LAWBY 26
Experience law effortlessly

# LAWBY 26

FROM THE HOUSE OF ORIGIN LAW LABS

Dec, 2024
Vol 37

# LAWBY WRITES

# EDITORIAL

P Arun Sugavaneshvar
Founder

## The not so easy conversation of making law fair to men- The Atul Subash Case

A man just died. He committed suicide. In fact, he had video-recorded reasons for his death, attributing the same to the harassment he faced from his wife, the judge and a not-so-helpful judicial system during the divorce and maintenance proceedings against him. **No one knows the truth fully. It is only correct to wait for the investigation process to complete and then make informed opinions and comments accurately. All the social media is abuzz as to how women misuse laws to harass men and how the laws are unfair to men. Let me just limit my views on the ability of laws to protect men in the Indian scenario.**

The Indian Constitution has mandated the Government to make special provisions for women and children under Article 15(3). It is not in dispute that the laws that were made to protect married women from the harassment of the husband and his relatives under the Bharatiya Nyaya Sanhita, 2023, The Protection of Women from Domestic Violence Act, 2005, Anti dowry laws, and other relevant laws had their wisdom rooted in the unpleasant past experiences that married women faced in the society. They should not be removed or diluted at any cost. **However, are the laws being increasingly misused by women of late? It might be possible, and the same must be remedied so that the ones who use the laws correctly shall not be unduly disregarded or confused with women who corrupt the sanctity of the legal process.**

The Supreme Court in ***Anju Garg and Another vs. Deepak Kumar Garg (Criminal Appeal no.1693 of 2022)*** has held that the husband, being able-bodied, is obliged to earn by legitimate means and maintain his wife and minor child. **Section 19 of the Hindu Adoptions and Maintenance Act, 1956,** states that a Hindu wife is entitled to maintenance from her father-in-law after the death of her husband. **It is to be noted that there are judgments where the husband has received maintenance from the wife but they are a rarity compared to the volume of cases where the husband is ordered to provide maintenance or alimony despite the wife earning adequately to meet her needs.**

Simply put, the financial obligations mandated by the law create a storm and animosity between the spouses at the court during divorce and maintenance proceedings. We must understand that there are complex emotions at play despite attempts by the mediation personnel at court. **Why not solve a big part of the problem at the time of marriage itself?** The argument that marriages are holy or sanctified is not questioned. **However, it is time that courts and the Indian Parliament consider legalizing pre-nuptial contracts immediately. Also, couples could consider Asset Protection Trust (APT) formats to simplify financial burdens if divorce happens.** Marriages may be made in heaven, but divorces are done in courts. It is time for the judicial system to work faster and move towards decisions that are without gender bias. **Also, consciously making gender-neutral laws will help put an end to the argument men are not protected by law.**

# LEGAL CRISPS

## What Does The Law Say About Prenuptial Agreements In India?

*-Adithya Menon*

Prenuptial agreements, though common in many parts of the world, are still a developing concept in India. Traditionally, Indian society has viewed marriage, especially in the context of Hindu customs, as a sacred, lifelong bond. This has made the idea of a prenuptial agreement seem out of place, even controversial. However, prenuptial agreements are gaining some acceptance with changing times, evolving relationships, and a growing focus on financial transparency. This shift highlights India's challenge of blending deep-rooted traditions with the realities of modern life.

For much of India's history, courts have been reluctant to support prenuptial agreements, especially in Hindu marriages. Cases like ***Tekait Mon Mohini Jemadai v. Basanta Kumar Singh (1901) ILR 28 Cal 751*** and ***Krishna Aiyar v. Balammal (1911) ILR 34 Mad 398*** rejected agreements that outlined future separations or specific marital conditions, believing such contracts went against the sacred nature of marriage. Later rulings, such as ***Thirumal Naidu v. Rajammal Alias Rajalakshmi (1967) 2 MLJ 484*** and ***Sribataha Barik v. Musamat Padma (1969) AIR 1969 Ori 112*** reinforced this view by invalidating agreements that conflicted with traditional marital roles. However, courts have occasionally recognized prenuptial agreements in cases like ***Pran Mohan Das v. Hari Mohan Das (1925) AIR 1925 Cal 856*** and ***Sunita Devendra Deshprabhu v. Sitadevi Deshprabhu 2016(6) BomCR 567*** where such agreements aligned with personal laws or clarified the couple's intentions without undermining public policy.

The approach to prenuptial agreements varies across religious communities. Muslim marriages, seen as contractual in nature, often include prenuptial terms through documents like the nikahnama. In ***Saifuddin Sekh v. Soneka Bibi (1954) MANU/GH/0054/1954***, the court upheld a prenuptial agreement that protected the wife's rights. However, agreements promoting separation or violating public policy are not accepted, as seen in **B*ai Fatma v. Ali Mahomed Aiyab (1912) 14 BomLR 1178***. Christian marriages, under the Divorce Act of 1869, allow limited consideration of prenuptial agreements in property disputes. Meanwhile, the Indian Contract Act, 1872 nullifies agreements that conflict with public policy, limiting enforceability in many cases.

Despite these challenges, there is a growing recognition of prenuptial agreements as a tool for transparency and fairness. Courts increasingly view them as evidence of intent; for example, the Delhi Family Court recently suggested making prenuptial agreements mandatory, signalling a potential shift towards acceptance. To unlock its full potential, India needs legal reforms that ensure fairness, prevent misuse, and reflect its diverse cultural values. By balancing tradition and modernity, prenuptial agreements could become valuable instruments for protecting rights and fostering financial security in today's evolving marriages.

# When is a foreign award unenforceable in India?

*-Sri Sai Kamalini M S*

Enforcing foreign arbitral awards in India is governed by the Section 48 of the Arbitration and Conciliation Act, 1996. The Act sets out the grounds for recognizing and enforcing these awards, aiming to strike a balance between upholding international commitments and safeguarding India's public policy. A key principle underlying the enforcement process is the limited scope of inquiry available to Indian courts. This means courts can't re-examine the merits of the award, focusing instead on procedural fairness and compliance with the Act's provisions. The court's role is not to act as an appellate body, but rather to ensure the award meets basic legal standards.

One ground for refusing enforcement is if the award violates India's public policy. This concept has been subject to judicial interpretation, with courts adopting a narrow interpretation to avoid undermining the enforceability of foreign awards. Generally, only awards that fundamentally contradict Indian law or basic notions of justice and morality will be rejected.

A notable case illustrating this principle involved a contract for the sale of coal between ***Bulk Trading S.A. and Mahendra Sponge and Power Ltd. (2024:CGHC:43451).*** The Indian party argued that the COVID-19 pandemic, and the resulting lockdown measures, prevented them from fulfilling their contractual obligations, specifically obtaining a letter of credit. They claimed enforcing the award against them would be contrary to India's public policy.

However, the court, analyzing the government's lockdown guidelines, found that banking services were explicitly exempted. The court emphasized that essential services, like banking, continued to operate, and obtaining a letter of credit was not impossible, even during the pandemic.

Ultimately, the court enforced the award, concluding that it didn't violate India's public policy. This case demonstrates the high threshold required to refuse enforcement on public policy grounds. **The mere existence of unforeseen circumstances, even a global pandemic, does not automatically render a foreign award unenforceable.**

# CASE CHRONICLE

## Delhi High Court exempts personal jewellery from customs duty for Foreign Nationals

*-Nithyaparvathy R G*

Case: **Saba Simran v. Union of India**
Citation: **2024 SCC OnLine Del 8446)**
The Delhi High Court, in the above mentioned case declared that personal jewellery worn by foreign nationals entering India is exempt from customs duty.

The case involved petitioner Saba Simran, who was detained by customs officers at Delhi International Airport while returning to India from a movie shoot in Dubai. Though she chose the green channel, indicating that she had no dutiable goods, customs officers discovered three gold bangles and fifteen gold beads with her. These items were retained, leading to the issuance of an order confiscating the jewellery and inflicting a penalty against Ms. Simran.

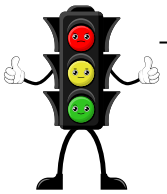
The core issue was in the interpretation of the Baggage Rules 2016, specifically its definition of "personal effects." Customs officers contended that all jewellery, regardless of its nature, was subject to the quantitative and valuation limits outlined in the 2016 Rules. They argued that the monetary limits imposed by these guidelines would decide the amount of jewellery allowed duty-free for any passenger entering the country.

However, the Court disagreed with this view. **The Court distinguished between “personal jewellery” and “jewellery” in general** after reviewing the legislative history of baggage rules and a 1998 explanatory circular issued by the Ministry of Finance. The 1998 circular precisely established that “personal effects” included “personal jewellery,” establishing a distinction that customs officers were expected to acknowledge.

The Court reasoned that the term “jewellery” as used in the 2016 Rules' definition of “personal effects” focuses on **newly acquired items,** as opposed to **“used personal articles of jewellery”** that a passenger might have been wearing or carrying upon exiting the country. This interpretation, the Court said, corresponds with the historical understanding indicated in prior baggage rules and the 1998 circular. **Thus, the Court held that personal jewellery not bought during an overseas trip but already a “used personal effect” of the passenger would not be subject to the 2016 Rules' monetary restrictions.** It reinforced the notion of fairness and the need for clear legal rules to guide people, especially in the circumstances associated with potential penalties or prosecution.

**The Court finally quashed the order confiscating Ms. Simran's jewellery and asked the Joint Commissioner of Customs to re-examine her case in light of the court's view.**

This decision clarifies the treatment of personal jewellery under Indian customs laws. **It preserves the distinction between “personal jewellery” and newly purchased “jewellery” for customs purposes, safeguarding people from unreasonable penalties and confiscation of their personal belongings.**



# BEYOND THE OBVIOUS

## Legal conventions and traffic signals

*-Seethala B*

Traffic signals in India, with green, red, and yellow lights, are critical for road safety and are regulated under both international conventions and domestic laws. Red signals indicate "Stop" for safety, yellow/amber indicates "Caution," and green permits "Go," providing clear directives for drivers. These colours follow the Vienna Convention on Road Traffic (1968), ensuring global uniformity and standardized communication. In India, compliance with traffic signals is mandated by the Motor Vehicles (Amendment) Act, 2019, with Section 118 requiring adherence to traffic control devices. Violations are penalized under Section 177, with fines of ₹500 for a first offence and ₹1,500 for subsequent offences, along with potential suspension of driving license. Further, reckless behaviour like jumping signals can invoke liability under **Section 281 of the Bharatiya Nyaya Sanhita, 2023 (BNS)** for rash driving, punishable by imprisonment or fines.

**The Guidelines on Design and Installation of Road Traffic Signals (IRC: 93-1985)** empower authorities to install traffic control devices and provide detailed guidelines for designing, installing, and operating traffic signals. These guidelines ensure proper visibility through reflective materials or LED lighting and uniform placement across urban and rural areas. Traffic signals are managed by municipal corporations, state traffic departments, and the **National Highways Authority of India (NHAI)** for highways, ensuring consistency in their implementation. The court emphasized the duty of drivers to comply with signals to ensure public safety. Modern urban traffic systems have incorporated technologies like **AI and IoT sensors(Internet of Things)**, under initiatives such as the **Smart Cities Mission,** enabling adaptive traffic signal timings based on real-time conditions.

Compliance with traffic signals ensures safe and efficient road usage while reducing accidents and legal consequences. Uniformity in signal usage, backed by laws and judicial precedents, emphasizes the importance of disciplined driving for public safety and order.

# MEET THE TEAM

Nithyaparvathy R G

Legal Consultant

Seethala B

Legal Consultant

Sri Sai Kamalini M S

Legal Consultant

Adithya Menon

Legal Consultant