

## **EXPLORING PRE-NUPTIAL AGREEMENTS**

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### **DISCUSSION OF KEY FINDINGS OF STUDY**

Most participants thought pre-nuptial agreements should be allowed in the UK, but they were less convinced about whether they should be legally binding. Women were more likely to say they should only be legally binding in some circumstances, perhaps because they prefer judges to have a discretionary role in upholding pre-nuptial agreements, supporting Brod's (1994) argument that the courts should protect women.

Fewer participants would consider a pre-nuptial agreement for their own relationships. As suggested by Scott (1990) and Baker & Emery (1993), this might be due to cognitive biases; people believe they are unnecessary because divorce is constructed as 'Other'.

The majority of participants thought pre-nuptial agreements could encourage marriage as claimed by Weitzman (1981) and Green & Long (1984). However, a large number of participants thought pre-nuptial agreements would both encourage and prevent marriage, implying their influence on the marriage rate may balance out. Women were less likely to think that they would prevent marriage, possibly because the reason women felt this was most likely to occur was due to a lack of trust, which might be easier to resolve than concerns about marriage for the wrong reasons.

Fewer participants thought pre-nuptial agreements would increase the likelihood of divorce, suggesting authors (Scott, 1990; Beck & Beck-Gernsheim, 1995) may be unnecessarily concerned. However, some thought that by planning for divorce this was exactly what would happen with one mentioning a "self-fulfilling prophecy", an idea also posed by Weitzman (1981). None of the participants with pre-nuptial agreements believed that they would increase the likelihood of divorce; purposive sampling could examine this further by comparing divorce rates among individuals with pre-nuptial agreements to those without.

Interviews with individuals who had a pre-nuptial agreement in a previous marriage may also reveal whether they believe the agreement influenced the relationship failure. Most participants thought legally binding pre-nuptial agreements would not affect the institution of marriage, perhaps negating arguments against pre-nuptial agreements on this premise. Many inferred this was because the institution of marriage has already undergone significant changes; some considering this positive, others negative. However, religious participants were more likely to think it would have a negative influence and reduce the lifelong concept of marriage, substantiating comments by Christian Concern in the Consultation Paper (The Law Commission, 2014).

Religious participants, particularly those describing themselves as Church of England or Other Christian, were also less likely to be encouraged by pre-nuptial agreements becoming legally binding. Overall, this was less likely to encourage use than expected, even for 2 of the 3 participants with pre-nuptial agreements. This, combined with the fact that most participants favoured enforceability only in some circumstances suggests that people may feel more comfortable with judges retaining a discretionary role. This differs from practitioners' views in Hitchings' (2011) study but it is possible that a purposive sample of people with pre-nuptial agreements would produce different results.

Religious approval would not influence the majority of participants, with only two participants who had no particular belief saying it would influence them, validating Beck & Beck-Gernsheim's (1995) argument that the influence of religion over the general population is decreasing. Although religious approval would have a greater influence on most religious participants, unexpectedly, participants affiliated with the Church of England were unlikely to say it would affect their decision. This consistently negative view is probably because nothing would persuade them to obtain a pre-nuptial agreement; the opposition by these particular participants is surprising given that the Church of England is often seen as having a more lenient and progressive attitude to marriage and divorce than other religions.

However, it may reflect different perceptions of marriage and pre-nuptial agreements among religions; both Jewish and Muslim marriages have some form of marriage agreement. Participants' claims that the concept of marriage has already changed, combined with the lack of influence that making pre-nuptial agreements legally binding, or religious approval would appear to have, suggests that the law and religious bodies have little influence on individuals' decisions and beliefs regarding marriage. This both supports Beck & Beck-Gernsheim's (1995) argument about marriage being a personal affair and Lewis' (2001) claim that public opinion influences legal change rather than the other way round. However, most participants believe the government has a continuing role, particularly in legal matters, corroborating Schultz's (1982) assertion that government will always have a role.

Contradictory to the revolutionary stereotype and results in Barlow & Smithson's (2012) study, younger participants were less likely to be against government having a role and less likely to support legally binding pre-nuptial agreements. This may be because fewer students are contemplating marriage in the near future and therefore may not have considered the implications of government involvement to the same extent as other participants. There was little support for government having a more paternalistic role, endorsing the autonomy argument (Sanders, 2010) that people want to make their own decisions regarding relationships.

Most participants thought wealthy individuals would be more likely to obtain a prenuptial agreement; others thought they would be obtained by insecure, practical or selfish people. The majority outlined typical characteristics, indicating that the presence of a prenuptial agreement in a relationship, or even the proposition of one by a partner as Margulies (2003) suggests, could lead to automatic biases and connotations about the individual(s) and relationship.

Pre-nuptial agreements are frequently mentioned in the media in connection with wealthy individuals and celebrities, perpetuating biases that pre-nuptial agreements are only for the wealthy, and perhaps superficial. If these biases persist, it may reduce public acceptance, which in turn is likely to prevent biases from reducing.

Participants' opinions differed regarding whether using pre-nuptial agreements as a pragmatic and realistic approach to marriage was good or bad. A small number of participants said it was a sign of a healthy relationship, substantiating claims in the literature that pre-nuptial agreements encourage open and honest communication (Weitzman, 1981; Kaslow, 1991). Research by Carrere & Gottman (1999) suggests that whether an agreement encourages a healthy relationship or causes problems may depend on how the suggestion of a pre-nuptial agreement, and any conflict that arises, is dealt with.

Participants' expected reactions if their partner asked for a pre-nuptial agreement varied significantly in positivity; some participants would be outraged and end the relationship, whilst others would happily agree. Several participants saw it as purely a practical decision, separate from emotional issues, with some likening it to life insurance, or

making a will, as did participants in Barlow & Smithson's (2012) study. This endorses Schultz's (1982) claim that pre-nuptial agreements are not necessarily incompatible with marriage.

Wealthier individuals were more likely to have a positive reaction, which is unsurprising given they have more to lose in divorce without a pre-nuptial agreement and supports the views of most participants that wealthy individuals are more likely to obtain one. Divorcees were also more likely to accept the suggestion, perhaps because they would like one themselves, or because they better understand the desire to reduce the stress of divorce.

Contrary to expectation, the majority of divorcees thought a pre-nuptial agreement would not have made their divorce easier, although those that thought it would tended to be quite bitter. Due to the small number of divorcees it is difficult to generalise to the population, but responses imply that pre-nuptial agreements might be particularly beneficial in acrimonious divorces. This may be because the more anger and conflict there is at the end of a marriage, the more difficult it is for individuals to reach a calm and rational decision about finances, making it easier to rely on a predefined division of assets.

Half of divorced participants confirmed that the experience made them more likely to obtain a pre-nuptial agreement in the future, supporting Beck & Beck Gernsheim's (1995) proposition that prenuptial agreements may be seen as a "life-jacket" when considering remarrying. These results differ to Barlow and Smithson's (2012) findings that divorcees were less likely to be in support of pre-nuptial agreements, but do not refute them given the smaller sample size in this study.

Two of the participants with pre-nuptial agreements had been divorced, and whilst neither thought a pre-nuptial agreement would have made their divorce easier they would both recommend one if either partner was wealthy. This may be because they recognise how much more difficult their divorces could have been if there had been significant assets. All three participants thought the pre-nuptial agreement was not impacting their relationship implying that they may not cause the problems foreseen by others. However, they may not have wanted to admit relationship difficulties either to themselves or in a questionnaire.

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