

Title – Role of Technology in regulating matrimonial relations established as per religious ceremonies

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Abstract: Use of technology can become helpful to reduce the marital crimes, which are increasing day by day. Even after passing numerous stringent laws related to marital issues, the state remains unsuccessful to control the crime rate and to save the marriages. *Rising the divorce cases and other marital crimes have brought instability in the society, which is the main hindrance in the development of the nation.*

Person should think practically, before tying the marital knots. The consequences of mis-information amounting to fraud in marital cases, which we face later, must be verified in advance and it can be made possible by the use of latest technology. E-verification of aadhaar card, pan card, voter card, license, passport, educational certificates and degrees etc. can make it possible easily to check the bio-data of any person and to verify all details about that person. Emergence of digital locker & digital signatures make it ‘safe to use and rely’ also. When we check all the documents very carefully to open a just bank account, then why we are so reluctant to give ourself for the whole life, that too without any practical verification? It’s a matter of debate and perhaps, the main reason of today’s most social issues.

Pre-Nuptial agreements are neither legal nor valid in India. In India, the concept of prenuptial agreements sounds like an alien concept. Use of advanced technology in making Pre- Nuptial agreements may help us to check the information in advance rather than bearing the consequences of mis-information and to reduce the crime rate and reduction in cases of domestic violence, dowry & dowry death cases, divorce cases, child marriages and other several marital offences. It may also prove useful to reduce the number of court cases. *If, in this 21st century and even after the advancement of so much technology, we have to still engaged ourself to save the women, then this technology will be a big ciphher and another failure for the safety of women at this stone.*

1. Introduction:

Technology is the best tool to regulate matrimonial relations established as per religious ceremonies. ***With advanced technologies, matrimonial offences can be curbed easily.*** People have great faith in their religion that they follow and they follow the directions and guidelines prescribed and suggested by their religious & spiritual leaders who propagated that particular religion. They live their life by wearing the clothes of their religion colored with particular customs and ceremonies attached to their religion. ***But, now-a-days, only religious identification is not sufficient in society and they must be verified by technical process to control the matrimonial offences.*** Religion is embedded in almost every day activities of people. They perform birth, marriage, death ceremonies etc. as per their religious customs. These customs having approval of state laws, keep saved by the state under the category of personal laws. Due to great diversity in religions propagating in secular country like India, the ceremonies which the people perform are also very different. ***We can not make uniform laws for each & every personal law, but a universal identification process can be easily developed to verify the personal bio-data and other material facts related to the candidate.***

In Hindus, marriage is treated as sacrament and it is supposed that the union of husband and wife is forever, even for their 7 lives or birth circles. So Hindu mythology does not support to divorce, it is the Hindu Marriage Act, 1955 that makes the door open for divorce. In Islam religion, it is not so and marriage is just a contract and social arrangement between husband and wife. This contract is recognized in Islamic laws and fulfilled with consideration i.e., Mahr and this contract of marriage may be broken easily under the terms of Islamic laws.

Although Hindu Marriage Act, 1955 brought the provisions of divorce in it, still divorce is not so easy to be taken for any couple, until they file the petition for divorce by mutual consent under section 13-B of the said Act. In normal routine life, minor conflicts between husband and wife or with their family members becomes the issue of ego between the parties and they start living separately. After this, usually one party goes to the court for divorce and the other party for restitution petition. By this, the bitterness between the couples and their families arises and as the legal recourse is time taken process, weaker party is compelled to file another petition for maintenance. Usually, maintenance petition is filed by the wife, but in rare case, husbands may also apply under section 24 and 25 of H.M.A, 1955.

In addition to these petitions, couples file another petition for property distribution and couples having kids go for custody and visiting rights of their kids also. Where the wife is victim of domestic violence, adultery/bigamy by husband or dowry & dowry death, petitions under several other Acts like Domestic Violence Act & Indian Penal Code also attracts. In nut-shell, sometimes small conflicts result into 4 to 7 petitions between the parties. Even after passing numerous stringent laws related to marital issues, the state remains unsuccessful to control the crime rate and to save the marriages. Rising the divorce cases and other marital crimes brought instability in the society, which is the main hindrance in the development of the nation.

All this happens due to non – verification of the information provided by the spouses or their family members and it can be easily done by the use of latest technology. ***Pre-verification is much better than curing the consequences of failure occurs due to non-verification.*** The personal bio- data, age proof, educational qualification, citizenship, previous marital records etc. can be easily traced through centralized database.

2. Social issues:

Although we pretend to prey for women in many ways, but the actual position on ground reality is much different. The status of women is very derogatory & makes our society very miserable. Women is being exploited at every stage, either she is inside the home or she is outside the home and women are not safe even in their own homes. The divorce ratio is increasing day by day in India. The cases of domestic violence, matrimonial offences, dowry cases etc. are rising in steep and in consequences of these cases, family courts are facing more and more divorce petitions.

Society remains unsuccessful to mark full stop upon the child marriages & failure of marriages are routine matters now. People used to verify the candidates through their friends, relatives and neighbors but they didn't think practically and dare not to use the technology to verify the correctness of personal data of the candidates. Whereas, person should be very much practical in tying marital knot. When we check all the documents very carefully to open a just bank account, then why we are so reluctant to give ourself for the whole life, that too without any practical verification? It's a matter of debate and perhaps, the main reason of today's most social issues.

3. Current status of Pre-Nup agreements in India:

Uncertain laws, unjustified customs and religious sentiments of the society creates this miserable situation, and due to this, some couples live their young life in court proceedings. In foreign countries, states have developed the theory of Prenup i.e., Prenuptial Agreements. A prenuptial agreement may also be considered as an agreement between couple prior to their marriage or a civil union in regards to control their various legal rights after marriage or civil union. These agreements provide certainty, in case of failure of marriage between the couples. Parties, agreed in advance, to the terms of divorce, property distribution, custody of children, maintenance etc. *Pre-Nuptial agreements are neither legal nor valid in India. In India, the concept of prenuptial agreements sounds like an alien concept* and some provisions of these types of agreements are covered under section -10 of The Indian Contract Act, 1872. Section -23 of the same act prohibits the agreements which are immoral or against the public policy. Goa is the only state of India, where prenuptial agreements are valid as it follows Portuguese civil code, 1867.

4. Global Scenario:

In many countries like Italy, France, Canada, U.S.A etc. Pre-Nuptial agreements are valid and legally enforceable. Pre- Nuptial agreements, if drawn up and executed correctly, are legally binding and usually upheld in courts of these countries. Moreover, 95% Hindus are living in India, that's why they enforce such laws like Pre-Nup agreements easily. Advanced countries are not so much reluctant to enforce such laws like India. In foreign countries like America, centralized database is used by the state to check the crime record of the person and for other technical purposes.

5. Technology Advancement:

Advanced technology can be easily used to curb the issue of matrimonial disputes. Documents of both spouses can be checked in advance before making any arrangement, which help us in locating any fraud in advance. Ministry of Education is also working upon issue of e-certificates and e-degrees to the students. After completion of this process, no one can hide their educational qualification also. Use of advanced technology may help us to reduce the crime rate and reduction in cases of domestic violence, dowry & dowry death cases, divorce cases, child marriages and other several marital offences. It may also prove useful to reduce the number of court cases.

Use of technology for the effective enforcement of Pre-Nuptial agreements:

- a. The identity of both spouses can be checked easily by checking their Aadhaar Cards, Pan cards, Election cards, Driving license etc. or any other valid identity proof.
- b. Their educational certificates and degrees can be e-verified easily, if issued digitally by the educational institutions.
- c. Checking of age-proof via birth certificate, pan card, matriculation certificate, passport etc. will be easily possible, which will be very much fruitful to control the child marriages.
- d. The whole process may be regulated through online portal, which will remove the probability of mis information in all cases. All data, related to introduction phase of Pre-Nuptial agreement, may be digitally verified and executed through digital signature, which authenticates the process of registration more safely.
- e. Digital registration process curbs the issue of bigamy also, as the person, who is already engaged with another person, shall not be able to execute the document twice, before taking the divorce from the first.
- f. The Supreme Court made registration of marriages compulsory in all over the India from 2006, these Pre- Nup agreements can help in a great way to fulfil the very purpose of registration of marriages, by using the latest and digital technology.

6. Judicial interpretation:

In U.K. Courts, it was discussed that whether prenuptial agreements are moral or not? It was held that Pre- Nuptial agreements are not illegal and so may be enforced in the courts, if duly and correctly executed.

Lady Baroness Hale's dissent in *Granatino v. Radmacher* (2010) UKHL 42:

“Prenuptial agreement is to deny the economically weaker spouse the provisions to which she – it is usually although by no means invariably she – would otherwise be entitled”¹.

“Would any self-respecting young women sign up to an agreement which assumed that she would be the only one who might otherwise have a claim, thus placing no limit on the claims that might be made against her and then limited her claim to a pre-determined sum for each year of marriage regardless of the circumstances, as if her wifely services were being bought by the year? Yet that is what these precedents do.”²

¹ *Granatino v. Radmacher*, (2010) UKHL 42

² *Supra*

Whereas majority judgment of 8 judges out of 9 judges bench held that prenuptial agreements are valid. “The Supreme Court qualified its ruling stating that both pre- and post- nuptial agreements have ‘magnetic importance’ and unless it can be demonstrated that they are unfair in either how they were created or the effect that they would have the agreement should be adhered to”³.

7. Constitutional & Legislative provisions:

Article 44 of Indian Constitution provides for the Uniform Civil Code, but as the part-4 of Indian Constitution is not enforceable in the courts, it is taken as just guidelines to follow by the state. Due to prevailing of multi religion and multi caste society, it didn't make possible for the legislators to enforce uniform civil code till now. Law Commission of India presided by B.S. Chouhan issued a consultation paper on uniform civil code and made the remarks that, “*secularism can not contradict the plurality prevailing in the country*”. The Law Commission added that, “cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integrity of the nation. A uniform civil code is neither necessary nor desirable at this stage in the country. A unified nation did not necessarily need to have ‘uniformity’, efforts have to be made to reconcile our diversity with universal and indisputable arguments on human rights”.

Article 25 & 26 from the part -3 of the Indian Constitution provides religious freedom to all persons and all religious denominations, which makes personal laws at upper hand in all matrimonial matters. Thus, there are a numerous provision applied differently to persons following different religions.

Indian Constitution does not directly or indirectly provide any directions for Pre- Nup agreements. Nor there is any statute passed by the legislation in this direction. But it does not mean that it is illegal to go in this direction. Many provisions are already covered under the Contract Act. Secondly, the obstruction comes in Hindu laws, where the marriage is recognized as sacrament and not as an agreement and have the ideology of union of seven lives. This ideology in Hinduism is the main hindrance to make Hindu marriage laws as an agreement in any form, but Pre-Nup agreements, as understood by Jurists & legal luminaries till now, seems wrongly interpreted. These agreements are not made to contract the marriage itself, but these agreements touch the issues of contractual liabilities and the way of living routine life, which can be termed as ‘*arrangement to live life in a peaceful manner*’.

³ Supra

Moreover, by inserting divorce laws and other provisions of maintenance, child custody etc. in Hindu Marriage Act, 1955, the legislation has already shown its intent that ***“to authorize the change in society, change in laws must be welcome”***. Moreover, it is the demand of the time now, to curb the offences against women, by every mean either by hook or by crook. So, if the intervention of latest techniques with enforcement of Pre- Nuptial laws can make this possible, then state must go for it and there should be no controversy for this step.

8. Proposed Draft of Pre – Nuptial Agreement:

Proposed Draft:

The extent of Pre-Nup agreements may be divided into four phases along with introduction phase applying in all four phases. The distribution scheme of all four phase is proposed in a model draft as follows.

1. Introduction Phase
2. Pre – Nup Agreements
 - A. Pre – Engagement Agreement (PrE – Agreement 1st phase)
 - B. Post – Engagement/ Pre – Wedding Agreement (PoE/PrW- Agreement 2nd phase)
 - C. Post Wedding Agreement (PoW – Agreement 3rd phase)
3. General Clauses
4. National Nuptial (Pre & Post) Insurance Scheme (NNIS – 4th phase)

1. Introduction Phase (Disclosure of basic information required to know the both candidates) (All fields are mandatory): -

- a. Personal bio-data of both candidates – KYC (including citizenship & nationality, if foreign citizen or NRI, then must be specify).
- b. Educational qualification of both candidates.
- c. At least two or three age proofs to curb child marriages (any one of Pan card, Aadhar Card, Matriculation certificate etc. along with mandatory birth certificate)
- d. Any extra- ordinary achievement.
- e. Details of service/ business, place of service/ business, length of service/ business, duration of working hours, income/loss containing balance sheets for last proceeding three years, any other involvement outside of main service or business.
- f. Parents/ Grand Parents personal bio-data along with their educational qualification
- g. Family tree of two to four generations (upside - up to grandparents’ level, downside – up to grandsons’ level).

- h. Religion followed by themselves, parents, grandparents (if candidate is following different religion from their parents/ grandparents, specify it and if candidate have faith in any other religion/ person/ deity/ custom, then specifically provide it to follow in future as their family custom, subject to validity of their personal laws).
- i. Any criminal record/ proceedings.
- j. Visits to foreign countries/ purpose of visit including passport details.
- k. In case of re-marriage, details of previous marriage and divorce along with judicially decided reason of divorce.
- l. Total moveable/ immovable assets of both candidates (net worth of both candidates) including all joint / HUF joint properties.

Mandatory & Voluntary Disclosure/ Declaration clause:

- a. Voluntary willingness to engage in marital relationship (Mandatory).
- b. Willingness for procreation of children or not (Voluntary).
- c. Disclosure of pre-marital relations (Voluntary).
- d. Willingness to live at parental home, another place outside of parental home or in a foreign country outside of India (Voluntary).

2. Pre – Nuptial Agreement (1st, 2nd & 3rd Phase): -

A. Pre – Engagement Agreement (PrE – Agreement 1st phase)

- a. Which ceremonies will be celebrated and under which customary style?
- b. Who will do arrangement for all ceremonies?
- c. What will be the venue of occasion and how much number of guests will be called in the occasion?
- d. What will be the budget of expenditure (Tentative Budget)?
- e. What will be the cost of all gifts exchanged throughout all the ceremonies?
- f. What should be the Consequences upon breach or failure of agreement of 1st phase?

B. Post – Engagement/ Pre – Wedding Agreement (PoE/PrW- Agreement 2nd phase)

- a. Which ceremonies will be celebrated and under which customary style?
- b. Who will do arrangement for all ceremonies?
- c. What will be the venue of occasion and how much number of guests will be called in the occasion?

- d. What will be the budget of expenditure (Tentative Budget)?
- e. What will be the cost of all gifts exchanged throughout all the ceremonies?
- f. What should be the Consequences upon breach or failure of agreement of 2nd phase?

C. Post Wedding Agreement (PoW – Agreement 3rd phase)

A. For “continuing marriages”.

B. For “being separated marriages”.

C. For “broken marriages”.

A. For “continuing marriages”:

- a. Where the couple would normally live, means which one will be the ‘marital home’ for the couples?
- b. Who will undertake the responsibility of all home expenditures?
- c. Who will manage financial affairs and bank accounts, lockers etc.?
- d. Who will own the marital and other household gifts?
- e. Who will be responsibility for the children’s expenditures, their study and health expenditures and their care take?
- f. Effect of HUF & other prevailing personal laws upon these provisions?
- g. What will be the extent of right to privacy for both couples (for attending parties, outside tours, higher education, shopping from joint funds etc.)?

B. For “being separated marriages”

- a. How to get judicially separated or divorced in easy ways?
- b. Who will be guardian of children and take their custody?
- c. Who will maintain to other spouse in case of failure of marriage?

C. For “broken marriages”

- a. How a husband will maintenance his divorced his wife, till her re-marriage and to his children?
- b. Who will bear the legal expenses of matrimonial petitions?
- c. How the marital properties will be distributed between the spouse and their children subject to their personal laws.?
- d. Who will take the custody of children after divorce?

3. General Clauses:

- A. Any spouse can enter into the agreement from any stage, either 1st phase, 2nd phase, 3rd phase or 4th phase, but the introduction phase will prevail in all four stages.
 - B. Couples, married before the enforcement of this Act, may also enter into 3rd stage of the agreement to operationalize daily routine life and to reduce the risk of post failure stage of marriage.
 - C. Couples can mutually agree upon uncertain events or may insert arbitration clause in the agreement to overcome the uncertainty beyond their control.
 - D. Post Wedding agreement 3rd phase may contain static and dynamic provisions both. Normally, static provisions will remain same and dynamic provisions keep changing as per change in circumstances. Couples can mutually agree upon any material change in terms of the agreement or may insert arbitration clause for such change.
 - E. There may be two arbitrator and one arbitrator must be from each side to represent both parties equally.
 - F. Misinformation in the introduction phase follows the consequences of penal provisions of breach of Pre- Nuptial agreement and mis informant may be charged with other available provisions of penal laws and civil laws like fraud, forgery, kidnapping, rape, contract act etc.
 - G. For enforcement of the Pre- Nuptial agreement in our courts, the said agreement must be registered as per the provisions of Registration Act along with signature of minimum two witnesses or sureties.
- 4. National Nuptial (Pre & Post) Insurance Scheme (NNIS – 4th phase):**

The state shall launch ‘National Nuptial (Pre & Post) Insurance Scheme, which will give assurance to the parties in contract, by taking some amount of premium and issue an insurance policy, covering all the facts of the agreement and assures to both parties, to indemnify the sufferer or victim, in case of breach of the agreement by the other party. *This policy may be regulated online via using latest technologies, which also put a second check upon the candidates not to allow them to provide misinformation, in default of which, the insurance company shall reserve all rights to reject the claim of the party.*

9. Conclusion and suggestions:

‘Law is dynamic and change is the law of nature’. In the changing circumstances, change in laws are always welcome. State should make a commission to invite the suggestions upon

the social conflicts discussed above and welcome all positive amendments and in case, the situation of society becomes worst, there should be no hindrance in making amendments in any law for better control of the society. ***State should make use of latest technology to enforce civil & penal laws and to make deterrent effect upon the wrong doers & criminals.*** One must remember, personal laws were developed by the natural affairs of the people with each other at ancient times, but with the advancement of technology and changes in social circumstances, the affairs of people with each other are also changed, which creates the necessity of change in social and personal laws. ***If, in this 21st century and even after the advancement of so much technology, we have to still engaged ourself to save the women, then this technology will be a big cipher and another failure for the safety of women at this stone.*** State should make best use of the technology to reduce the crime rate by enforcing these types of agreements, it will surely bring certainty and stability in the society and also helps in keeping peace and harmony in the society.