|  |
| --- |
| **PARTING SHOT** |
| Young, urban Indians are increasingly signing prenuptial agreements before getting married. Yet the document is still not considered watertight under Indian law, finds **Varuna Verma** |
| |  | | --- | | http://www.telegraphindia.com/1120404/images/0404law2_Laycorretted.jpg | | **VICTORY LAP**: Celebrations in Lucknow after the Women’s Reservation Bill was passed in the Rajya Sabha |   Jayanth Krishnan had an inter-faith wedding. But before the couple got married, they signed a prenuptial agreement stipulating that neither would force the other to change his or her religion in the future. However, two years down the line, Krishnan’s wife started putting pressure on him to change his religion. Krishnan promptly sought a divorce. When the lawyer produced the prenuptial agreement to defend his client’s decision at the Coimbatore Family Court, it was upheld by the judge.  Krishnan is not alone. It’s not just destination weddings and exotic honeymoons; young urban Indians are adding a new must-have to their nuptial checklist — prenuptial agreements. “Young, urban about-to-wed Indians are increasingly signing prenuptial agreements. They want to lay down clearly who gets what if the marriage turns sour,” says V.K. Singh, a divorce lawyer with Legal Divorce Juris, Delhi.  Singh says both men and women are rushing to lawyers to lay down the financial terms and conditions for marriage. “I get a large number of women who want a signed statement from their fiancés, saying the latter will allow their wives to look after their parents financially after marriage,” he says.  The lawyer, however, adds a word of caution to couples seeking prenuptial agreements. “Prenuptials are not recognised in an Indian court of law. Even then, many couples are opting to sign the agreement, in order to put the financial terms and conditions of their marriage on paper,” says Singh.  A prenuptial agreement — a contract entered into by a couple about to tie the knot — is a signed, registered and notarised document that usually outlines the distribution of assets, liabilities and issues relating to the custody of children if the marriage falls apart in the future.  And with the proposed amendments to the Indian Marriage Act making divorce easier as well as giving women a greater share of the property acquired by the couple during the time they stayed married, interest in prenups will only go up, point out experts.  “The law will impact marriages on the financial front,” says Delhi-based Supreme Court lawyer Mahesh Tiwari. “The Marriage Act will allow women to get a 50 per cent share in all property acquired by a couple while they were wedded,” he explains. A Delhi-based men’s rights group, Save Indian Family Foundation (SIFF), has already demanded that prenuptial agreements be legalised to counter financial ambiguities in marriage, adds Tiwari.  Virag Dhulia, head, gender studies, Confidare Research, a Bangalore-based men’s rights community centre, and also an SIFF member, says Indian marital laws have a lot of grey areas regarding financial and child custody issues. “Prenuptials will bring clarity to wealth distribution between husband and wife. It will ensure that both parties are aware of what they are getting into and what happens if the marriage turns sour,” he explains.  If a couple is headed towards spiltsville, prenups can also help cut short long, exhausting legal battles. “Prenuptials can help couples get an amicable and quick divorce. That will benefit everyone involved,” says Dhulia.  Despite the benefits that prenups can bring to warring couples, as of now, they remain invalid in an Indian court of law. “At best, they can be used for the purpose of evidence, reference or for self-regulation,” says Osama Suhail, associate partner, AMZ Law, a Delhi-based divorce law firm.  Suhail has witnessed first hand that, in an Indian court, a prenuptial agreement may amount to being just a piece of paper. He was representing Amit Seth, a Delhi-based corporate executive, in a divorce case last year. “The couple had signed a prenuptial agreement which specified that Seth’s wife would not seek alimony if the couple were to separate,” recalls Suhail.  When the couple decided to call it quits, Seth’s wife went back on her promise. “She demanded maintenance on the grounds that she was unemployed,” recalls Suhail. When he produced the prenuptial agreement in court, the judge struck it down. Seth now pays a fat sum to his wife every month.  Suhail believes prenups can be a handy tool for couples who want an amicable end to a marriage. “But if one party decides to fight it out, this document has no meaning,” he says.  However, V.P. Sarathi, a divorce lawyer at VPS Law Firm, Coimbatore, believes there are ways of making prenuptials work in the Indian legal system. “Although there is no clause to legalise prenuptials, it depends on the creativity of the lawyer to make a case out of it,” he says.  The lawyer explains with an instance. “If a person breaks a prenuptial agreement signed on a stamped and notarised paper, it becomes a case of fraud. And fraud is a ground for divorce under the Marriage Act,” says Sarathi, who used the prenuptial agreement between his client Jayanth Krishnan and his wife to win his case.  Sarathi says if a prenuptial agreement is made in a legally prescribed format — written on a stamp paper, notarised and has two witnesses — it can carry weight in a law court. “There may not be any written sanction for prenuptials, but judges are often open to interpreting the agreement in different ways,” he says.  However, not everyone is as positive as Sarathi. Mumbai-based matrimonial lawyer Mrunalini Deshmukh, who gets about six requests to draft prenuptial agreements every month, says she tells her clients that it’s simply not worth the effort. “I tell them the document doesn’t count in court,” she says.  However, she admits that most of her clients are undeterred by her advice. “An increasing number of urban, high-income couples are signing prenups. Even though the document lacks legal power, they feel it will make both parties morally obligated to stick to its terms in case of a separation,” she says.  Clearly, modern Indian couples want to enter matrimony with their eyes wide open so that if a parting does come about, it can be without acrimony. |