Introduction

Under Hindu Law eight forms of marriages were recognized out of which four were approved and four were unapproved. Brahma, daiva, arsha and prajapatya were approved forms, whereas gandharva, asura, rakshasa and paishacha were approved form. Twelve types of sons were recognized under ancient Hindu law. According to Manu twelve types of sons were divided into two categories. In first category the aura, kshetraja, dattak, kritis, gudhotpanna and apavindha were kinsmen as well as heirs, whereas, in second category the kanina, sahadha, krita, paurnarthava, savyamadatta and shudra were only kinsmen. Prior to the Hindu Marriage Act, 1955, there was no prohibition for a Hindu to have more than one wife, all the children born to the wives were treated as legitimate children and members of joint family or co-parcenery, except a child born to concubine was treated as an illegitimate child. Each one of these legitimate children had a right to maintain a suit against their father for partition and separate possession of their legitimate share either in the joint family property or in the co-parcenary property.

Legislative Approach

Hindus are governed by four codified laws and amendments made therein from time to time. So far marriage is concerned, a Hindu Marriage Act, 1955 is applicable, which has overriding effect. Though unrestricted polygamy was permitted among Hindus prior to 1955 i.e. commencement of Hindu Marriage Act, 1955, it was a rear practice among Hindus of having more than one wife, as marriage was considered as a sacrament to repay the debt of ancestors by having a son, who continues their bloodline. However after enactment of Hindu Marriage Act, 1955, polygamy was abolished and strict monogamy is allowed.

Thus, after the passing of the Hindu Marriage Act 1955 a prohibition was imposed on the Hindus to enter into second marriage during the life time of the spouse. Section 11 of Hindu Marriage lays down that any marriage solemnized after commencement of the Act in contravention of section 5 (l) i.e. marrying during life time of spouse is void. A son born to the void marriage was deprived of a right under the traditional Hindu law since the provisions of the Act, excluded the application of personal law in this regard and under the Hindu Succession Act, 1956, because he was not a legitimate son.

ABSTRACT

Prior to enactment of Hindu Marriage act in the year 1955, unlimited polygamy was permitted. However, it was a very rear practice among Hindus to marry more than one wife, since marriage was a sacrament which every Hindu was supposed perform to have a son, who continues his blood line. After the passing of the Hindu Marriage Act 1955 a prohibition was imposed on the Hindus to enter into second marriage during the life time of the spouse. Second marriage during life time of other spouse is void and children born to void marriage or voidable marriage which is annulled by decree of nullity are illegitimate. Children born out of unlawful wedlock were considered void and deprived of their rights available otherwise. Therefore, some provisions are made under the various laws to overcome injustice to such children.

KEY WORDS: Marriage, Void, Children, Illegitimate.
(2) of the Hindu Marriage Act. However, the parliament was conscious of the consequences of such status being given to an illegitimate child as it would affect other persons who are in no way responsible for the birth of an illegitimate child. Therefore, they made it clear by introducing Section 16(3) to the effect that such an illegitimate son who is admitted being an illegitimate son by virtue of Section 16(1) and (2), will have a right only in the properties of the parents and none else. Thus, the conferring of the status did not affect the rights of the persons other than the parents in the property.

Conclusions
Innocent children should not suffer because of their parents’ failure to marry. Therefore, majority of the countries across the globe have done away from using the words ‘legitimate’ and “illegitimate” in differentiating between children whose parents are married or not married. Some of them adopted the Uniform Parentage Act, according to which the parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents. Others have modified versions of the Act in place, but either way, many states have now abandoned outdated notions of legitimacy. The object of section 16 of Hindu Marriage Act, 1955 is to confer a protective cover to the children and to save them from the stigma of illegitimacy and also to give them proprietary rights in the property of their parents.

REFERENCES
1. Dr. Paras Diwan, Family Law, Faridabad (Haryana) Allahabad Law agency, p. 311.
3. Hindu Marriage Act, 1955 – section 4(a)–any text, rule or interpretation of Hindu law or any custom or usage as the part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act.
5. Hindu marriage act, 1955 – section 16 (1) Legitimacy of children void & voidable marriage – Notwithstanding that the marriage is void or voidable under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Law (Amendment) Act, 1976.
7. Section 16 (3) Nothing contained in sub-section (1) or (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any right in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.
9. Hindu Minority and Guardianship Act, 1956- Section 6(b) natural guardians of Hindu minor – In case of an illegitimate boy or an illegitimate unmarried girl- the mother, and after her, the father.
10. Hindu Adoption and maintenance Act, 1956- Sec 20 (1) Subject to the provisions of this section a Hindu is bound, during his or her life time, to maintain his or her legitimate or illegitimate children and his or her aged or inform parents. (2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.
11. AIR 1982 Mad 148
12. Hindu Marriage Act, 1955 -Section 16 (2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.