The subject of maintenance occupies an important place in Hindu law. The importance and extent of the right to maintenance arises from the concept of an undivided family.¹ Some members of the family are unable to maintain themselves. For the smooth running of their lives the head or certain other member of the family have some obligations to them. He has the responsibility to take care of them by fulfilling their essential needs.

The right to get the necessities, which are reasonable, by those persons who are unable to take care of themselves is termed as Maintenance. Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 defines maintenance. According to it, maintenance includes provision for food, clothing, residence, education and medical attendance and treatment. Apart from these, in case of an unmarried daughter, the reasonable expenses of her marriage are also included. It does not rest upon any contract. It is a liability created by Hindu law and arises out of jural relations of the parties.

Since ancient days the lawgivers are in support of providing maintenance to certain persons. The Smṛti writers have clearly mentioned the

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categories of persons to be maintained and the consequences of disobeying the law.

MAINTENANCE OF A WIFE

The wife enjoys a special position in her matrimonial home. In the patrilineal family system, the wife's main task has been the management of her husband's household. The patriarchal society did not consider it to be her function to engage in the earning of wealth.²

The maintenance of a wife by her husband is a matter of personal obligation. Such right of a wife for maintenance is because of the status or state of matrimony.³ It begins from the moment of marriage. The obligation of the husband to maintain his wife does not arise out of any contract expressed or implied.⁴ This obligation to maintain the wife arises out of the jural relationship of husband and wife, which is created by the performance of the marriage. It is irrespective of the fact whether the husband has possessed property or not.⁵ She is entitled to enforce this personal obligation by creating a charge on his property either acquired or ancestral.⁶

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4. Supra, Note 2, p.421
5. Supra, Note 3
6. Ibid
In all patriarchal societies it has been considered as the duty of the wife to live with her husband. Side by side with this obligation of the wife, the husband is to maintain his wife as soon as the performance of the marriage ceremony. A wife, who resides with her husband, must be maintained by him. He cannot refuse to maintain on the ground that his financial condition is not sound.

In the days of Smritis the lawgivers were quite conscious to maintain a chaste wife. Manu has declared in his Smrti that a girl is protected by her husband in her youth.\(^7\) Here the root raks that is ‘to protect’ is used. It includes maintenance. It is because, without maintenance protection is fruitless. It is also said that a chaste wife is to be maintained by doing hundreds of misdeeds.\(^8\) It means that irrespective of the possession of property there is a personal legal obligation on the husband to maintain his chaste wife. She should not be deprived of her maintenance because of his weak financial condition. Manu again declares that if the wife is chaste and with her permission the husband overmarries then also she should never be

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7. ‘.........bharta rakṣati yauvane.' Manusmṛti, IX.3

8. ‘ṛddhau ca mātāpitarau sādhvi bhāryā sutaḥ śīśūḥ. āpyakāryasātam kṛtvā bhartavyā Manurabravit.’

treated with contempt. He further states that a husband might be without love towards his wife. Yet, if she is virtuous then must be supported to please the gods. A husband who is crazy, degraded, castrated, impotent or afflicted with an evil disease has no right to set her aside and take away her gifts. Manu provides punishment for such a person who does not maintain his wife who is not a *patitā*. According to him the king should fine 600 *panas* from him. In regard to offering maintenance to a wife Viṣṇu is of the opinion that he who forsakes a faultless wife should be punished, like a thief. Nārada states that if a man forsakes a wife who is obedient, sweet spoken, skillful, virtuous and the mother of male issue, then the king shall make him mindful to his duty by inflicting severe punishment. Yajñavalkya declares that between the husband and the wife if one forsakes the other then he shall be fined. *Āpastamba* and *Vāśiṣṭha* are of the same

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9. *Manusmṛti*, IX.82
10. Ibid. IX.95
11. Ibid. VIII.389
13. *anukūlāmavādudśtā dákṣāṁ sādhvīṁ prajāvatīṁ. tyajan bhāryāmavasthāpyo rájñā daṇḍena bhūyasā: Nāradasmṛti*, IV.12.95
14. *Yajñavalkyasmrtyi*, II.237
Thus, the husband was bound to give security and comfort to the chaste and virtuous wife and she was entitled to maintenance and protection by him. She could not be deprived of her right to maintenance. If such a wife did not get maintenance then for his negligence of duty the husband was to be punished. Thus, the ancient lawgivers provided the wife with her right to maintenance for the smooth running of her life and made it obligatory on the part of the husband.

Section 18 of the Hindu Adoptions and Maintenance Act, 1956, deals with maintenance of wife. Section 18(1) lays down that a Hindu wife, whether married before or after the commencement of the Act, is entitled to be maintained by her husband during her lifetime. The person claiming maintenance must have a status of wife. It means that she must be legally married to the person against whom the claim is made. The husband’s obligation to maintain her comes to an end only when she leaves him without any good cause.

Thus, the ancient and modern laws are in favour of giving the right to maintenance to a wife. On marriage a husband becomes both legally and

15. *Āpastambadharmaśūtra*, 1.10.28.9

*Vāśishthadharmaśūtra*, XIII.17

16. Supra, Note 1, p.1067
morally bound to maintain his wife. The maintenance is dependent on her living with him and discharging the duties as wife. The Śrīmukāravas also do not allow a person to abandon his wife if she is guiltless.\(^\text{17}\)

Section 18(2) of Hindu Adoptions and Maintenance Act, 1956, has given some provisions of maintenance when the wife does not live with her husband. Section 18(2)(a) states that if a person is guilty of desertion i.e., of abandoning her without reasonable cause and without her consent or against her wish or of willfully neglecting her then she shall be entitled to live separately from her husband and also to claim maintenance. If a husband abandoned his wife then it is clearly directed in the Śrītis that the abandoned wife should always be maintained.\(^\text{18}\)

Section 18(2)(b) states that if a person treats his wife with such cruelty which causes a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband then also she is entitled to live separately and to get maintenance. The Manusmṛti is of the opinion that if the husband is a crazy, degraded, castrated and impotent one and if she hates him then the husband has no right to set her aside and must maintain her.\(^\text{19}\) In both these cases the fault is on the part of the husband and he is bound to maintain her. Section 18(2)(c) declares that if a person is suffering from a virulent form of

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17. Supra Note 12, pp. 718-719
18. Yajnavalkyasmrți, 1.76
19. \textit{unmattam patitaṁ kībavāvijam...} 
\textit{na tyāgo 'sti dvi̍ṣantyāśca na ca dāyāpavartanam? Manusmrți, IX.79}
leprosy and if the wife does not live with him then the husband must maintain her. In the days of Smṛti also if a husband was afflicted with an evil disease and if the wife hated such a husband then also the husband had to maintain her.²⁰

Section 18(2) (d) declares that if a person has any other wife living and if the earlier wife lives separately then also he has to give her maintenance. In this regard, Manu is of the opinion that if a person with the permission of his wife again marries another girl then the earlier wife should never be despised.²¹

The rules regarding maintenance of an unchaste wife were also dealt in the Smṛtis. It was declared that an unchaste wife should always be given maintenance. According to Manu a wife, guilty of adultery has to undergo the same penance as a man guilty of adultery has to undergo.²² He again provides

20. ‘.........pāparoginam. na tyago ‘sti dvīṣantyāśca na ca
dāyāpavartanam.’ Manusmṛti, IX.79

21. ‘sānujñāpyādhivetavyā navamānyā ca karhicit:’ Manusmṛti, IX. 82.

22. Manusmṛti, XI.176
that when woman becomes *patītā* the rite may be performed for purification but she must be given food and raiment and she must be provided with a hut near the family house.\(^{23}\) Yājñavalkya states that an unchaste wife should be deprived of all her rights but she should be given a morsel of food, accommodation near the dwelling house, raiment and protection.\(^{24}\) Thus, *smṛtikāraḥ* have given maintenance to an unchaste wife. However, certain expiatory rites were provided for them. The modern law has not recognised the right to maintenance to an unchaste wife.\(^{25}\) It states that a Hindu wife is not entitled to separate residence and maintenance from her husband if she is unchaste. Thus, this provision of the ancient laws remained in the *Smṛtis* is totally avoided by the modern lawgivers.

The concubine’s right to maintenance also was provided in the days of *Smṛti*. The rights of women to maintenance, who were not wives, are based mainly on two texts, namely, of Nārada and Kātyāyana. Nārada says that a king devoted to *dharma* should give maintenance to the woman of a deceased

\(^{23}\) Ibid. IX.188

\(^{24}\) *Yājñavalkyasūtra*, I.70, III.297

\(^{25}\) The Hindu Adoptions and Maintenance Act,1956, Section18(3)
person. It is when the king succeeds as heir by escheat.\textsuperscript{26(i)} Kātyayana states that heirless property goes to the king after keeping aside wealth for the women, the dependents and the funeral rites and \textit{ṣrāddhas}.\textsuperscript{26(ii)} This provision of the \textit{Śṛṣṭis} have been completely avoided by the modern lawmakers.

MAINTENANCE OF CHILDREN

The children are unable to maintain themselves. So, it is the obligation of Hindu parents to maintain their children for their physical and mental upliftments. The obligation to maintain one’s children is a personal obligation. It arises out of the personal relationship between parent and child.\textsuperscript{27} The obligation extends during the minority of the children.

The writers of the \textit{Śṛṣṭis} have directed very strictly about the obligation of a father to maintain the children. It is stated that a child must be maintained by doing hundreds of misdeeds.\textsuperscript{28} It means that even if a father is financially not sound he cannot be excused if he does not maintain the

\textsuperscript{26(i)} \textit{anyatra brāhmaṇeḥbhyaḥ syādrāja dharmaparāyaṇaḥ.}

\textit{Tat strīḥyo jīvanam dadyāt} \ldots \ldots \textit{Nāradasṛṣṭi,} IV.13.52

\textsuperscript{26(ii)} Kane, P.V., \textit{History of Dharmāśāstra}, Vol. III, Bhandarkar Oriental Research Institute, Puna, 1946, p.810

\textsuperscript{27} Supra, Note 2, p.425

\textsuperscript{28} Supra, Note 8
children. By any means he has to maintain them. He cannot neglect such a responsibility in the name of poverty. Manu does not allow a person to forsake his son and if one does so then he should be fined. Yajñavalkya is also of the same opinion that if the father forsakes the son then he will be fined. Thus, Smṛtiwriters emphasised a lot in regard to the maintenance of children by the father. In Section 20 of Hindu Adoptions and Maintenance Act, 1956, the rules regarding the maintenance of children has been laid down. According to Section 20(1), a Hindu is bound during his or her lifetime, to maintain his or her children. It is upto the minority of the child.

To maintain one's sons, both the Smṛtis and the Act of 1956 have laid down provisions by which a father is bound to maintain them. It is the personal obligation of the father and this obligation is recognised by both the Smṛtis as well as the modern law.

Regarding the maintenance of a daughter, the Smṛtiwriters are not silent. A father is directed to maintain his daughter till her marriage. If the father is dead then the daughter is entitled to maintenance out of his estate. In such a case the Smṛtiwriters are of the opinion that each of the brothers out of their respective shares has to bestow one fourth part of their property upon the

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29 Supra Note 11
30. Supra Note 14
31. The Hindu Adoptions and Maintenance Act, 1956, Section 20(2)
If any of the brothers is not willing to do that then according to Manu he would be degraded.\(^{33}\)

Thus, for the maintenance of the daughters, the Smrtiwriters laid proper provisions so that they were not to think about their livelihood even after the death of their father.

Section 20(2) of the Hindu Adoptions and Maintenance Act, 1956, is applicable to the daughters also. As the section imposes obligation to the father to maintain his children during minority, such obligation continues in respect of an unmarried daughter also so long as she is unable to maintain herself out of her own earning or other property.

The provisions regarding the maintenance of a daughter are same in both ancient and modern laws. She has the right to maintenance until her life is secured either by marriage or by her own earning.

According to the Smritis, an illegitimate son is entitled to maintenance in certain circumstances. Gautama provides that if a brāhmaṇa

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32. 'Bhaginyaśca nijādamśād datvāṁsaṁ tu turīyakam:'

Yājñavalkyaśmrti, II.124;

*and also* Manusmṛti, IX.118 and Nāradasmṛti, IV.12.13

33. 'svātvādamsāccaturbhāgaṁ patitāḥ syuraditsavaḥ:'

Manusmṛti, IX.118
is issueless, even the son of him from a śūdra woman should receive the
means of maintenance if the boy is obedient.\textsuperscript{34(i)} Bhāspatī states that an
obedient and meritorious son born from a woman of the śūdra caste to a man
who has no other child should get maintenance.\textsuperscript{34(ii)} Regarding the son of
śūdra from a dāsi Manu provides that an illegitimate son of a śūdra from a
dāsi may take a share in the father’s property if the father permits him to do
so.\textsuperscript{35} Yājñavalkya declares that even a son begotten by a śūdra on a dāsi may
partake of a share at the choice of his father.\textsuperscript{36} But when the father is dead the
brothers should make him the recipient of a half share.\textsuperscript{37}

Thus, the illegitimate son whose position was quite lower than the
legitimate son was entitled to maintenance. Sometimes such sons were

\textsuperscript{34(i)} ‘śūdrāputra pyanapatyasya susrūṣuscellabheta

\textit{vṛttimūlamantevāsviśidhinā}: *Gautamādharmasūtra, III.10.37

34(ii). Supra, Note 26(ii), p.809

35. \textit{Manusmṛti, IX.179}

36. ‘Jato pi dāsyām śūreṇa kāmato ‘masaharo bhavet:

\textit{Yājñavalkyasūtra, II.133}

37. ‘Mṛte pitari kuryustām bhrātarastvardhabhāgikam:

\textit{Yājñavalkyasūtra, II.134}
entitled to acquire some part of ancestral property also and thus their lives were secured. Section 20(2) of the Hindu Adoptions and Maintenance Act, 1956, applies to the illegitimate sons also. By this section, all illegitimate sons are also entitled to maintenance. Under modern law, there is no difference between a legitimate and an illegitimate son regarding the right to maintenance. In the days of Smṛtis, the illegitimate son as member of family was entitled to maintenance. However, the obedience of the boy was necessary to count.\textsuperscript{38}

The writers of the Smṛtis are silent on the putative father’s obligation to maintain an illegitimate daughter. They are concerned only about the son and expressed the term in masculine gender as \textit{sudrāpūtra}.\textsuperscript{39} Under the modern Hindu law the daughter is entitled to claim maintenance against both her putative father and her natural mother. But such claim of maintenance persists only during minority. Thus, the illegitimate daughter who did not have any identity in the days of Smṛtis, the modern law has recognised her right which is equal with the son.

Earlier, only the father was obliged to maintain his children. No such obligation was imposed on the mother. However, in modern times both the father and the mother are liable to maintain their children.

\textsuperscript{38} Supra, Note 27

\textsuperscript{39} Supra. Note 26(ii), p.810
MAINTENANCE OF PARENTS

In Indian tradition one’s father and mother are considered as God. The sacrifice of the parents for the welfare of their children cannot be measured with anything. When the parents grow old and are unable to do anything, it becomes the moral responsibility of the children to take care of them. This moral responsibility of a person is transformed into a legal one by the lawgivers both in ancient as well as modern times. This is a personal obligation to maintain one’s aged and infirm parents and it arises out of the parent-child relationship.

Different Smṛti writers are of the opinion that one must have to protect his old parents. According to Manu, the son is to protect his mother at her old age. It is provided that by doing hundreds of misdeeds one has to protect his mother and father. Yājñavalkya is of the opinion that if a son forsakes his father then he will have to be fined. Śāṅkha Likhita declares that the father and mother should never be forsaken. Manu provides punishment to a person for the abandonment of his parents when they are not patitas. The amount of such punishment is 600 pāpas.

In certain Smṛtis it is clearly stated that one must maintain his mother

40. ‘Rakṣanti sthavire putrāḥ... ...: ‘Manusmṛti, IX.3
41. Supra, Note 8
42. Supra, Note 14
43. Supra, Note 12, p.692
though she is a *patitā*. *Baudhāyanadharmaśūtra* states that a son is bound to maintain a mother even if she is a *patitā*.\textsuperscript{44} *Vāsiṣṭhadharmaśūtra* is also of the same view.\textsuperscript{45} Section 20(1) of Hindu Adoptions and Maintenance Act, 1956 makes it an obligation of a Hindu to maintain aged and infirm parents. However, Section 20(3) states that the right given to aged or infirm parents is enforceable only when they are unable to maintain themselves out of their own earnings or their other property.

Both the laws are quite similar in this respect that one has the obligation to maintain the parents. However, earlier it was only the son who was to maintain his parents. At present, both the sons and the daughters are to maintain their parents. Earlier as only the sons were entitled to inheritance, the daughters did not have the obligation to look after their parents. By the modern law, a daughter has got equal rights with the son. At the same time, their obligations are also equal and that is why, they are equally obliged to maintain their parents.

**MAINTENANCE OF A WIDOWED DAUGHTER-IN-LAW**

The widowed daughter-in-law, as a member of the family, is entitled to maintenance. She can claim maintenance against the family property.

\textsuperscript{44} 'Patiitāmapi tu mātaram kibhyādanabhibhāsamāṇaḥ.'

*Baudhāyanadharmaśūtra*, II. 2.3. 43

\textsuperscript{45} '... Matā tu puire na patati.' *Vāsiṣṭhadharmaśūtra*, XIII.15
Hindu law has recognised it to be a moral obligation of the father-in-law to maintain a daughter-in-law who has no other means of maintenance.

Since the days of the *Smṛtis* a widowed daughter-in-law has been entitled to maintenance. According to Nārada, if any one among several brothers dies without issue or becomes an ascetic, the rest should take the estate and give maintenance to his wives till death. However, they should keep the bed of their husband unsullied.\(^{46}\) It is also declared that whichever wife becomes a widow and continues to be virtuous, she is entitled to be provided with food and raiment.\(^{47}\) Kātyayana is of the opinion that when the husband goes to heaven, the wife is entitled only to food and raiment if he was unseparated or she may get a share in ancestral property till her death.\(^{48}\) Thus, the widow’s right to maintenance has been established in the days of the *Smṛtis*. Section 19 of Hindu Adoptions and Maintenance Act, 1956 states that the father-in-law has to maintain his daughter-in-law after the death of her husband, if she is unable to maintain herself out of her own earnings or other property. So, when the daughter-in-law is able to maintain herself then the

\[46.\text{bharaṇaṁ cāsyā kurvīrān stīmāmaṁ jīvitakṣayāt.}\]
\[\text{Pakṣanti śayyāṁ bhartuśced... ... ... : Narasasmṛti,IV.13.26}\]
\[47.\text{Smṛticandrika, XI.1.34}\]
\[48.\text{Supra, Note 26(ii), p.805}\]
father-in-law does not have any liability to maintain her.

Thus, with certain modifications the rules of the ancient Smrtis regarding maintenance of widowed daughter-in-law have been adopted in modern laws on maintenance. So, after her husband's death a woman cannot be deprived of her right to maintenance. The law has been made for the security of her life.

MAINTENANCE OF PERSONS EXCLUDED FROM INHERITANCE

The person excluded from a share or inheritance must be maintained during their life by those who take the inheritance. Baudhāyana states that granting food, clothes and shelter they shall support those who are incapable of transacting business.49 Gautama declares that an idiot and a eunuch should be supported.50 Viṣṇu is also of the opinion that maintenance should be given to those who are excluded from inheritance.51 As Manu says that the wise should give according to their ability, food and raiment till the end of their lives even to all who are excluded. He who does not give would be a sinful

49. Baudhāyanadharmaśītra, 2.3.37-40
50. ‘Jadakīśau bhartavyau’ Gautamadharmaśītra, III.10.41
51. Supra, Note 12, p.766
and outcast. Yājñavalkya is also in support of providing maintenance to those persons excluded from inheritance.

It is also not that all those who are excluded from inheritance must be maintained. Some Smṛti writers do not recommend maintenance also for some of those who are excluded from inheritance. As Baudhayana says that the outcast or his offsprings are not able to be supported also. Vasistha has opined that persons who have entered into another order or āśrama, the impotent, the lunatic and the patita or outcasts are not entitled to a share. However, he has provided maintenance to the impotent and the lunatic. Thus, he has excluded the person who have entered into another order or āśrama and an outcast from getting maintenance which can be known from expressed mention of persons getting maintenance with the exclusion of the above

52. ‘sarveṣām api tu nyāyam dātum śaktyā maniṣinā. 
grāsācchādanamatyam patito hyādbhavet:’ Manusmṛti, IX.202

53. ‘kībo tha patitastajjakhaḥ paṅgurunmattako jaḍāh. 
āndho cikitsyarogādyā bhartavyāḥ syurnirāṃsākāḥ.’
Yājñavalkyaśṛmṭi, II.140

54. ‘patitatajjatavaram.’ Baudhayanadharmaśutra, II.3.41
two. Thus, those who have taken themselves to another order, i.e. other than that of householder and those who are outcasts and the sons of outcasts are not entitled to be maintained.

Thus, persons who were excluded from share had been provided maintenance. However, as directed by some of the Smṛti-writers a few of them have been excluded from maintenance also. The circumstances taken up by the modern law for exclusion of persons from inheritance which are shown in the third chapter are such that there is no justification of providing maintenance to them. So, Hindu Adoptions and Maintenance Act, 1956 does not have any such provision.

In India, the tie among the members of the family is very strong. That is why, in ancient as well as in modern times much importance has been laid upon maintenance so that the members like a wife, minor children, aged and infirm parents etc. do not get trouble. These provisions have provided security to such persons and they need not have to become dependent upon others due to their inability to maintain themselves and they get maintenance as their right.

55. ‘aṇaṃśa-stvaśramāntaragatāḥ Klībonmattatātāśca:

bhāramaṃ klībonmattānām Vasīṣṭhasmytī, XVII.46-48

56. Kane P.V. and S.G. Patwardhan (ed.), Vyavahāramajukha, Motilal Banarasidass, Delhi, 1933, p.195

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