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NIKAHNAMA AS A FORM OF PRENUPTIAL AGREEMENT IN THE MUSLIM COMMUNITY: LEGAL, SOCIAL, AND JURISPRUDENTIAL PERSPECTIVES

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ABSTRACT

This Article explores the concept of Nikahnama i.e. the Islamic Marriage Contract within the Muslim community in India as well as around the world, which has the characteristics of a Prenuptial agreement. It traces its historical and religious origins by highlighting its contractual nature and drawing comparisons to prenuptial agreements prevalent in western countries. This article also tries to check upon the legal status of Nikahnama under Indian laws emphasizing on its recognized functions such as providing financial protection either in terms of maintenance or for the purpose of division of assets for spouses. It examines pivotal clauses and their evolution in contemporary practice by taking into account judicial reception, model reforms, and attitude of Society towards Nikahnama. This article also tries to understand the Nikahnama in international context and its ability to bridge the gap between traditional religious practices and modern need for a better Asset protection mechanism before the solemnization of Muslim marriage. This Article supports the broader recognition of the Nikahnama which may be used as a template for a secular Prenuptial agreement in India, ensuring the autonomy in their Personal beliefs and religious practices along with fairness and protection of both the spouses.

KEYWORDS: Nikahnama, Prenuptial Agreement, Mehr, Iddat, Divorce.

INTRODUCTION

Within the intricate framework of Indian marriage law, the concept of prenuptial agreements is still in its infancy, encountering substantial resistance from both traditional customs and the

legal system itself.¹ However, the nikahnama, an Islamic marriage contract, has for centuries encapsulated many core elements traditionally associated with prenuptial agreements, especially within the Muslim community. Unlike prenuptial agreements in Western contexts, the nikahnama is not perceived as a tool for anticipating marital breakdown but rather as a dynamic covenant for securing rights, responsibilities, and asset protections within marriage and in the event of its dissolution.²

This article explores the jurisprudential basis of the nikahnama, its comparison with the prenuptial agreement, its legal treatment in Indian courts, practical challenges, and proposed models that highlight its unique role in marital negotiations. In almost every respect, the nikahnama can be seen as the Indian Muslim community's established answer to marital asset protection, maintenance, and spousal autonomy.

Historical and Religious Foundation of the Nikahnama: Origins and Jurisprudence

Islamic law regards marriage not only as a sacred union but also as a civil contract. The nikahnama is thus vested with dual significance as both a religious and a contractual document. Historically, Muslim societies have used the nikahnama to formalize financial arrangements such as mahr, the mandatory dower given by the groom, delineate grounds for divorce, and affirm spousal rights in property or maintenance.³

A well-drafted nikahnama typically records:

- Names and particulars of spouses and witnesses;
- Amount and method of mahr payment;
- Rights and duties for mutual respect, cohabitation, and dissolution;
- Clauses on maintenance after divorce;
- Safeguards for the wife, including delegated divorce rights (talaq-i-tafwid)⁴

¹ Parth G Jogin, 'High Time to Adopt Prenuptial Agreement in India' (March 2025) IJIRT 174360 https://ijirt.org/publishedpaper/IJIRT174360_PAPER.pdf [accessed 3 November 2025].

² 'PRE-NUPTIAL AGREEMENTS IN INDIA: AN ANALYSIS OF LAW AND SOCIETY', The Amikus Qriaie, 22 June 2022 <https://theamikusqriaie.com/pre-nuptial-agreements-in-india-an-analysis-of-law-and-society/> [accessed 3 November 2025].

³ Shivendra Pandey, 'All you need to know about Model Nikahnama', iPleaders Blog, 15 June 2017 <https://blog.ipleaders.in/need-know-model-nikahnama/> [accessed 3 November 2025].

⁴ 'What You Need To Know Before You Sign Your Nikah Nama', Muzz Blog, 23 June 2025 <https://muzz.com/us/en/blog/relationships/nikah-nama/> [accessed 3 November 2025].

This root in Islamic jurisprudence sets the nikahnama apart, embedding it with both legal and religious enforceability in matters of marriage, divorce, and spousal protection, often even beyond the reach of secular regulation.

Legal Status and Recognition of Prenuptial Agreements in India

Indian marriage law is regulated by diverse personal statutes-Hindu Marriage Act, 1955, Muslim Personal Law, Special Marriage Act, 1954 etc., each reflecting unique customs and perspectives on marital autonomy, property, and divorce. Under Muslim Personal Law, marriage is explicitly treated as a contract, where parties are free to negotiate terms relating to financial maintenance, property rights, and other stipulations.⁵

Courts have traditionally been reluctant to recognize prenuptial agreements for non-Muslim marriages, often declaring them void for being against public policy if perceived to encourage separation or contravene religious norms. Yet, for Muslim marriages, judicial precedent has acknowledged the contractual validity of nikahnamas, provided they conform to Islamic doctrine and statutory law.

Model Nikahnama and Policy Debates

In recent years, efforts by groups like the All-India Muslim Personal Law Board have aimed to modernize and standardize the nikahnama so that it not only serves as a religious certificate but also protects women's rights in marriage and upon separation. There is increasing ethical and policy advocacy for the Indian state to recognize the nikahnama as a legally binding marital contract and potentially as a civil marriage certificate.⁶

Nikahnama as a De Facto Prenuptial Agreement

A prenuptial agreement is a written contract between two parties executed before marriage, outlining arrangements for property, assets, and obligations in the event of divorce or death. In Western systems, they are viewed as tools for financial planning and asset protection, particularly where spouses come from different wealth backgrounds or wish to avoid protracted disputes.⁷

Comparison between Nikahnama and Prenuptial Agreement:

⁵ Marriage (NIKAH) in Muslim Law', Drishti Judiciary, 31 October 2024 <https://www.drishtijudiciary.com/to-the-point/ttp-muslim-law/marriage-nikah> [accessed 3 November 2025].

⁶ Nikahnama should be accepted as marriage certificate: All India Muslim Personal Law Board', Times of India, 15 July 2012 <https://timesofindia.indiatimes.com/city/lucknow/nikahnama-should-be-accepted-as-marriage-certificate-all-india-muslim-personal-law-board/articleshow/14968936.cms> [accessed 3 November 2025].

⁷ Are Prenuptial Agreements Valid in India?', LegalKart, 3 October 2025 <https://www.legalkart.com/legal-blog/are-prenuptial-agreements-valid-in-india-a-complete-guide> [accessed 3 November 2025].

Aspect	Nikahnama	Prenuptial Agreement
Legal Foundation	Islamic Law and contract doctrine	Civil Contract Law
Scope	Mahr, maintenance, delegated divorce, etc	Property division, maintenance, child custody
Rights and Duties	Explicit rights for both spouses	Depends on negotiations, potentially more asset-focused
Mandatory Provisions	Mahr, witnesses, registration	Only what parties agree (varies by jurisdiction)
Social Perception	Religious, customary, protective	Financial, practical, sometimes seen as unromantic
Status in Indian Law	Recognized for Muslims, sometimes used in court	Not generally valid, seen as void for Hindus, Christians

Nikahnamas thus operate as prenuptial agreements in substance outlining rights, obligations, and financial protection from the outset of marriage.

Model Clauses and Evolution in Contemporary Practice

Legal scholars and policy advocates suggest that a robust nikahnama should include the following elements:⁸

- No polygamy clause: Prohibiting husband from taking additional wives.
- Mahr clause: Detailed amount and schedule of dower payment, ensuring enforceability.
- Maintenance and iddat clause: Guaranteeing post-divorce maintenance beyond the iddat (waiting) period, which protects the wife.
- Right to delegated divorce (talaq-i-tafwid): Allowing the wife to initiate divorce under certain circumstances.
- Assets and property clause: Distribution of marital property if marriage dissolves.
- Grounds for divorce clause: Defining “irretrievable breakdown of marriage” as permissible ground for divorce.

In several recent judgments and model contracts, the nikahnama has been used in evidence to resolve disputes regarding asset division and maintenance demonstrating its effective role as a prenuptial safeguard.

⁸ A Ghosh, P Kar, ‘PRENUPTIAL AGREEMENTS IN INDIA: AN ANALYSIS OF LAW AND SOCIETY’, (2019) 12 NUJS Law Rev 217 <https://nujslawreview.org/wp-content/uploads/2019/12/12.2-Ghosh-Kar.pdf> [accessed 3 November 2025].

Judicial Reception and Case Law

While there is no statutory framework specifically regulating prenuptial agreements for most faiths under Indian law, courts have sometimes looked to the nikahnama for guidance and asset division in divorce proceedings. In several landmark cases, courts have weighed the terms of the nikahnama in granting maintenance, enforcing mahr, and evaluating the fairness of other settlements.

Recent case law demonstrates:

- Courts routinely use the nikahnama to determine quantum of mahr and post-divorce maintenance.
- Nikahnama clauses on mutual consent for divorce or delegation of rights to the wife are upheld if freely negotiated and not in conflict with public policy.
- While not always enforceable as a civil contract, its provisions have evidentiary value and may be considered under the Indian Contract Act for Muslims, provided they do not contravene statutory law or notions of fairness.

Societal Attitudes and Evolution⁹

Societal attitudes in India towards prenuptial agreements are colored by the perception that they undermine the sanctity of marriage, anticipating failure instead of unity. For the Muslim community, the nikahnama is generally free of such stigma; it serves instead as a prudent instrument for safeguarding women's rights and ensuring responsible marital conduct.

- In urban, educated circles, the concept is gaining traction with more women and families willing to assert detailed marital terms.
- Declining stigma and increased awareness have led to broader acceptance of the nikahnama as both a religious and practical contract for asset and rights protection.
- Advocates urge greater public awareness and education efforts to encourage informed negotiation of nikahnama terms.

International Perspectives and Comparative Law

Globally, prenuptial agreements are recognized for their asset protection and clarity. In many Western countries, robust prenuptial laws provide frameworks for voluntary, transparent asset division, maintenance, and divorce grounds. In most Islamic nations, the marriage contract

⁹ Maha Alkhateeb, 'Cultural legitimacy in human rights: A case study in Islamic marriage contracts and Jewish pre-nuptials', Bar & Bench, 9 December 2020 <https://www.barandbench.com/columns/cultural-legitimacy-human-rights-islamic-marriage-contracts-jewish-pre-nuptials> [accessed 3 November 2025].

(nikahnama or equivalent) is enforceable not just religiously but civilly, owing to the recognition of marriage as a contract with negotiated obligations.

Lessons for India include:

- Legalization and standardization of asset-distribution clauses;
- Education for individuals negotiating marital contracts;
- Harmonization with religious precepts, recognizing nikahnama's protection for both spouses;
- Judicial oversight balancing equity and consent, especially to protect women from unfair or coercive terms.

Practical Challenges and Legal Reform

Key challenges in recognizing the nikahnama as a prenuptial agreement within Indian law include:

- Lack of explicit statutory recognition for prenuptial or marital contracts for most faiths;
- Variability of enforcement while Muslim nikahnamas may be recognized, asset-distribution clauses can face ambiguity without statutory support;
- Risk of coercion and gender disparity: Historically, women may lack bargaining power, demanding legal oversight so that nikahnama terms do not cement inequality.

Suggested legal reforms include drafting national legislation that recognizes prenuptial contracts as valid if:

- Freely negotiated,
- Clear on asset disclosure,
- Reviewed by independent counsel,
- Aligned with gender equality and protections for vulnerable parties.

Case Studies and Jurisprudence

A survey of Indian case law demonstrates the pivotal role of the nikahnama in resolving disputes. In cases such as *V. Bhagat v. D. Bhagat*¹⁰ and *Bharat Patel v. Rajesh Patel*¹¹, courts have upheld equitable division of assets in the absence of prior formal agreements, often referencing the nikahnama for establishing spousal entitlements.

¹⁰ *Bhagat v D. Bhagat*, (1994) SCC.

¹¹ *Bharat Patel v Rajesh Patel*, (2010) Gujarat High Court

In certain cases, courts have even pointed to the need for legislative reforms and clearer frameworks for pre-marital contracts especially informed by the precedent of Islamic law's nikahnama provisions.

Model Nikahnama: Towards a Modern Prenuptial Instrument

Legal scholars recommend developing a pan-India model nikahnama, emphasizing the following:

- Inclusion of maintenance and asset distribution, subject to public policy and fairness;
- Provision for women's rights, divorce delegation, and protection from polygamy;
- Clarity and detail reducing scope for litigation or ambiguity;
- Education and counseling for parties to empower informed negotiation.

As prenuptial agreements become more accepted among India's urban elite, the nikahnama stands not just as a religious tradition but as a bridge towards modern marital asset protection.

CONCLUSION

The nikahnama, deeply rooted in Islamic legal tradition and evolving social practice, operates in many respects as a prenuptial agreement negotiating key marital rights, duties, and financial protections before marriage. Contemporary legal scholarship and policy advocacy in India increasingly urge recognition of the nikahnama's utility as a model prenuptial contract, especially amidst broader calls to modernize asset-protection laws for all communities.

While challenges remain in enforceability, public perception, and statutory inertia the nikahnama provides a robust template for negotiated marital contracts, balancing religious tradition with modern needs for autonomy and asset protection. Enhanced legal reform, judicial awareness, and public education promise to cement its status as a cornerstone of both religious and civil protection for Indian Muslim families.

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