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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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COHABITATION WITHOUT MARRIAGE: ANALYSING LIVE-IN RELATIONSHIPS THROUGH THE LENS OF INDIAN PERSONAL LAWS

AUTHORED BY - KANGAN CHAWLA & ISHIKA JAISWAL

ABSTRACT

A live-in relationship means when two adults live together but do not enter into a contract of marriage (also described as cohabitation in some parts of the world). Cohabitation or living together as a couple outside marriage remains taboo in India though this concept has somewhat been better appreciated particularly during the influx of orthodox western values of freedom, privacy and globalization. Although live-in relationships are believed to be a precursor to marriage or as a way to check compatibility and thus curb cases of divorce they equally do not have recognized legal status in this country. Nevertheless, they are slowly finding their way in organisations for several reasons. There are no set laws regarding these relationships, thus the Supreme Court has provided a set of rules and regulations over these undertakings. In 2010, the Supreme Court through its landmark judgment had held that live in relations are not immoral or illegal.¹ The present paper aims at reviewing the legal position of live-in-relationship in India and it has been prepared on the basis of some relevant case laws. Most importantly, common law cohabitation is not prohibited, but where two people portray themselves as a married couple, and share conjugal resources for a reasonable period of time, then their relationship can be considered as 'co-habitation in the nature of marriage' under the Prevention of Domestic Violence Act, 2005. Therefore, the female partners may request alimony. Besides, offspring conceived from such unions are recognized as legitimate and can claim self-acquired property of the parents though they have no rights to the Hindu Undivided Family property. The author examines the present Indian legislation concerning live-in-relationships under the Hindu and Muslim Law and possibilities, rights and liabilities for the parties involved under the Indian laws.

Keywords: Live-in relationship, personal laws, maintenance, property rights

¹ S. Khushboo vs Kanniammal & Anr 2010 (5) SCC 600

INTRODUCTION

The advent of technology, globalization and the current changing society have different spheres of life. In recent decades there has been an enormous social change in the affairs of marriage and family, thus changing peoples' perception radically. Globalization in recent decades has fanned these changes across the world to different aspects of social living standards such as the family, marriage, and partnerships. Marriage a socially and legally acceptable form of relationship is of great importance in many cultures including India where relationship matters most. Cohabitation without getting married continues to be deemed as socially inappropriate, and is quite rare despite the fact that the idea has begun to catch on somewhat.

Conventional Indian marriage used to mean not only a civil contract with restricted legal implications but a social contract where families' role in selecting the life partners for their children was paramount. This framework was beneficial in that it gave pragmatics about relationships and duties as well as expectations of societies on the couple, their marriage and family. However, as the country is getting closer to the global cultures and their ideas, the youth has started getting sceptic about most of these conventions because of which they have been trying out live in relationships.

A live in partnership may be regarded as a domestic partnership where two people cohabit without entering a marriage contract for reasons of law or religion. It affords the couple the opportunity to be together at the same time it affords them a free license to live single lives which may not be within their grasp if they were married. Despite the fact that these models can be understood as the new approach to understanding relationships better, they also can cause a number of concerns regarding social and legal admissibility.

Even though live-in relationships are increasingly being practiced more in modern India, there is still a serious legal vacuum. Laxity of the law on these matters has thus created doubts over rights and duties of people in such associations. Considering this void, the Supreme Court has leaned in through several precedents and set down guidelines to ensure that the couple in the live in relationship have certain rights. These have been legalizing such unions especially under the Prevention of Domestic Violence Act, 2005 where the claims under the civil suit involving alimony and the children of these unions are propelled. Legalisation of live-in relationships to an extent means that new rules would have to be put in place to handle affairs such as desertion, cheating, spousal/child support/maintenance and inheritance.

LEGALITY OF LIVE IN RELATIONSHIPS

Today marriages in India are regulated through either the personal matrimonial laws or through statutes such as The Special Marriage Act, 1954. Among Hindus marriage is considered holy, whereas under other personal laws marriage is treated as a contract. Since live-in relationships are unlawful in India, women within such arrangements cannot lawfully adopt her partner's surname for official or financial functions. They are not related as domestic partners remain single and independent in their identity. These relationships can end at the will of either of the parties without involving the court or even getting a formal divorce.

The Indian courts in the absence of concrete laws regarding live in relationships have developed certain guidelines for these relationships to be considered legal through various judgments.

In the case of *Payal Sharma v. Superintendent Nari Niketan*², Justices M. Katju and R.B. Mishra said that cohabitation is perfectly legal and a couple of the opposite sex can live together without being married to each other. Although people may consider this as wrong or unethical, it is not unlawful. Likewise, in the case of *S. Khushboo vs Kanniammal & Anr*³ the Supreme Court stated that there is no law in India which makes live in relationship or pre-marital sex a crime. It was even more specifically stated that living together as partners, is permissible regardless of gender if partners are of legal marriageable age.

In, *A. Dinohamy v. W.L. Blahamy*,⁴ the Privy Council laid down the general proposition that: "where a man and woman are proved to have lived together as man and wife, the law will presume, unless, the contrary be clearly proved that they were living together in consequence of a valid marriage, and not in a state of concubinage."⁵

In *D.Velusamy v s D.Patchaiammal*⁶ (2010), the Court observed that if these relationships are akin to marriage the woman will be entitled for maintenance under section 125 CrPC. The Supreme Court upheld the difference between "marriage" and "relationship in the nature of marriage" at the same time as it recognized Parliament's aim to protect the rights of women in both kinds of relationships. But, the Court stressed on the criterion of 'common law marriage'

² Payal Sharma v. Superintendent Nari Niketan AIR 2001 All 254.

³ S. Khushboo vs Kanniammal & Anr 2010 (5) SCC 600.

⁴ A. Dinohamy v. W.L. Blahamy, AIR 1927 P.C. 185.

⁵ LAW FINDER LIVE <https://www.lawfinderlive.com/Articles-1/Article13.htm?AspxAutoDetectCookieSupport=1> (last visited October 13, 2024).

⁶ D.Velusamy v s D.Patchaiammal AIR 2011 Supreme Court 479.

as the standard for defining 'a relationship in the nature of marriage' in order to place limits on the kinds of live in relationships, which would fall under such category.

The following were the conditions that the court set for qualification of a live-in relationship:⁷

- Voluntary Cohabitation of Parties and posed to the world as akin to spouses for a significant amount of time
- Possession of "shared household" as elucidated in Section 2(s), Protection of Women from Domestic Violence Act, 2005.
- Both parties must be unmarried or otherwise capable of entering into a legal marriage.

Furthermore the Fundamental right guaranteed under Article 21 of the Constitution of India grants to all its citizens "right to life and personal liberty"⁸ which includes the right to live with whomever they want.

RECOGNITION OF LIVE IN RELATIONSHIPS IN PERSONAL LAWS OF INDIA

The Indian culture is collectivistic in nature, and every part of the culture for the Indian people is associated with great value and respect as everyone is emotionally connected. Thus marriage is one of the cornerstones in the personal laws of many religions and people have a deep emotional feeling about it. Even though what a valid marriage looks like is different, according to the various religions in India marriage is considered as very important in every religion. These fundamental concepts are questioned by live-in-relationships, which are now legalized in India, but are criticized by a major part of the Indian society. This makes it difficult to form proper laws regarding and surrounding live in relations or cohabitation without marriage.

India, Hindu, Muslim, Christian, and Parsi laws have been followed as personal laws that govern marriage, inheritance rights. Such laws commonly approach marriage as an invasion sanctified or perhaps as a binding contract that realizes expectations and responsibilities of the married couple.

Hindu Laws:

It was several centuries ago that civilized communities acknowledged and endorsed one of the

⁷ MANUPATRA, <https://articles.manupatra.com/article-details/India-v-USA-Legality-of-Live-in-Relationships> (last visited October 13 2024).

⁸ INDIA CONST. art. 21.

most primal human vices – the need for companionship through the creation of an honourable social covenant known as marriage. In order for marriage to become a union that will make the couple happy and allow the family to live a worthwhile life, Hindu ancestors put in place some ideals that made marriage to be more than a mere copulation to produce children but a lasting union within the spirit of Dharma – the Hindu code of ethics. In today's world the laws regarding marriage between two Hindu individuals is governed by the Hindu Marriage Act, 1955. As a law passed in the 1950s the Act fails to cover the concept of live in relationships. Live in relations although not a new topic was considered to be an even bigger taboo than it is today thus, the Hindu marriage act defines marriage as both legal and social, but fails to grant similar coverage to live in relationships. However, the courts have relied on some provisions of the Act, for example, presumption of marriage where parties have been in the cohabited relationship for a long time in the case of live-in matters.

Muslim Laws: In Muslim Law, except for a valid marriage (Nikah) all other sexual relations are forbidden.

Despite growing attempts to make the legal position of children born out of such relationships under Indian law more concrete, Muslim personal laws do not approve live in relationships. Alimony is not be permitted as live in relationships are not recognized in Islamic law. Any sort of sexual relation outside the confines of a marriage is considered to be sinful in Muslim marriage. This type of unlawful marriage is called zina. Legally zina can be defined as a formation of a sexual relation between a couple who is not lawfully wedded to one another. The proof of marriage can be provided either by direct evidence or by providing the deed of marriage. However, it is not always that the deed of marriage can be produced or that the witnesses to the marriage can be called, in such cases it is possible that man and woman who were involved in the alleged marriage and are living together as husband and wife, the relation can be considered as a valid marriage.⁹

In *Rashida Khatoon v S K Islam*¹⁰, the Court stated that in the particular case there was no acceptance of an offer of marriage, but only a promise to marry in the future. It was followed that when entering into cohabitation on such a promise, the fact of marriage does not thereby

⁹ Wazida Rahman, Live-In-Relationship And Personal Laws: A Contemporary Study, Vol. 3, Issues 3-4, NUJS Journal of Regulatory Studies, 29, 2018, <https://www.nujs.edu/wp-content/uploads/2022/11/File-54.pdf>.

¹⁰ Rashida Khatoon v S K Islam AIR 2005 Ori 57.

exist and the woman cannot be regarded as a legally wedded wife.

Thus under Muslim law, the concept of live in relationships is highly looked down upon and is considered to be a sin as sexual intercourse outside of marriage is considered to be zina. Repeatedly performing the zina, that is living in a live in relationship thus, doesn't provide the union the recognition of a valid marriage as committing a sin continuously doesn't make it a righteous act.

Christian and Parsi Marriage Acts: Like Hindu and Muslim personal laws, the laws of Christian marriage and Parsi marriage also take marriage as the basis of family rights and do not recognize live in relation to a great extent.

MAINTAINENCE RIGHTS

Section 125 of Code of Criminal Procedure (CrPC) casts the legal duty to maintain a wife, minor children, and parents who are dependent upon the person to do so. The courts of India have given a broader meaning to the term wife used in this section to also mean women who are in a live in relationships.

The Malimath Committee set up in November 2000 to review the Criminal Justice System produced its report in 2003 containing several propositions regarding "offences against women". One of the main reforms that was suggested was the change of section 125 of Criminal Procedure Code (CrPC) which talks about maintainence rights of wives, children and parents.

In the landmark case of *Chanmuniya v Virendra Kumar Singh Kushwaha and Anr*¹¹ it was stated that:

"...that a broad and expansive interpretation should be given to the term "wife" to include even those cases where a man and woman have been living together as husband and wife for a reasonably long period of time, and strict proof of marriage should not be a precondition for maintenance under Section 125 CrPC, to fulfil the true spirit and essence of the beneficial provision of maintenance under Section 125."

For a woman to qualify for maintenance u/s 125 of the Act, the conditions established in

¹¹ Chanmuniya v Virendra Kumar Singh Kushwaha and Anr (2011) 1 SCC, 141.

*D.Velusamy vs D.Patchaiammal*¹² (2010) have to be fulfilled as already stated above.

This law of maintenance is now inscribed in section 144 of Bharatiya Nagarik Suraksha Sanhita.

Protection of Women from Domestic Violence Act (PWDVA), 2005¹³: This Act has shown some steps towards recognition of live-in relationships by providing women under 'de facto' relationship akin to marriage, freedom against violence, maintenance or legal remedy. In the case of *Narayan Jagluji Thool and Ors v. Mala Chandan Wani*¹⁴, the court elaborated the Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 and said that the women does not have to be legally wed to seek protection under this law. It is enough for her to be in a relationship with a man that is akin to marriage. However, there is a condition: the woman must be a spinster and must be in a legal capacity to wed.

Hindu laws:

Under the Hindu Adoptions and Maintenance Act, 1956, Section 21 maintenance is to be provided to legitimate children. In accordance with the amendment made in 2005 the Hindu Succession Act, 1956, a woman is provided with legal status for claiming the ancestral property. This means that a woman, married or in live-in relationship can claim parental property by birth right. In *Payal Sharma v. Superintendent Nari Niketan*¹⁵ the Delhi High Court had held that the rights of a woman in a legally recognised marriage and a live in relationship are the same. Under Hindu law, any woman who is living in with a man as his wife is not entitled to maintenance unless it is proved or presumed that the man and the woman were staying together as a married couple. In *Indra Sarma vs. V.K.V. Sarma*,¹⁶ it was held that a woman staying in a live-in relationship for a considerable amount of time can claim maintenance from her partner even after the separation. It was also said that if the man deserts the woman or does not provide for her financially, the woman can apply for maintenance.

Muslim laws: Living together is not legally recognized and therefore bears no legal or moral consequences between the couple under Islamic laws. A woman in such a relationship cannot

¹² D.Velusamy v s D.Patchaiammal AIR 2011 Supreme Court 479.

¹³ Prevention of Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

¹⁴ Narayan Jagluji Thool and Ors v. Mala Chandan Wani AIR 2015 Bombay 36.

¹⁵ Payal Sharma v. Superintendent Nari Niketan AIR 2001 All 254.

¹⁶ Indra Sarma vs. V.K.V. Sarma, (2013) 15 SCC 775.

claim the rights accorded to a wife in marriage such as dower or maintenance; or even memorial rights over her partners' property after he is dead.

Property Rights: The Indian Laws do not provide any code that deals with partners' inheritances or property right in the live in relationships. Unlike a married couple, the cohabitant has no automatic legal rights over his or her partner's property, unless there is an agreement to the contrary. Section 114 of the Indian Evidence Act, 1872, deals with the presumption of facts; by virtue of which, the Court even treats the couple living together as an officially wedded couple. The onus is on the opposing party to disprove such presumption.¹⁷ In the case of *Vidyadhari v. Sukhrana Bai*¹⁸ the court not only provided the partners the right to inherit the property of one another but also a child born out of such a relationship the same right.

Hindu law:

Children conceived by a couple in a live-in relationship, can claim property from parents under the Hindu Succession Act, if the children are recognised as legitimate under the present judicial orders. This is further discussed under "RIGHTS OF CHILDREN BORN TO A LIVE-IN COUPLE"

Muslim law:

As stated above since under Muslim laws a live in relationship is not recognised the couple does not have the right of inheritance of property of one another.

RIGHTS OF CHILDREN BORN TO A LIVE-IN COUPLE

There is no individual law that provides that children born to live-in couples are legal. It means that the future of such children is unclear, if the partners decide to part ways, as there is no legal support to back them up. These are the children who require protection of the law since their future needs to be protected and be given a right to both parents property.

Section 16 of The Hindu Marriage Act of 1955 and section 26 the Special Marriage Act Of 1954 give lawful sanction to children born out of void and voidable marriages. These sections hold that children resulting from even live in relationships, shall be regarded legitimate. But by

¹⁷ LAW AND WORLD, <https://lawandworld.ge/index.php/law/article/view/365> (last visited October 14,2024).

¹⁸ *Vidyadhari v. Sukhrana Bai* AIR 2008 SC 1420 (India).

virtue of Subsection (3) of both the Acts, these children can only inherit property of their parents. Therefore, they have no rights received through coparcenary in the Hindus Undivided Family (HUF) property if their parents were not legally wedded.

According to the case *Madan Mohan Singh v. Rajni Kant*¹⁹, when a couple cohabits for a significant amount of time, then the law deems them to be husband and wife and not in a concubine relationship. This presumption, however, can be defeated only by substantial evidence. A long passable conjugal partnership cannot be viewed as a passing cohabitation, and under Section 114 of the Indian Evidence Act 1872, unless evidence to the contrary is presented, they must have lived together as husband and wife and children born out of their union are legitimate.

Supreme Court clarified the status of children born from live-in relationships in *Bharata Matha v. R. Vijaya Renganathan*²⁰, stating that they can claim inherited assets from their parents but have no rights vested in them for acquiring ancestral or coparcenary property.

Hindu Laws:

According to The Hindu Marriage Act, 1955, children born to live in relationship couples are legitimate if the relationship existing between the couples is somewhat similar to a marriage. Their right of inheriting their parents self-acquired property was also recognized under the Hindu Succession Act. However, they do not have power regarding ancestral property unless there has been marriage prior to it.

According to Section 16 of the Hindu Marriage Act, 1955, that focuses on legitimacy of children born out of valid or invalid marriages, children born out of live-in-relationship are legitimate and it also recognizes other rights of these children similar to rights of children born in a valid marriage. The apex court in the case of *SPS Balasubramanyam v. Sruttayan*²¹, held that under Section 114 of the Indian Evidence Act once a man and a woman live together for several years, that is they are cohabiting, and/if are producing children are to be considered as husband and wife. Not only that but the court also held up the legitimacy of such children.

¹⁹ Madan Mohan Singh v. Rajni Kant 2010 (9) SCC 209.

²⁰ Bharata Matha v. R. Vijaya Renganathan 2010 AIR SCW 3503.

²¹ SPS Balasubramanyam v. Sruttayan 1994 AIR 133.

By its decisions, the courts have endeavoured to uphold lawfulness and protection of the children born to live-in partners. In such a situation, a child has the right to inherit a parent's property and be regarded legitimate. However, the Court hastened to add that this right shall not include ancestral or coparcenary property.²²

Further, the Hindu Succession Act of 1956 allows an illegitimate child to inherit the property from his /her mother but not from the father thus creating a disparity. This was discussed in *Vidyadhari V. Sukhranabai*²³ where it was stated that children born out of live in relationships are to be considered as legal heirs and thus, they have the right of inheritance.

In the case of *Jinia Keotin & Ors. v. Kumar Sitaram Manjhi & Ors.*²⁴, it was pointed out that in view of the provisions of section 16 of the Hindu Marriage Act, 1955²⁵ which relates to the legitimacy and the property right of the children born out of the void and voidable marriages, it is in fact the intention of the legislature to provide these children a certain degree of legitimacy.

The Hon'ble Supreme Court has in *Tulsa & Ors v. Durghatiya & Ors*²⁶ dealt with the question of children who are born out of long-term live in relationships. The court has considered such children not as illegitimate children and therefore they can claim parental property.

In *Revanasiddappa & Anr. vs Mallikarjun & Ors*²⁷ the Supreme Court said that child's rights cannot be subjected to the legality of parentage relation. The court made it clear that a bastard child is equally as innocent as any other child born in marriage which the law deems to be a valid marriage; therefore the bastard child should enjoy equal rights and freedom. The above principle is incorporated in Section 16 of the amended Hindu Marriage Act 1955.

In *Dimple Gupta v. Rajiv Gupta*²⁸ it was stated that

“even an illegitimate child born from an illegal relationship is entitled to maintenance under Section 125 of the Code of Criminal Procedure, 1973...”

²²Bharata Matha & Ors. v R. Vijaya Renganathan & Ors. 2010 AIR SCW 3503.

²³ Vidyadhari V. Sukhranabai AIR 2008 SC 1420.

²⁴ Jinia Keotin & Ors. v. Kumar Sitaram Manjhi & Ors AIR Online 2002 SC 635.

²⁵ Hindu Marriage Act, 1955, § 16, No. 25, Acts of Parliament, 1955 (India).

²⁶ Tulsa & Ors v. Durghatiya & Ors 2008 AIR SCW 1148.

²⁷ Revanasiddappa & Anr. vs Mallikarjun & Ors Civil Appeal No. of 2011.

²⁸ Dimple Gupta v. Rajiv Gupta 2007 AIR SCW 6651.

The position of law regarding custodial rights of a child is mentioned in section 6 of the Hindu Minority and Guardianship Act, 1956. The provision states that the father is the natural guardian of a legitimate child and in the event of father's death or incapacitating injury, the mother steps into the shoes of the father. Nevertheless, the rule in sub-section (6) of the same section indirectly talks about live-in domestic partners, by awarding custody of children born out of illegitimate relationships to the mother.²⁹

Muslim Law:

As already mentioned Muslim law acknowledges only a legal marriage, thus, children born out of wedlock in a live in relationship are deemed illegitimate, and therefore they do not have any legal standing at all. Thus, for instance in Shariah Law children born out of wedlock do not have rights to inheritance as the legal system may provide. They are not recognized in law and cannot claim an heirship to the father's property unless provided in a will. Thus, in Islamic law there is no support, maintenance, alimony or duty of upbringing owed by the parents to the child out of the cohabitant relationship. It also means that the mother has custody of the child and by no circumstances can lose her rights in relation to the child. This right which is known as Hizanat in the Islamic law may also be exercised against the child's father. Illegitimate child does not have right of succession to the father as among Islamic legal concerns about inheritance, it is clear that only legitimate children may inherit from their parents. The child may, however, inherit from the mother depending on certain conditions. Hanafi law provides that the mother and her illegitimate child have reciprocal rights of inheritance.

CONCLUSION

The Islamic law frowns at cohabitation and any form of sexual activity which is not sanctioned by marriage. All types of sexual intercourse as per the teaching of Islam, including premarital sexual intercourse, sexual intercourse before marriage, and zina are prohibited. In addition to it being considered as a worldly crime, such acts are considered as sinful which could lead to punishment in the other world.

Likewise under the Hindu law immoral relations are forbidden, it is pointed out that marriage is not only a civil contract but also a religious obligation which has number of religious obligations attached to it. It is not allowed to have live with people regarded as immoral and

²⁹ Gita Hariharan v. Reserve Bank of India 1999 AIR SCW 811.

those considered as going against the traditions of any society since Hindu marriage is a sacrament which is supposed to facilitate the process of purification of the human soul. But the legality of these kind of relationships is still ambiguous. Cohabiting partners are expected by the law, for instance, to be akin to marriage after a given period of time. Section 29 of the Prevention of Domestic Violence Act, 2005, proposed live-in relationship as a form of domestic relationship. However, they do not amount to marriage, and may be prejudicial to the legally married parties and their children when a partner cohabits.

The role of the Indian judiciary in the process of enhancement in legal recognition of live-in-relationships where personal laws do not recognize it, cannot be undermined.

Courts have also played an active role in changing a progressive interpretation of family law more specifically by allowing women in these relationships to claim maintenance and protection against domestic violence.

Currently there is no specific law regulating live-in relationship nor are the personal laws uniform on this topic, therefore, there is confusion and disparities in how the existing laws are implemented by the judiciary. Therefore, the legislation that demands a standard law for regulating live-in relationships that give relief and clear enumeration of rights to people is the need of the hour. Such vagueness results in confusion and unfairness to the people who enter into those relationships. The laws relating to live in relationships must give a definite sense of the social reality coupled with the conventional and cultural construct of Indian society. At times the courts have deemed these relationships to be the same a marriage and at other times the court has held that living in with a partner entails no responsibility towards the other person. The laws regarding live in relationships face several issues like bigamy because the people who enter the live-in relationships may be already married. Current legal systems are shifting towards the modern values of relationships. India, too, should update its legal statutes to match new social situations that unfolded in the past few decades. Either a uniform law regarding live in relationships irrespective of religion be passed or the personal laws of the different religions need to become more elaborate on this concept.