

**Law of Maintenance with Special Reference To *smṛti* Literature**

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**ABSTRACT**

*Smṛti* literature is a class of sacred books based on human memory. This literature is said to be the basement of Hindu law. It is the belief of Hindus that if one faithfully obeys his duty, the gates of heaven are wide open for one. The maintenance of the aged parents, children and wife is considered to be the greatest duty of a person. Under Hindu law, in respect of aged parents and minor children, this is an obligation of every Hindu, male or female. Thus, a Hindu has personal obligation to maintain his wife, children and aged parents. In every Judicial System there are various provisions for the sake of maintenance. In Indian Judicial System also there are so many acts to provide maintenance for the needy. Those provisions are more or less found right from the *Smṛti* literature. In the present paper such provisions are discussed in the light of *Smṛti* literature.

**Key words:** Law, obligation, maintenance, family

From the time immemorial importance has been laid upon maintenance so that nobody has been deprived of protection as well as financial security. For the smooth running of a family support from every member is necessary. Hence the idea of maintenance comes into existence.

The concept of maintenance occupies a significance position in Judicial System. Maintenance is the financial support provided for a person's living expenses. The right of maintenance arises from the concept of an undivided family, where some members of the family are not capable to maintain themselves. For the convenience of those members the head or some other members of the family have some obligations. Hence, maintenance is the right to get the necessities which are reasonable. Section 3(b) of the Hindu Adoptions and Maintenance Act, 1956 defines maintenance. As per this Act maintenance includes in all cases, provision for food, clothing, residence, education and medical attendance and treatment, in the case of an unmarried daughter, also the reasonable expenses of her marriage is also estimated. It does not rest upon contract. It is a liability created by Hindu Law. Hindu sages, in most unequivocal and clear terms, lay down that maintenance of certain persons is a personal obligation. Manu states, "The aged parents, a virtuous wife and an infant must be maintained even by doing hundred misdeeds".<sup>1</sup> According to *Mitākṣara*, "Where there may be no property but what has been self acquired, the only persons whose maintenance out of such property is imperative, are aged parents, wife and minor children".<sup>2</sup> The *Smṛti* writers have clearly stated the categories of persons to be maintained and the consequences of disobeying the law.

### **Maintenance of a wife**

Section 18 of the Hindu Adoptions and Maintenance Act, 1956 deals with the maintenance and separate residence of a wife. Every male Hindu was under a legal obligation to maintain his wife. On marriage, a husband becomes both legally and morally bound to maintain his wife. The obligation of the husband to maintain his wife does not arise out of any contract, express or implied, but out of the status of marriage, out of the jural relationship of husband and wife. In the *Smṛti* literature, it is noticed that the law givers were highly conscious to maintain a chaste wife. In the *Manusmṛti* it is said that a girl is protected by her husband in her youth.<sup>3</sup> Manu also adds that if the wife is chaste and with her permission the husband over marries then also she should never be treated with contempt.<sup>4</sup> Manu declares that a husband might be without love towards his wife. Even then, if she is virtuous then must be supported to please the gods.<sup>5</sup> In the *Yājñavalkyasmṛti* it is observed that between the husband and the wife if one forsakes the other then he shall be fined.<sup>6</sup> Nārada also holds 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.<sup>7</sup> In case of a wife who is abandoned by her husband should always be maintained.<sup>8</sup> According to Manu, a wife, guilty of adultery has to undergo the same penance as a man guilty of adultery has to undergo.<sup>9</sup> Yājñavalkya said that an unchaste wife should be deprived of all her rights but she should be given a support of food, residence and protection.<sup>10</sup>

### **Maintenance of Children**

A Hindu is required to maintain his natural as well as adopted sons. It is obligatory to maintain a child by his father. But the modern Hindu law imposes the obligation on both the parents and in respect of both legitimate and illegitimate children. According to Section 20(1 & 2) of the Hindu Adoptions and Maintenance Act, 1956, a Hindu is bound during his lifetime to maintain his children. It is till the minority of the child. Manu does not allow a person to forsake his son and if he does so then he should be fined.<sup>11</sup> Yājñavalkya also holds the same opinion with Manu.<sup>12</sup> A father is also directed to maintain his daughter till her marriage. After the death of the father the brothers are liable to maintain their sister by giving one fourth of their property.<sup>13</sup> Degradation of such brothers are also mentioned by Manu who are unwilling to maintain their sister.<sup>14</sup> An illegitimate son is also entitled to maintenance in certain circumstances.<sup>15</sup>

### **Maintenance of parents**

The obligation to maintain aged or infirm parents is a personal obligation arising out of the parent-child relationship. Section 20(1) of Hindu Adoption and Maintenance Act, 1956 makes it an obligation of a Hindu to maintain aged and infirm parents. Different authors of *Smṛti* also gave same opinion. In the *Manusmṛti* it is found that the son should protect his mother at her old age.<sup>16</sup> Even by doing hundred of misdeeds one has to protect his parents.<sup>17</sup> Yājñavalkya opined that if a son forsakes his father then he will have to give penalty.<sup>18</sup>

### **Maintenance of Daughter-in-law**

Section 19 of the Hindu Adoptions and Maintenance Act, 1956 does not make it a personal obligation of the father-in-law to maintain his daughter-in-law. Further, the obligation is confined to the

## Law of Maintenance with Special Reference To *Smṛti* Literature

coparcener interest of the father-in law. In this Act (Section 19), it is mentioned 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 by means of her own earnings or from the estate of her husband or father or mother; or from the son or daughter, if any, or his or her estate. . In the days of *Smṛti* also a widowed daughter-in-law has been entitled to maintenance. In the *Nāradaśmṛti* it is stated that if any one among several brothers dies without issue or becomes an ascetics, the rest should take the estate and give maintenance to his wives till death. However, they should keep the bed of their husband unsullied.<sup>19</sup>

Thus, it is seen that from the time of *Smṛti* literature there are so many provisions to protect and support the weaker members of the family. In the present Judicial System also with some omission and commission those provisions are followed.

### References

1. Medhatithi on *Manusmṛti*, IV, 251
2. Mitākṣara on *Manusmṛti*, II, 175
3. . . bhartā rakṣati yauvane/ *Manusmṛti*, IX.3
4. Ibid, IX.82
5. devadattām patir bhāryām vindate necchayā tmanah/  
tām sādhvīm bibhṛyān nityam devānām priyam ācaran// *Manusmṛti*, IX.95
6. *Yājñavalkyaśmṛti*, II.237
7. tyajan bhāryāmavasthāpyo rājñā daṇḍena bhūyasā// *Nāradaśmṛti*, IV. 12.95
8. ājñāsampādinīm dakṣām vīrasūm priyavādinīm/  
tyajandāpyastrīyāmśamadravyo bharaṇām striyāḥ// *Yājñavalkyaśmṛti*, I.76
9. vipraduṣṭām striyam bhartā nirundhyāt ekaveśmani/  
yat puṁsaḥ paradāreṣu taccaīnām cārayed vratam// *Manusmṛti*, XI.176
10. hṛtādihikārām malinām piṇḍamātropajīvinīm/  
paribhūtāmadhahśayyām vāsayedvyabhicāriṇīm// *Yājñavalkyaśmṛti*, I.70,
11. na mātā na pitā na strī na putras tyāgam arhati/  
tyajanna apatitān etān rājñā dandyaḥ śatāni ṣaṭ// *Manusmṛti*, VIII.389
12. *Yājñavalkyaśmṛti*, II.237
13. bhaginyaśca nijādamśād datvāmsam tu turīyakam// Ibid., II. 124
14. svebhyo amśebhyas tu kanyābhyah pradadyur bhrātaraḥ pṛthak/  
svātsvādāmśaccaturbhāgam patitāḥ syuraditsavaḥ// *Manusmṛti*, IX.118
15. Kane, P.V., *History of Dharmaśāstra*, Vol.III, Bhandarkar Oriental Resesarch Institute, Puna, 1946, p. 809
16. rakṣanti sthavire putrāḥ// *Manusmṛti*, IX.3  
putrāstu sthavire...// *Nāradaśmṛti*, IV.13.31
17. vṛddhau ca mātāpitarau sādhi bhāryā sutaḥ śisuh/  
apyakāyāśatām kṛtvā bhartavyā manurabavit// Medhatithi on *Manusmṛti*, IV.251
18. *Yājñavalkyaśmṛti*, II.237
19. bharaṇām casya kurvīran strīnamajīvitakṣayāt/  
rakṣanti śayyām bhartuścedācchindiyuritarāsu ca// *Nāradaśmṛti*, IV.13.26