

Till Debt Do Us Part: Prenuptial Agreements and the Boundaries of the Insolvency Estate under the Insolvency and Bankruptcy Code, 2016

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ABSTRACT

Prenuptial agreements – contractual arrangements entered into by prospective spouses to govern the ownership and distribution of assets upon separation or death – occupy a legally contested space in Indian law. Their uneasy coexistence with public policy norms under the Indian Contract Act, 1872, and their outright non-recognition under most personal law statutes renders them vulnerable instruments of asset protection. This paper examines a largely neglected intersection: the fate of prenuptial agreements when one party to such an agreement subsequently enters insolvency under the Insolvency and Bankruptcy Code, 2016. It argues that the broad and functionally expansive definition of the "insolvency estate" under the IBC, combined with the absence of any statutory carve-out for marital property, creates a significant risk that assets purportedly transferred or segregated pursuant to a prenuptial arrangement may be clawed back by the Resolution Professional or liquidator. The paper analyses the preferential and fraudulent transaction provisions under Sections 43 to 51 of the IBC and considers how courts may treat prenuptial transfers made in contemplation of financial distress. Through a comparative analysis of the United Kingdom and the United States of America, the paper identifies legislative gaps in the Indian framework and proposes targeted reforms to bring clarity and fairness to the treatment of marital asset arrangements in insolvency proceedings.

INTRODUCTION

The Insolvency and Bankruptcy Code, 2016[1] (hereinafter "the IBC" or "the Code") has, in the decade since its enactment, radically restructured the landscape of creditor-debtor relations in India. Designed to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals, the IBC has generated a voluminous body of jurisprudence that continues to evolve. Yet, one dimension of insolvency law has received comparatively little academic or judicial attention: the collision between insolvency proceedings and the private marital arrangements of debtors, specifically those embodied in prenuptial agreements.

Prenuptial agreements also known as antenuptial contracts or premarital agreements are instruments executed by parties intending to marry, which seek to define and delimit their respective rights in respect of property during marriage and upon its dissolution. In many Western jurisdictions, such agreements have attained a well-settled, if not untroubled, legal status. In India, by contrast, prenuptial agreements inhabit a juridical no-man's-land. They are neither expressly prohibited nor affirmatively recognised by any statute. Their enforceability is perpetually shadowed by the public policy exception enshrined in the Indian Contract Act, 1872,[2] and by the deeply personal law-specific frameworks

governing matrimonial property, which do not contemplate, let alone sanction, pre-marital contractual bargaining of this nature.

The intersection of these two fields prenuptial arrangements and insolvency law produces a set of questions of both theoretical and practical importance. Can a prenuptial agreement effectively remove certain assets from the debtor-spouse's estate, thereby placing them beyond the reach of creditors? If assets have been transferred pursuant to such an agreement, can the Interim Resolution Professional (IRP) or liquidator challenge that transfer under the avoidance provisions of the IBC? And what lessons can Indian lawmakers draw from jurisdictions where both prenuptial agreements and personal insolvency frameworks are more mature?

This paper proceeds in five parts. Part I surveys the legal status of prenuptial agreements in India, assessing their enforceability under the law of contract and personal law statutes. Part II examines the architecture of the insolvency estate under the IBC, with a focus on the breadth of the statutory definition of "property" and the implications of the moratorium. Part III the analytical core of the paper considers whether prenuptial transfers can withstand challenge under the preferential and fraudulent transaction provisions of the IBC, and how courts might approach such disputes. Part IV undertakes a comparative analysis of the treatment of prenuptial agreements in insolvency proceedings in the United Kingdom and the United States, identifying principles and models of reform that India might productively adopt. Part V concludes with legislative and judicial recommendations.

I. PRENUPTIAL AGREEMENTS IN INDIA: A LEGALLY CONTESTED TERRAIN

A. Historical and Comparative Context

The concept of a prenuptial agreement is not entirely alien to the Indian legal tradition. Under the personal laws governing Hindu[3] and Muslim matrimonial relationships, and under the Special Marriage Act, 1954,[4] there exist limited provisions for the regulation of matrimonial property. However, these provisions are invariably framed around post-nuptial entitlements maintenance, alimony, and division of joint property upon divorce rather than pre-marital contractual arrangements. In the comparative context, jurisdictions as diverse as France, Germany, and Singapore have long recognised the contractual autonomy of prospective spouses to determine, by way of pre-marital agreement, the regime governing their matrimonial property.[5]

The Indian judiciary's engagement with prenuptial agreements has been sporadic and inconsistent. Early decisions of the High Courts treated such agreements with considerable scepticism, regarding them as being antithetical to the institution of marriage.[6] The Calcutta High Court's observations in *Tekait Mon Mohini Jemadai v Basanta Kumar Singh*[7] that agreements contingent on the dissolution of marriage are contrary to public policy have cast a long shadow over any attempt to give legal effect to prenuptial arrangements in India. The English common law position, as articulated in *Balfour v Balfour*,[8] that agreements between spouses lack contractual intent, has been loosely imported into Indian jurisprudence, even though subsequent English authority, such as *Merritt v Merritt*,[9] has significantly qualified that proposition.

B. Enforceability under the Indian Contract Act, 1872

For a prenuptial agreement to be enforceable in India, it must satisfy the essential conditions of a valid contract under Section 10 of the Indian Contract Act, 1872:[10] free consent, competence of parties, lawful consideration, and lawful object. The first three conditions are typically unproblematic in the context of prenuptial agreements between literate, adult parties negotiating at arm's length. The fourth lawful object presents the critical obstacle.

Section 23 of the Contract Act renders void any agreement whose object is opposed to public policy. The Supreme Court in *Gherulal Parakh v Mahadeodas Maiya*[11] held that the concept of "public policy" must be understood narrowly and that courts should exercise restraint before voiding an otherwise lawful agreement on grounds of public policy. However, the marital context introduces a distinct dimension. Agreements that are perceived as commodifying marriage, or as providing financial incentives for marital breakdown, have consistently attracted adverse judicial comment in India. The constitutional right to privacy, recognised by the Supreme Court in *Maneka Gandhi v Union of India*, [12] and subsequently elaborated upon, might provide a theoretical basis for arguing that pre-marital contractual autonomy falls within the protected sphere of personal liberty though this argument has not yet been successfully deployed before any Indian court.

Scholarly commentary has increasingly called for legislative clarity. Srishti Pandey has argued that India's refusal to recognise prenuptial agreements represents "a missed opportunity to protect both women's economic autonomy and the legitimate expectations of prospective spouses who wish to bring order to their financial arrangements".[13] The Law Commission of India's 283rd Report on the Reform of Family Law recommended the enactment of legislation to govern pre-marital agreements, while noting that any such legislation would need to incorporate safeguards against unconscionable terms and undue influence.[14]

C. Personal Law Dimensions and the Absence of Statutory Recognition

Under Hindu personal law, matrimonial property is governed by principles that do not contemplate the existence of pre-marital agreements altering the statutory incidents of the marital relationship. The Hindu Marriage Act, 1955, and the Hindu Succession Act, 1956, operate as the primary instruments governing the property rights of Hindu spouses, leaving no space for contractually negotiated derogations. Similarly, under Muslim personal law, the concept of *mahr* (dower) represents an obligation of the husband towards the wife, but its quantum is typically fixed at or after the time of marriage and cannot be legitimately reduced by a pre-marital agreement that departs from its protective purpose.

The result of this legislative vacuum is a legal landscape in which prenuptial agreements exist, are executed, and are relied upon by parties particularly high-net-worth individuals and those with complex cross-border asset profiles without any reliable basis for predicting their judicial treatment.

This uncertainty is, as will be demonstrated in the sections that follow, materially compounded when a party to such an agreement enters insolvency.

II. THE ARCHITECTURE OF THE INSOLVENCY ESTATE UNDER THE IBC

A. The Statutory Definition of "Property" and Its Breadth

Central to the question examined in this paper is the scope of the "insolvency estate" the body of assets that, upon the commencement of insolvency proceedings, comes under the control of the insolvency professional and is made available for distribution amongst creditors. Section 3(27) of the IBC defines "property" in capacious terms: it "includes money, goods, actionable claims, land and every description of property situated in India or outside India and every description of interest, present or future or vested or contingent, in property of every description, including claims and every kind of means wheresoever situate".[15]

Section 18 of the IBC,[16] which governs the duties of the Interim Resolution Professional in corporate insolvency resolution proceedings, requires the IRP to take custody and control of all assets over which the corporate debtor has ownership rights, including assets over which the corporate debtor has beneficial interest. Section 36[17] extends this framework to liquidation, providing that the liquidation estate shall include all assets of the debtor. The Supreme Court in *Innoventive Industries Ltd v ICICI Bank*[18] affirmed that the IBC is a comprehensive code that overrides inconsistent provisions of other statutes, and the Court in *Swiss Ribbons Pvt Ltd v Union of India*[19] emphasised the primacy of creditor interests in the statutory scheme.

B. The Moratorium and Its Impact on Marital Property Disputes

Upon the commencement of the corporate insolvency resolution process, Section 14 of the IBC[20] imposes a moratorium that prohibits, inter alia, the institution or continuation of suits or proceedings against the corporate debtor, the enforcement of security interests, and the recovery of any property by an owner or lessor where such property is occupied or in the possession of the corporate debtor. In the context of personal insolvency Part III of the IBC, the provisions of which remain only partially notified the moratorium would similarly freeze any action that seeks to alter the debtor's asset position.

The implications for a spouse seeking to enforce a prenuptial agreement once their partner has entered insolvency are significant. Assuming the prenuptial agreement purports to vest or transfer certain assets in the non-debtor spouse, any enforcement proceedings to give effect to that transfer whether by way of a civil suit, a family court proceeding, or a domestic violence complaint would potentially be caught by the moratorium. The NCLAT in *Arcelormittal India Pvt Ltd v Satish Kumar Gupta*[21] confirmed that the moratorium under the IBC has a broad, protective ambit designed to preserve the corporate debtor's estate for the benefit of all creditors.

C. Beneficial Interests and Constructive Trusts: An Unexplored Dimension

A further complication arises where the prenuptial agreement does not purport to transfer assets but merely records the parties' agreement as to the beneficial ownership of assets held in the debtor-spouse's name. The IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016[22] and the jurisprudence of the NCLT suggest that the insolvency estate captures assets in which the debtor holds a beneficial interest, but may not extend to assets in which the debtor is merely a legal titleholder for the benefit of another. However, the evidence required to establish such a beneficial interest would need to pre-date, and be independent of, the insolvency proceedings: a claim crafted in the shadow of impending insolvency would attract intense judicial scrutiny.

The NCLT's decision in *In re Bhagwati Developers Pvt Ltd*[23] and the Supreme Court's observations in *Jaypee Infratech Ltd v Anand Rathi Global Finance Ltd*[24] indicate a consistent judicial disposition towards protecting the integrity of the insolvency estate from collateral claims that would diminish the pool of assets available to creditors. This disposition will inevitably colour the treatment of any claim by a non-debtor spouse that certain assets, though appearing on the debtor's balance sheet, are in fact subject to a pre-marital beneficial arrangement.

III. PRENUPTIAL TRANSFERS AND THE AVOIDANCE PROVISIONS OF THE IBC

A. Preferential Transactions: Section 43

Section 43 of the IBC[25] empowers the Resolution Professional or liquidator to apply to the Adjudicating Authority to avoid a "preferential transaction" defined as a transaction that gives a creditor, surety, or guarantor a benefit in excess of what they would receive in the event of the debtor's liquidation, and which is entered into during the "look-back period". For transactions with related parties, the look-back period is two years prior to the insolvency commencement date; for unrelated parties, it is one year.

The application of Section 43 to prenuptial transfers is not straightforward, because a prenuptial agreement is entered into before marriage rather than in the run-up to a known insolvency. However, where a party enters insolvency within two years of marriage a period during which financial distress may have been incubating the Resolution Professional is well-placed to argue that the transfer of assets pursuant to the prenuptial agreement constituted a preference over the general body of unsecured creditors. The courts would need to determine, pursuant to Section 44,[26] whether the transfer was, in fact, "influenced by a desire" to prefer the spouse over creditors, and whether the spouse qualifies as a "related party" within the meaning of the Code a categorisation that married couples would, after solemnisation of the marriage, almost certainly satisfy.

B. Undervalue Transactions: Section 45

Of perhaps greater potency is Section 45 of the IBC,[27] which permits the avoidance of any transaction at an undervalue defined as a gift, or a transaction for a consideration the value of which is significantly less than the value provided by the debtor. A prenuptial agreement that purports to

transfer assets to the non-debtor spouse for nominal or no consideration would appear to fall squarely within this category. The "look-back period" for undervalue transactions is again two years for related parties.

The counter-argument available to the non-debtor spouse is that the prenuptial agreement was entered into in good faith, for the purpose of making a provision for the needs of the prospective spouse, and that at the time of entry into the agreement, there were reasonable grounds for believing that the transfer would not affect the debtor's ability to pay their debts as they fell due. Section 49[28] of the IBC preserves a "good faith" defence to undervalue transaction claims. However, as Agarwal and Mehta have argued, "the burden of establishing good faith is a heavy one, and courts have shown little patience with debtors who have disposed of assets to connected persons in the period preceding insolvency".[29]

C. Fraudulent Transactions: Section 49 and Extortionate Credit Transactions

Where the prenuptial agreement can be shown to have been designed, even in part, to defraud creditors that is, to put assets beyond the reach of persons who might at some future date have claims against the debtor the Resolution Professional may invoke the broader fraudulent transaction provisions. The NCLAT's decision in *SBI v Jah Developers Pvt Ltd*[30] affirmed that the mens rea required to establish a fraudulent transaction under the IBC is less demanding than the common law standard of fraud, and that evidence of an intention to defraud may be inferred from the circumstances of the transfer, including the debtor's financial position at the relevant time.

The Supreme Court's landmark judgment in *Lalit Kumar Jain v Union of India*[31] confirmed that the IBC's avoidance provisions are broadly construed, and that the Adjudicating Authority under Section 60(5)[32] has wide jurisdiction to entertain applications relating to transactions that prejudice the interests of creditors. This expansive approach to the avoidance regime suggests that courts would be unlikely to extend automatic immunity to prenuptial transfers merely by virtue of their marital context.

D. The Tension Between Creditor Rights and Spousal Autonomy

The avoidance provisions of the IBC embody a fundamental tension that the legislature has not directly addressed: the tension between the rights of creditors to look to all of the debtor's assets for satisfaction of their claims, and the right of the debtor (and their spouse) to organise their financial affairs by private agreement. As Erach Davar has observed, "the IBC is, at its core, a creditor-protective statute, and its avoidance provisions must be understood in that light; there is little room within the statutory scheme for the accommodation of private marital preferences at the expense of legitimate commercial creditors".[33]

This observation, while compelling from a creditor's perspective, does not give adequate weight to the competing interests at stake. The non-debtor spouse, who may have made significant non-financial contributions to the marriage or who may have foregone career and earning opportunities in reliance on the prenuptial arrangement, has legitimate interests that the law ought not to subordinate entirely to those of commercial creditors. The question of how to balance these competing claims is one that

the Indian legislature has conspicuously failed to address, and it is to comparative models that one must turn for guidance.

IV. COMPARATIVE PERSPECTIVES: THE UNITED KINGDOM AND THE UNITED STATES

A. The United Kingdom: From Judicial Scepticism to Conditional Recognition

The English common law tradition, reflected in the Fraudulent Conveyances Act, 1571,[34] and now crystallised in Sections 339 and 423 of the Insolvency Act, 1986,[35][36] has long permitted trustees in bankruptcy to challenge transactions that prejudice creditors. The framework closely parallels the IBC's avoidance provisions: a transaction at an undervalue may be avoided if it was entered into within five years prior to the presentation of the insolvency petition, while a transaction defrauding creditors may be challenged at any time.

The legal status of prenuptial agreements in England and Wales underwent a transformation with the Supreme Court's decision in *Radmacher v Granatino*. [37] The Court held that a prenuptial agreement should be given "decisive weight" by the courts unless it would be unfair to hold the parties to it. [38] The Law Commission subsequently recommended legislative recognition of "qualifying nuptial agreements" that would be binding on the parties, subject to procedural safeguards. [39] However, crucially for present purposes, neither the *Radmacher* decision nor the Law Commission's recommendations addressed the position of creditors in insolvency. The intersection between prenuptial recognition and insolvency avoidance remains a gap in English law, though Section 341 of the Insolvency Act [40] and the Court of Appeal's analysis in *Hill v Haines* [41] suggest that a family court order giving effect to a prenuptial agreement would not automatically be immune from challenge by a trustee in bankruptcy.

The *Hill v Haines* principle that a trustee in bankruptcy may challenge a consent order made in ancillary relief proceedings if it constitutes a transaction at an undervalue has important implications. It establishes that even a judicially sanctioned recognition of a prenuptial arrangement cannot definitively insulate assets from insolvency claims. The interplay between the Matrimonial Causes Act, 1973, [42] and the Insolvency Act, 1986, thus remains a site of ongoing legal complexity in English law.

B. The United States: Bankruptcy Code and the Treatment of Exempt Marital Property

The United States Bankruptcy Code, 11 USC § 548, [43] provides for the avoidance of fraudulent transfers made within two years prior to the filing date with actual intent to hinder, delay, or defraud creditors. The concept of the "bankruptcy estate" under 11 USC § 541(a)(2) [44] is notable for its explicit treatment of community property: all interests of the debtor and the debtor's spouse in

community property become property of the estate, to the extent that such interest is subject to the claims of the debtor's creditors.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005[45] introduced important modifications to the treatment of marital property in bankruptcy. The Seventh Circuit's decision in *In re Draiman*[46] illustrates the approach of US courts: a prenuptial agreement that purports to place assets beyond the reach of creditors will be scrutinised with care, and the court will look behind the formal arrangement to the substance of the transaction to determine whether the transfer constituted a fraudulent conveyance. The Uniform Premarital Agreement Act, 1983,[47] adopted in various forms by a majority of US states, provides that prenuptial agreements are enforceable unless they were not entered into voluntarily, or unless the agreement was unconscionable at the time of execution. However, enforceability as between the parties does not automatically translate into enforceability against creditors in bankruptcy, a distinction that the Draiman court drew with care.

C. Lessons for India: A Comparative Assessment

The comparative analysis reveals several important lessons. First, both the UK and the US have developed, albeit imperfectly, frameworks that distinguish between the inter partes enforceability of prenuptial agreements and their effect on third-party creditors. India has neither framework: prenuptial agreements are of uncertain inter partes enforceability, and their treatment in insolvency is wholly unaddressed by statute. Second, both jurisdictions recognise, in principle, that a trustee in bankruptcy is not bound by the private arrangements of the debtor, and that courts will look to substance over form in assessing whether a pre-marital transfer was designed to place assets beyond the reach of creditors. Third, and most importantly, both jurisdictions have recognised the need for legislative intervention to bring clarity to an area that judicial creativity alone cannot adequately address.

India's cross-border insolvency framework, which draws upon the UNCITRAL Model Law on Cross-Border Insolvency,[48] remains partially implemented. The EU Insolvency Regulation[49] provides a model for the treatment of matrimonial property regimes in cross-border insolvency proceedings a particularly important consideration given the increasing prevalence of prenuptial agreements amongst non-resident Indians (NRIs) and persons of Indian origin with assets in multiple jurisdictions.[50]

V. CONCLUSION AND RECOMMENDATIONS

The intersection of prenuptial agreements and insolvency law in India presents a legal puzzle of considerable practical significance. As the IBC's personal insolvency provisions become more fully operative, and as the volume of personal insolvency filings increases[51] a trend that is likely to accelerate as the Insolvency and Bankruptcy Board of India extends its supervisory reach the absence of any legislative guidance on the treatment of marital property arrangements in insolvency proceedings will become increasingly untenable. The questions examined in this paper are not merely academic: they arise, and will arise with growing frequency, in the practices of resolution professionals, in the courtrooms of the National Company Law Tribunal and the National Company Law Appellate Tribunal, and in the family courts of India wherever a financially distressed spouse

has, at some earlier point in their life, executed a prenuptial agreement in the hope of bringing order and certainty to their domestic financial arrangements.

This paper has demonstrated that the broad definition of "property" under the IBC,[52] the robust avoidance provisions in Sections 43 to 51,[53] and the creditor-protective orientation of the statute affirmed repeatedly by the Supreme Court[54] collectively create a hostile environment for prenuptial agreements as instruments of asset protection. Assets purportedly segregated pursuant to a prenuptial arrangement are, in practice, likely to be treated as forming part of the insolvency estate, particularly where the agreement was executed in proximity to the period of financial distress, or where the transfer under the agreement cannot be independently justified by reference to the non-debtor spouse's contributions or legitimate expectations. The moratorium under Section 14,[55] the expansive definition of "related party" transactions,[56] and the willingness of courts to look to substance over form in evaluating avoidance claims[57] all of these features of the IBC's architecture operate, in combination, to significantly diminish the practical utility of prenuptial agreements as vehicles for asset protection against creditors.

Yet the law as it currently stands is not merely inconvenient for debtors and their spouses; it is fundamentally unclear. Neither the IBC nor any personal law statute provides guidance on how an insolvency professional or an adjudicating authority should approach a situation in which a pre-marital agreement claims to have determined the ownership of assets that now form part of a disputed estate. The result is a legal vacuum that invites inconsistent judicial outcomes, encourages strategic litigation, and ultimately undermines both the efficiency objectives of the IBC and the legitimate expectations of spouses who have relied upon pre-marital arrangements in good faith. It is a vacuum that the legislature must fill, and fill with care.

This paper makes the following concrete recommendations toward that end.

First, the Law Commission of India should be tasked with preparing a comprehensive standalone report on the legal status and enforceability of prenuptial agreements in India. The 283rd Report on Family Law Reform made important preliminary observations,[58] but the intersection of prenuptial agreements with insolvency, tax, and succession law was not within its primary scope. A dedicated report should examine the full lifecycle of a prenuptial agreement from execution through enforcement and should specifically address what happens to such an agreement when one party enters insolvency. The report should engage with the full range of personal law frameworks applicable in India and should consider the particular vulnerability of women who enter into prenuptial agreements that are subsequently rendered unenforceable, leaving them without either the protection of the agreement or the statutory entitlements they may have contractually waived.[59]

Second, the legislature should amend the IBC to include a specific statutory provision addressing the treatment of prenuptial and post-nuptial agreements in insolvency proceedings. Such a provision should, at minimum, accomplish three things. It should define the circumstances in which a transfer made pursuant to a marital agreement shall be treated as a transaction at an undervalue or a preferential transaction within the meaning of Sections 43 to 45 of the IBC.[60] It should establish a presumption

rebuttable upon the application of the Resolution Professional that a prenuptial agreement entered into more than five years before the insolvency commencement date and not otherwise demonstrably connected to a scheme to defraud creditors shall not be treated as a voidable transaction. And it should establish a clear procedural mechanism by which the non-debtor spouse may intervene in insolvency proceedings to assert their rights under a pre-marital agreement, pursuant to Section 60(5) of the IBC.[61]

Third, any future legislation governing prenuptial agreements whether freestanding or integrated into a reformed family law code should expressly address the insolvency dimension. Specifically, it should provide that the inter partes enforceability of a prenuptial agreement does not bind the Resolution Professional or liquidator in insolvency proceedings, except where the non-debtor spouse can demonstrate, to the satisfaction of the Adjudicating Authority, that the agreement was entered into in good faith, at arm's length, with independent legal advice on both sides, and without any knowledge or reasonable anticipation of imminent financial distress on the part of the debtor-spouse at the time of execution. This formulation draws upon the best elements of the frameworks examined in Part IV of this paper[62] while adapting them to the realities of the Indian legal context, where independent legal advice in matrimonial matters is not yet standard practice and where power imbalances within marriages particularly affecting women remain a serious concern.[63]

Fourth, the pending legislative work on the personal insolvency framework under Part III of the IBC must be completed as a matter of priority.[64] The continued non-operationalisation of the personal insolvency provisions which would directly govern the insolvency of individual debtors, including those who are parties to prenuptial agreements is itself a significant source of legal uncertainty. Individual debtors and their creditors currently operate in a twilight zone in which the applicable rules are unclear, the institutional infrastructure is underdeveloped, and the courts are left to improvise solutions from first principles.[65] Completing the personal insolvency framework would not only address this uncertainty but would also create the legislative space within which the specific provisions recommended above could be inserted.

Fifth, courts adjudicating disputes between insolvency professionals and non-debtor spouses should, in the interim absence of legislative clarity, adopt a structured analytical framework rather than approaching each case in an ad hoc manner. Such a framework should require the court to first determine the temporal proximity of the prenuptial agreement to the insolvency commencement date; second, assess the financial position of the debtor-spouse at the time the agreement was executed; third, evaluate whether the non-debtor spouse provided any consideration whether financial or otherwise that could independently justify the transfer; and fourth, consider whether the agreement was the product of free and equal negotiation or was, instead, the result of one party's superior bargaining position.[66] Only after working through this analysis should the court decide whether the avoidance provisions of the IBC ought to be applied. In conducting this inquiry, the Adjudicating Authority may usefully draw upon the Transfer of Property Act, 1882,[67] and the Benami Transactions (Prohibition) Act, 1988,[68] as supplementary analytical tools.

Sixth, the IBBI should issue guidance to Insolvency Professionals on the treatment of marital property disputes that arise in the course of insolvency proceedings.[69] At present, Resolution Professionals and liquidators have no regulatory direction on how to handle claims by non-debtor spouses, or on the evidentiary standards applicable to the assessment of prenuptial agreements. Clear regulatory guidance analogous to the IBBI's existing circulars on related party transactions and connected person would bring much-needed consistency to professional practice and reduce the burden on the Adjudicating Authority. The IBBI's Annual Report 2022-23 itself acknowledges the growing complexity of individual insolvency cases,[70] and the issuance of such guidance would be a proportionate and timely regulatory response.

The vision that animated the framers of the IBC a vision described by the Ministry of Corporate Affairs as one of creating "a modern, efficient, and creditor-friendly insolvency regime"[71] must ultimately be reconciled with the equally important social interest in protecting the legitimate expectations of spouses who enter into financial arrangements in good faith before marriage. The IBC was not designed to be an instrument of marital injustice, and its avoidance provisions were not conceived with the specific objective of neutralising pre-marital financial planning. Yet, in the absence of legislative guidance, that is precisely the effect they risk producing when applied without nuance or qualification to the complex facts of marital property disputes.

The resolution of this tension requires not only legislative attention but also a shift in the conceptual approach that Indian insolvency law takes toward the debtor as a person embedded in a web of domestic and social relationships. The corporate debtor model in which the entity whose assets are administered is a legal person with no family, no spouse, and no pre-marital commitments cannot simply be transposed onto the individual debtor without significant distortion. Individual debtors bring to insolvency proceedings a full biographical and relational context, including, in many cases, the financial arrangements they made at the most hopeful moment of their lives. As Subramanian and Gupta have compellingly argued, the IBC's personal insolvency framework remains "incomplete, underdeveloped, and inadequate to deal with the complex asset profiles of contemporary Indian households",[72] and the legislative attention required to remedy that inadequacy must extend beyond procedural mechanics to encompass the substantive legal treatment of marital arrangements.

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