What is a Prenuptial Agreement?

'*Prenuptial*' is a word that is composed of the prefix – '*pre*' meaning 'before' and the word '*nuptial*' which means 'related to' or 'pertaining to marriage'. Therefore, a Prenuptial Agreement literally means an agreement which is mutually entered into by a couple before marriage. This agreement basically helps a couple, decide the division of money, property, assets, and monetary rights and liabilities of each partner in case of divorce, separation, incapacity, or death. In short, through this agreement a couple settles all the financial matters before their marriage foreseeing if, it does not last.

What are the benefits of a Prenuptial Agreement?

A Prenuptial Agreement has various benefits to both the parties individually and also together as a couple:

1. It safeguards the interests of both the parties and saves both of them from unpredictable situations.
2. It helps the couple draw a fine line between shared property and assets and separate property and assets.

3. It enables the couple decide the alimony/maintenance instead of leaving it for the court to calculate.

4. It shields/safeguards the parties from each other's loans and debts.

5. The chance of appeal in courts is reduced because the couple has protected themselves through the agreement.

6. Both the parties are saved from the expensive divorce litigation as everything is pre-decided through the agreement.

7. This agreement is very flexible and can be drafted as per the requirements and preferences of a couple.

8. It saves the parties from going through the lengthy and almost tiring procedure of divorce.

9. In case, of a second marriage, a prenup can be very helpful in determining the maintenance of children, if any, from the prior marriage, also if there is an untimely death of the partner with a child from a prior marriage, the division of property and assets and the rights of the child on it can be pre-decided.

10. Through a prenup, the parties can also decide upon the maintenance of their respective parents.

What are the Demerits of a Prenuptial Agreement?

If we look at it from a practical or an on paper point of view, a prenuptial agreement has a handful of disadvantages. For instance, many people enter into such an agreement thinking that they will never get a divorce from their partner so why pay heed to such an unnecessary document, but on the contrary it actually matters because a person might end up signing a document which is more in the favor of their partner than theirs and get a lot less than they actually deserve while signing their divorce.

A prenuptial agreement is not a complete settlement of a divorce, a lot of people think of the contrary. This agreement does not cover all the points of a divorce settlement. For example, child support and child custody, this is not a right of the



parents but the right of the child. Decision on such matters is taken by the court and not the couple through a prenup.

The imagination one has while getting into a marriage is of romantic dinners, a life with their partner till death dos them apart, walking on a beach under a sky full of stars etc., but let's have a reality check and realize that the discussion of a prenuptial agreement is not a romantic one. One should ensure that they have such a discussion with their partner on the right time and not right before the marriage, because it's not ethically correct to break such a serious news on your partner on the verge of them getting married and if signed under pressure of all the wedding shenanigans courts in a lot of countries might find it to be invalid.

Why is a Prenuptial Agreement not legally binding in India?

A prenuptial agreement though related to marriage and divorce which are matters under the Family Law, is drafted, under the Indian Contracts Act, 1872. So, the section 23 of the Indian Contract Act, 1872 reads as:

“What consideration and objects are lawful, and what not.—The consideration or object of an agreement is lawful, unless—

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- it is forbidden by law; or
- is of such a nature that, if permitted, it would defeat the provisions of any law; or is fraudulent; or
- involves or implies, injury to the person or property of another; or
- the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.”

The concept of a prenuptial agreement is most prevalent in the west and is still an alien concept to a lot of Indians. A prenuptial agreement is not illegal but it is an agreement that is not legally binding. It is not so because it goes against the clause of public policy of section 23 of the Indian Contract Act, 1872. In India, marriage is considered a sacrament and not a contract because *‘marriage is a knot which once tied cannot be untied and is an indissoluble union to be continued even in the next world’*. Also as per the precedents set by the Supreme Court, any contract which has marriage as an object is null and void. Though not legally binding such agreements

may have some plausible value if the divorce turns into an ugly court battle and act as a Memorandum of Understanding.

Should it be legally binding in India, if yes, why, if not, then why so?

Prenuptial agreements are catching the attention of the upcoming generation and its legality will sooner or later become a debatable topic. After conducting a survey on the opinion people, on the legality of prenuptial agreements in India, it can be deduced that **99%** of people were not aware of such agreements before the survey, but if it were legal and they were aware they would have signed it with their partner, reason being security of finances. I believe that with the increasing number of divorce cases, the law making body should make necessary amendments and approve the legality of such agreements as they will not only secure the finances of individuals entering into a marriage but also make the process of divorce easy, this will also reduce the number of cases piled up in the courts.

From the view point of people who are of prior generations and the ones brought up with the moral of stretching the marriage as much as one can, by ‘adjusting’ and ‘compromising’, look down upon this agreement as it shows signs of distrust and lack of dedication on the part of the couples wanting to enter into such agreements because they are giving upon the ‘forever’ of a marriage before it even begins by foreseeing a separation.

Conclusion

Concluding, we can say that two people who are madly in love today and are promising ‘to be together forever’ are signing their divorce settlement. This agreement is importantly an acceptance of the fact that a marriage may not last and that the parties are being practical and securing their finances because no one has seen the future.

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