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PRE-NUPTIAL AGREEMENTS: WHETHER A LEGAL REALITY IN INDIA?

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ABSTRACT

Pre-nuptial agreements are being widely used by prospective couples to determine their rights and liabilities in case of breakdown of marriage and to avoid complex and time-consuming judicial proceedings. However, the validity of pre-nuptial agreements in all countries is not unquestionable. In some countries pre-nuptial agreements are legally valid while in other countries, its validity is not free from doubt. In India, the position of pre-nuptial agreements is ambiguous in nature. The position in Hindu Law with regard to pre-nuptial agreements is very much unsettled. However, the position in Muslim Law is more or less settled. This research paper attempts to study and analyse the benefits and challenges of prenuptial agreements, legal position of prenuptial agreements in different countries of the world and the legal position of prenuptial agreements in India. Moreover, in the conclusion part, the researcher will present his own opinion with regard to the whole discussion related prenuptial agreements in research paper.

KEYWORDS: *pre-nuptial agreements, mahr, alimony, divorce, ketubah.*

INTRODUCTION

A prenuptial agreement refers to a legal agreement which is entered upon by the parties before the marriage. The agreement usually includes the terms related to the distribution of assets, liabilities, securities and issues related to the custody of children at the time of divorce, death of spouse or break-up of marriage. Some of the prenuptial agreements also includes the terms related to the arrangement of finances

and property during the marriage. The main reason for forming the prenuptial agreement by parties or spouses are –

(i) To Lessen Down Lengthy Court Proceedings and Complications in Case of Divorce – The prenuptial agreement sets out the shares and specific property rights of the spouses. In case of divorce, this kind of distribution beforehand helps to ease out the lengthy court proceedings and makes the whole process smoother.

(ii) To Clarify Financial Rights and Obligations – A prenuptial agreement helps to clarify the financial rights and obligations of the spouses during marriage and also in case of divorce or break-up of marriage.

(iii) To Get Protection from Debts – The prenuptial agreement saves the spouses from the debts of the other one. The agreement clearly outlines the specific debts of both parties who are going for the marriage.

In this research paper, the researcher tries to study and analyse the benefits and challenges of prenuptial agreements, legal position of prenuptial agreements in different countries of the world and the legal position of prenuptial agreements in India. Moreover, in the conclusion part, the researcher will present his own opinion with regard to the whole discussion related prenuptial agreements in research paper.

RESEARCH OBJECTIVES

1. To study about the positive effects of prenuptial agreements.
2. To study about the challenges of prenuptial agreements.

3. To study about the legal position of prenuptial agreements in different countries of the world.
4. To study about the legal position of prenuptial agreements in India.

RESEARCH QUESTION

- What is the legal position of prenuptial agreements in India?

HYPOTHESIS

- Prenuptial agreements are not legally valid in India.

LITERATURE REVIEW

1. Pre-nuptial Agreements in India: An Analysis of Law and Society, By Amrita Ghosh and Pratyusha Kar.

This research paper analysed the position of prenuptial agreements in India. Also, the different reasons of resistance and the position of prenuptial agreements in different personal laws of India. Moreover, the author also lists down the ideal clauses of prenuptial agreements and the benefits that Indian spouses can have by forming prenuptial agreements.

2. Pre-nuptial Agreements in India, By Rishabh Tiwari.

This research paper analysed the validity of prenuptial agreements and their importance in the present circumstances. Moreover, the author also analysed the various complications that arise because of formation of prenuptial agreements.

3. Pre-nuptial Agreements: Presence, Judicial Attitude and Roadblocks, By Parag Agrawal.

In this research paper, the author majorly talks about the stance of India Courts towards prenuptial agreements with relevant case laws. The author also lists down the challenges of prenuptial agreements and the solutions needed for overcoming that challenges.

4. Pre-nups: The New Way Out For India, By Rishabh Sethi & Anita Thomas.

In this research paper, the author analysed the legal position of prenuptial agreements in different countries of the world and particularly in India. Moreover, this research paper also analysed the pros and cons of forming prenuptial agreements.

METHODOLOGY OF STUDY

(a). The Methodology adopted by the researcher: Doctrinal Research

(b). Sources of Data: For this research, the author of the present article will depend upon Secondary Sources of Data. The researcher would rely on the books and articles discussing various websites and newspaper articles.

MEANING AND PRE-REQUISITES OF PRE-NUPTIAL AGREEMENTS

Meaning

A prenuptial agreement refers to a legal agreement which is entered upon by the parties before the marriage. The agreement usually includes the terms related to the distribution of assets, liabilities, securities and issues related to the custody of children at the time of divorce, death of spouse or break-up of marriage. Some of the prenuptial agreements also includes the terms related to the arrangement of finances and property during the marriage. The main reason for forming the prenuptial agreement by parties or spouses are –

(i) To Lessen Down Lengthy Court Proceedings and Complications in Case of Divorce – The prenuptial agreement sets out the shares and specific property rights of the spouses. In case of divorce, this kind of distribution beforehand helps to ease out the lengthy court proceedings and makes the whole process smoother.

(ii) To Clarify Financial Rights and Obligations – A prenuptial agreement helps to clarify the financial rights and obligations of the spouses during marriage and also in case of divorce or break-up of marriage.

(iii) To Get Protection from Debts – The prenuptial agreement saves the spouses from

the debts of the other one. The agreement clearly outlines the specific debts of both parties who are going for the marriage.

Pre-requisites

Pre-requisites or requirements that a prenuptial agreement should meet are as follows:

- (1) The prenuptial agreement should be clear, fair, reasonable and duly acknowledged.
- (2) The prenuptial agreement should be in writing.
- (3) The prenuptial agreement should have attorney certification from both parties. Both the parties should have separate attorneys who will review and certify the agreement.
- (4) The prenuptial agreement must be mutually made by the free consent of both the parties and in no way be made under coercion, undue influence, pressure etc.
- (5) The prenuptial agreement should contain a clause which states that if any provision of the agreement gets invalidated, the rest of agreement remain in effect.
- (6) The list of the assets, liabilities, financial possessions etc owned by both spouses should also be owned.
- (7) The prenuptial agreement should not contain any information which is fake, false or invalid.
- (8) All the clauses of the prenuptial agreement must be arrived at between the prospective spouses.
- (9) The prenuptial agreement should clearly specify the property rights and obligations and the spousal support to be paid in case of divorce or break-up of marriage.

HISTORICAL EVOLUTION OF PRE-NUPTIAL AGREEMENTS

The concept of prenuptial agreement is not a new one. It dates back to ancient Egypt one of the earliest prenuptial agreement made existed

over 2000 years old. At that time, the prenuptial agreements were not documented and written by lawyers to specify the rights of each spouse. Rather, they were oral or written agreements which specifies the property that each spouse needs to bring to the marriage. This was used to determine the brides dowry and brides wealth (i.e. the price which the groom has to pay to the brides family in exchange for marrying her. For several thousands of years, the women were not given the right to own property. As the time passed, the provisions were made in the agreements because of which women were able to access inheritance rights in case of divorce or husbands death. The first of this could be seen 2000 years ago in the form of a Herdew marriage contract also known as 'Ketubah'.

Moreover, the concept of Dower in the Mohammedan Law seems to have similar characteristics as that of the prenuptial agreement. This idea of prenuptial agreements in the form of Mahr and Dowers existed even before popular western notion of prenuptial agreements.

Therefore, the concept of prenuptial agreements has a very long history and it existed in past and in many different forms.

MAIN CLAUSES OF PRE-NUPTIAL AGREEMENTS

Divorce or break-up of marriage is very painful for any couple. No couple in the initial stage thinks about divorce or break-up of marriage but subsequently situations or circumstances arises which makes very difficult for the couple to continue with their relationship. In case of divorce or separation of marriage, serious complications arise with regard to distribution of assets and liabilities, financial states, alimony support etc. Therefore, the prenuptial agreement can be a good tool to settle down such disputes in a smoother manner if it is framed in a proper way.

So, the following are the main clauses of prenuptial agreements –

(1) Clause Related To Premarital Assets and Debts

– Pre marital assets refers to the assets which both the parties separately own prior to their marriage. Pre marital debts refers to debts which both parties separately owe prior to their marriage.

Before making a prenuptial agreement, the parties should give an exhaustive list of assets and debts of their own and must make full and fair disclosures with regard to that. Then after making the exhaustive list of pre-marital assets and debts, the parties in the prenuptial agreement should decide the following issues with regard to it.

(i) How will the pre-marital assets and debts be handled during marriage and in the event of divorce or break-up of marriage?

(ii) Does the separate properties will be jointly owned or will remain separate and go to the same spouse who owned it prior to their marriage. In the case of divorce or break-up.

(iii) What will happen if the pre-marital property of any one party will be used to pay pre-marital debts of another party? Does the paying party will be reimbursed or will be treated as a gift?

(iv) What will happen if the pre-marital property of any one party is used to buy a property which will be owned together? Does the paying party will be reimbursed or it will be treated as a gift?

(2.) Clause Related to Marital Assets and Debts

–

The marital Assets and Debts are those assets and debts are these assets and debts which are accumulated and owns throughout the marriage. Usually these are co-jointly owned by both the couples. But the major question to be answered in a prenuptial agreement with regard to this clause is :

(i) In case of divorce and separation, how will the marital assets and debts be shared?

(ii) whether it is going to be 50/50? Or whether there will be another arrangement?

(3.) Clause Related to Children from Previous Marriage

– If any of the spouse has a child from the previous marriage(s) then the property rights and inheritance rights of that child would be secured with the help of a prenuptial agreement. Through this it is ensured that, in case of death of the spouse during the marriage or during divorce the child who has been brought from the previous marriage will get his/her allotted share.

In a prenuptial agreement, the parties should not include child custody, visitation rights or child support to be paid by one spouse to another in the case of separation. It is because the custody and visitation rights are to be determined on the basis of the best interest of the child and in future, conditions may get change which can alter the present existing circumstances altogether and the purpose of prenuptial agreement with regard to this issue will get futile. Similarly, the quantum of child support can't be decided in the prenuptial agreement because of the dynamic situations with regard to expenditure incurred on child, inflation rate in future etc. Therefore, it is better that these issues must be decided by the court so that best interest of the child can be served.

(4) Clause Related to Marital Responsibility

– In a prenuptial agreement, the spouses can define and decide the different types of marital responsibilities among each other. These responsibilities should not be non-financial or personal responsibilities such as who will cook the food, who will clean the utensils etc. Rather, these responsibilities should be financial responsibilities such as who will pay the bills, file the returns, how the accounts will be handled, how investment will be done etc.

(5) Clause Related to Family Property – If one of the spouse have family heirloom, family business and they want to keep in their birth family then they can specify that in the prenuptial agreement.

(6.) Clause Related to Protection For Estate Plans – Other than wills and living trusts,

prenuptial agreements can be a good tool for spouses to carry out their estate plans as they think fit. With this, spouses can determine what property to be owned separately and what property can be owned jointly which will eventually help to secure and protect their estate plans.

(7.)Clause Related to Alimony Support – In the prenuptial agreement, the quantum of alimony support to be provided by one spouse to another in the event of divorce or separation can be included.

(8.)Clause Related to Spousal Gifts – If your spouse gifts you anything then how gifts will be treated in case of divorce or separation. All matter related to spousal gifts can be included in a prenuptial agreement.

BENEFITS AND CHALLENGES OF PRE-NUPTIAL AGREEMENTS

The prenuptial agreements enjoys certain benefits and at the same time suffers from certain challenges. The prospective couple should diligently analyse all the benefits and challenges before going for a prenuptial agreement.

BENEFITS OF A PRE-NUPTIAL AGREEMENT:

(1.)Helps to Communicate and Clarify Things – Many people think that prenuptial agreement hampers the relationship between the spouses but on a larger perspective, prenuptial agreement acts as a source by which spouses can communicate and understand each-other in order to build a stronger relationship. With the help of prenuptial agreement, the spouses discuss and clarify all the matters related to property, finances and also the level of expectations that they have from each other. This level of honesty and openness develops the sense of trust among each other and makes the relationships even more stronger.

(2.)Save the Time and Money of Spouses – A typical divorce case is very expensive and time consuming. Sometimes, serious complications may arise with regard to settlement of disputes

among spouses because of which a lot of precious time and money gets exhausted in the court room proceedings.

A well – drafted prenuptial agreement can save a lot of time and money in fighting a lengthy court room battles.

(3.)Protects from Separate Property and Family Heirlooms of Spouses – While setting the disputes among the spouses in the case of divorce or separation one of the most complicated task is the division of assets among the spouses. It's very difficult to determine which assets are to be considered as property and which assets are to be considered as co-joint. It is very difficult for the courts to determine what is the intention of the spouses with regard to certain property i.e. the spouses want to own it separately or co-jointly.

The prenuptial agreements can prove to be very useful in solving the issue of division of assets among the spouses. The spouses in the prenuptial agreement can clarify which assets and debts to be kept as separate and which assets to be owned jointly. Moreover, specifying any property as separate property in the prenuptial agreement can secure the spouses from future loss as that property will not be divided among spouses in the case of divorce or separation.

(4.)Helps in Dividing Co-jointly Owned Property – Usually in the event of divorce and separation the courts use a 50/50 formula for dividing the co-jointly owned properties by spouses in the course of marriage. But sometimes this equitable distribution can be unfair because in case one spouse pooled more resources then the others for purchasing the property.

That's why prenuptial agreements can prove to be very helpful in dividing the co-jointly owned properties among spouses. The spouses can very well specify the arrangement on the base of which the co-jointly property will be divided in case of divorce and separation.

(5.)Helps in Protecting from the Debt of Other Spouse – The prenuptial agreement can be very helpful to save one spouse from the debt of other spouse. The spouses in the prenuptial agreement can clarify that what will be the marital debts and what will be the separate debts of the spouses. The inclusion of separate of separate debts of spouses in the prenuptial agreement secure the other spouse from bearing the burden of other debt.

CHALLENGES OF PRE-NUPTIAL AGREEMENT:

(1.)Conflict with the state laws – One of the most difficult task which the spouses face while enforcing the prenuptial agreement is that it may be not enforceable as it conflicts with state laws. These issues generally arise with respect to division of property rights and debts. Moreover, the states have specific laws for divorce, death and inheritance which makes the whole exercise of making the prenuptial agreement futile.

In addition to this, the absence of any specific law with regard to prenuptial agreement always keep it under preview of ambiguity.

(2.)Hiding the Debts and Assets By Spouses – The disclosure of debts and assets in the prenuptial agreements demands honesty and fairness from the spouses. But sometimes spouses hide some assets and debts and thereby does not include them in the prenuptial agreement. These, hidden assets when disclosed at the time of divorce or separation invalidated the purpose of making the prenuptial agreement.

(3.)Not Willing to Enter into the Prenuptial Agreement – One of the spouse may be unwilling to enter into the prenuptial agreement. But somehow entered it, may be because of the family pressure or undue influence etc. exerted by other spouse. The courts when comes to know about these situation in the case of divorce and separation will invalidate the whole prenuptial agreement.

(4.)May not be Legally Binding – The prenuptial agreement may be invalidated in a court of law if it is too “unfair”. Suppose, in the case of divorce, the court feels that one of the party is weak party and the provision in the agreement are not in favour and because of which it requires much larger financial support than that is given in the prenuptial agreement, than the court can invalidate such prenuptial agreement and order for the more larger financial support to the weak spouse.

(5.)Difficulties Which May Arise While Making Financial Provisions For Children – The courts most of the time remains doubtful with regard to the inclusion of financial provisions for children in the prenuptial agreement. The courts feels that with the passage of time circumstances, inflation rate, cost incurred in the development of child get changed it will not be in the best interest of the child to allow the same financial support to the child at the time of divorce which existed at the time of making the prenuptial agreement.

(6.)Circumstances in Future May Change – Name of the spouses will be able to predict what will happen during their marriage. There may be drastic change in the circumstances in future. Suppose, one spouse may lose his/her job becomes incapacitated. Because of this prenuptial agreement made by the spouses will lose its relevance and will not be upheld by the court of law.

(7.)Sense of Distrust– Making a prenuptial agreement creates a sense of distrust among parties. Moreover, on a specific clause parties do not agree with each other. This sense of distrust may continue during the marriage and there are chances that a marriage may get fail.

LEGAL STATUS OF PRE-NUPTIAL AGREEMENTS IN FOREIGN JURISDICTIONS

The making of prenuptial agreements provides various benefits to spouses. It is a very useful tool to settle disputes among the parties in an early manner. Despite these benefits, the legal status of prenuptial agreements is not uniformly

establish in different countries of the world. In some countries, it is valid and enforceable while in other countries its legal position is ambiguous and vague. Lets discuss the legal position of prenuptial agreements in the following six countries.

(1.)United Kingdom :

Traditionally, the prenuptial agreements were not considered to be legally enforceable in the England and Wales. It was viewed to be contrary to public policy. This is because marriage is considered as an agreement for staying together but the prenuptial agreement is an agreement for separation which involve conflicts with the policy of marriage.

This traditional position underwent a significant change because of the landmark judgement given by the Supreme Court of the United Kingdom in the case of Radmacher⁵². In this case, the court outlined the three factors that needs to be fulfilled for making any prenuptial agreement enforceable. These factors are –

(a)The agreement should be made by the free consent of the parties and without any coercion, undue influence or pressure etc.

(b)The terms of the agreement should be clear and all the financial disclosures be made.

(c)There, must not be any circumstances under which it would be unfair to execute the terms of the agreement under prevailing conditions, the determination of which should be based on compensation, need and sharing at the event of separation.

These factors does make the prenuptial agreements to be binding in each and every situation. Moreover, courts will possess the autonomy to validate the fairness of an agreement on a case to case basis. But these factors will guide the court and provide legal understanding with regard to any prenuptial agreement. Since 2010, this case provides a

substantial amount of guidance to all the subsequent prenuptial agreement cases.

The law Commission's 2014 report on Matrimonial Property accept the decision given in Ratmacher case. Moreover, commission recommend to create a 'Qualifying' nuptial agreement regime by Parliament which indeed makes the prenuptial agreement binding without the involvement of courts as long as the said factors are met.

(2.)Canada:

In the case of 'Canada', the Divorce Act, 1985⁵³ does not make the prenuptial agreement legally enforceable but considers the agreements while deciding upon the issues of child and spousal support during the divorce proceedings with regard to child custody, the Canadian Courts give emphasis to prenuptial agreements if it is for the maximum benefits for the welfare of the child. Moreover, though as a general rule, the community property law of equitable distribution of assets is applicable in all the provinces of Canada. However the importance of the prenuptial agreements in the Canadian context can be ascertained from the fact that they are considered as marriage contracts under section 52 of the Family Law Act, 1990⁵⁴.

(3.)Australia:

The prenuptial agreement are also known as "Binding Financial Agreements" and these agreements become enforceable with the enactment of the Family Law Amendment Act, 2000⁵⁵. Part VIII A of the Family Law Act specifies certain conditions which have to be taken care by the Family Law solicitors with regard to these agreements. These are –

(a)The agreement in order to be binding must be in writing and signed by both the parties.

(b)Original copy of agreement to be given to one party and the copy to the other party.

⁵³ Divorce Act, R.S.C 1985, c. 3 (2nd Supp.) (Canada).

⁵⁴ Family Law Act, R.S.O. 1990, c. F. 3 (Canada).

⁵⁵ Family Law Amendment Act, 2000, No. 143, 2000 (Australia).

⁵²Radmacher v. Granatino, [2010] UKSC 42.

(c) To specify the extent of spousal support being provided.

(d) State that both parties have received independent legal advice and annex a certificate with regard to that.

The "Binding Financial Agreement" will not be binding in Australia if it is obtained by mistake, undue influence, under duress, if the whole or part of the agreement is impracticable to be carried out, if there has been a material change in the care of a child leading to its hardships or if either of the party is at a disadvantage and the other spouse knows this then the agreement is contrary to good conscience.

(4.) New Zealand:

The prenuptial agreements became legally enforceable with the enactment of the Matrimonial Property Act, 1976 renamed as the Property (Relationships) Act, 1976 by the Property Relationships Amendment Act, 2001. The usual or the general rule is that there should be an equitable division of the community property (i.e. the property which is purchased during the relationship section 31 of the Property (Relationships Act), 1976 allows the married couples to make an "opt-out agreement" with respect to ownership status and division of property including future property. The 1976 Act originally grants power to courts to nullify the prenuptial agreement where its terms cause 'injustice'. But the 2001 Amendment Act limits this discretionary to only those prenuptial agreement where its terms cause 'serious injustice'. This was done in order to make the prenuptial agreements more enforceable and also to provide more confidence to the spouses.

LEGAL POSITION OF PRE-NUPTIAL AGREEMENTS IN INDIA

In India, the prenuptial agreements are not considered to be legally valid as here marriage is not considered as a contract. Moreover, there is no specific legislation or statute in India which governs the prenuptial agreement. When the attention of women and child development

industry was drawn towards this topic, the ministry states that the concept is very urban and it is too early with regard to prenuptial agreement. However, if the marriage has been solemnised under Special Marriage Act, 1955 then the prenuptial agreement can be considered as legal binding agreement provided that all the relevant documents have been submitted to the Registrar. Also, Section 40 of Indian Divorce Act, 1869 (dealing with Christian marriages) provides for the prenuptial agreements. But on a larger perspective, prenuptial agreements are considered as invalid in India.

Main Reasons For The Invalidity Of Pre-Nuptial Agreement In India/Different Set Of Challenges That Pre-Nuptial Agreements Face In India:

(1.) The Validity of Pre-nuptial Agreements With Regard to Marriage Laws -

In India, as of now, there is not any specific legislation or statute which governs the prenuptial agreements. Marriages in India, are governed by personal laws of different religion.

These personal laws governs issues such as marriage, dissolution of marriage, maintenance, property rights etc. Moreover, Section 125 of CrPC specifically deals with the issue of maintenance. So, there are high chances that the prenuptial agreements may come in conflict with these matrimonial laws. Also, giving effect to the prenuptial agreements by overriding the existing matrimonial laws will defeat the purpose of enacting such beneficial legislation.

One of the main reason for non-validity of prenuptial agreements is that, marriage in India is considered as a spiritual bond and instead a contract. Therefore, the prenuptial agreements are not socially acceptable in India and that's why they are not legally enforceable.

(2.) The Validity of Pre-nuptial Agreements Under the Indian Contract Act, 1872 -

Because of absence of any specific legislation for governing the prenuptial agreement, the

concept of prenuptial agreement has to be viewed under Indian Contract Act, 1872⁵⁶. The prenuptial agreement are considered as invalid as per the Indian Contract Act, 1872. In spite of being entered upon by the free consent of the parties (i.e. without any coercion, undue influence, fraud) the courts are reluctant to validate the prenuptial agreement. This is because, the prenuptial agreement are considered to be violative of Section 23 of India Contract Act, 1872. Section 23 says that the agreements whose consideration or object is unlawful. Because of this section, in many cases prenuptial agreement have been considered as immoral or opposed by public policy and thereafter been declared as void. The clauses in the prenuptial agreement such as 'separation clause', 'no child clause' are considered to be violative of public policy.

Judicial Perspective on Pre-nuptial Agreements in Hindu and Muslim Marriage in India:

(I).Pre-nuptial Agreement in Hindu Marriage -

In Hindu law, marriage is considered to be a spiritual bond instead of a contract. So, the courts have been very cautious while validating prenuptial agreements in Hindu marriages. In majority of the cases courts had invalidated the prenuptial agreements but with the passage of time the courts also in some cases have validated the prenuptial agreements.

Some of the case laws are as follows -

(1.)In the case of **'Thirumal Naidu Vs Ragammel Alias Rajalakshmi'**⁵⁷, the Madras High Court had refused to enforce the prenuptial agreement. In which the coupled agreed prior to the marriage to live apart. The court in its word said that, "an agreement before or at the time of marriage controlling the rights of the parties which the law confers upon them after the marriage and which, if enforced, might make the marriage itself nugatory or

infructuous.... Is bad and opposed to public policy.

(2.)In the case of **Sribataha Barik Vs Musamat Padma**⁵⁸ -

A prenuptial agreement was made by the husband and wife as per the agreement, the husband need to live at the wife parental home and maintain her there. But after few years, the husband moved back to his parents house and also wanted his wife to come back and live with him. The wife refused and demanded that the husband should honour the contract. The Orissa High Court held that such agreement is invalid and is opposed to public policy.

The judicial interpretation of prenuptial agreement in Hindu Marriage provide two broad conclusion:

(a).The agreement which contain the clause that overrides the right available to spouses under Hindu Law will likely to be stuck down as opposed by public policy.

(b).The agreements which supports the future separation also attracts public policy concerns.

(II).Pre-nuptial Agreement in Muslim Marriage

In Muslim Law, marriage is considered as a civil contract. The provision of "Mahr" in Muslim law can be considered as similar to prenuptial agreement. Initially, the courts have invalidated the prenuptial agreements in Muslim Marriages on the grounds of public policy. But later on, the courts have adopted liberal attitudes towards prenuptial agreements in Muslim marriages. So, it can be said that the concept of prenuptial agreement seems to be on a positive side.

One of the case laws where prenuptial agreement in Muslim Marriage has been allowed in the case of **'Muhammad Muin - Ud - Din Vs Musammat Jamal Fatima'**⁵⁹. In this case the Allahabad High Court upheld the validity of

⁵⁶ Indian Contract Act, 1872, No. 9, Acts of Parliament, 1872(India).

⁵⁷ A.E. Thirumal Naidu vs. Rajammal Alias Rajalakshmi, (1967) 2 MLJ 484.

⁵⁸ Sribataha Barik vs. Musamat Padma, AIR 1969 Ori 112.

⁵⁹ Muhammad Muin-Ud-Din And Anr. Vs. Musammat Jamal Fatima, 63 Ind Cas 883.

prenuptial agreement. As per terms of agreement, the husband need to pay the maintenance in addition to dower debt in case of dispute between the spouses.

After analysing the whole legal position of prenuptial agreements in India, it can be said that prenuptial agreements are not legally valid in India. Therefore, the Hypothesis is correct.

CONCLUSIONS AND SUGGESTIONS

Prenuptial agreements has its own drawbacks and benefits. In my opinion, prenuptial agreements should not be discarded altogether. If the prenuptial agreements are properly and carefully drafted then it can be very advantageous for the spouses. Prenuptial Agreement provides the most economical solution when it comes to costly and lengthy litigation processes in case of divorce, separation or maintenance. Moreover it reduces the chances of frauds, misrepresentation by either of the parties and provides for an easy going mechanism for settling the disputes.

In India the law related to prenuptial agreement is not settled. In India, the prenuptial agreements are considered as taboo. It is believed that marriage is deemed to fail upon entering the agreement. Moreover, the agreement is considered to be against public policy. The concept of public policy is not fixed or stagnant. It changes with time what may be opposed to public policy 20-30 years back may not be opposed now. The time has come to review the arguments presented against prenuptial agreements in India. Moreover, the increasing divorce cases in India and the lengthy litigation processes not only creates burden on the spouses but also adds pressure on the judiciary. Therefore, the author is of the opinion that a proper legislative framework needs to be established for allowing clauses of prenuptial agreement which are practical, reasonable and also in accordance with existing Matrimonial Laws in India.

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