

# SHOULD A FATHER ALWAYS BE OBLIGATED TO PROVIDE FOR CHILD SUPPORT?

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## Abstract:

In the conundrum faced between child support and the right to receive maintenance between spouses, the Courts' first attempt is usually to ensure the child's financial security, even at the cost of subjecting the husband to rigorous and onerous maintenance orders, and at times, without attempting to verify if the husband is indeed in a position to be able to meet such financial demands. By way of this article, the author seeks to challenge the existing belief that husbands must financially support their children at all costs and in all circumstances whatsoever, by questioning whether it is indeed moral to subject such a husband to the rigor of maintenance payments for his children, even when the wife is capable and financially self-sufficient for providing for them and has severely reduced the husband's very capability of doing so in the first place.

## INTRODUCTION:

At the outset, the author is keen to emphasise that with respect to the laws and jurisprudence of maintenance, the ultimate objective is to strike a balance between both spouses in all aspects thereof. However, the scope of this particular article has been consciously delimited to focus on the issue of a husband's liability to pay for child support, irrespective of his wife's financial status and her actions and inactions.

At present, the laws relating to maintenance of children by their parents have abided by a rigid and invariable trend, i.e. a father is obligated to financially maintain his children in all situations whatsoever, irrespective of him being unemployed or having no source of income. Furthermore, this sacrosanct duty of the father applies not only when the wife is unemployed, but also when she is herself earning substantially (at times more than the husband), or is well-qualified and capable of earning and yet chooses to sit idle. Right from the highest echelons of the Indian Judiciary (the Hon'ble Supreme Court of India) to the district courts of the remotest areas of the country, this well-established trend has been given primacy, considering that the welfare of the child is of paramount importance and must not be compromised on account of the preferences or disputes of the parents involved. Thus, the inflexible law, even today, is that a husband is bound to work and earn in order to maintain his wife and children, and cannot escape from such legal responsibility on the ground that he is unemployed or not able to generate sufficient income for his own sustenance.

These primeval judicial principles have evolved basis the societal conditions and gender hierarchy prevailing in the 20<sup>th</sup> Century, wherein husbands would be the sole bread-earners of the family and wives would be expected to stay at home and manage the affairs of their household and the children. The wives constituted the inferior gender in society and did not possess the voice or authority to challenge the decisions and actions of their husbands. Thus, the idea of the wife being employed and contributing to the family income was unheard of in those times, and even looked down upon by many sects of the society.

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Another facet to such social hierarchy was that the husband was exclusively vested with the responsibility – legal, moral and social – of ensuring the sustenance of his wife and children by providing them with adequate financial maintenance.

#### **PRESENT SCENARIO - BOTH PARENTS ARE RESPONSIBLE FOR CHILD SUPPORT:**

In today's times, however, the situation is different; often, it is both spouses who are qualified and earning. Therefore, it is only practical to assume that the couple's financial responsibilities towards the children must also be split between them in proportion to their respective incomes. In the case of "*Padmja Sharma Vs Ratan Lal Sharma*"<sup>1</sup>, the Hon'ble Supreme Court of India has affirmed this view by holding that:

*"11. ... Salaries of both the parents have since increased with the course of time. We believe that in the same proportion ... If we take approximate salary of husband is twice as much as that of the wife, they are bound to contribute for maintenance of their children in that proportion."*

Modern day has also seen examples, *inter alia*, wherein the wife is earning substantially more than the husband; where the wife is the sole bread winner of the family with the husband being unemployed on account of various inhibiting circumstances; where the wife is capable of earning but chooses to sit idle; or where she suppresses her true income. In such situations, would it still be fair and reasonable to vest the entire financial responsibility of maintaining the children solely upon the husband's shoulders?

#### **LIABILITY OF UNEMPLOYED HUSBAND TO PAY MAINTENANCE TO HIS WIFE:**

In relation to the maintenance of one's *wife* when one is himself unemployed, the law in India usually applied is that the husband has a sacrosanct duty to take care of his wife as long as he is able bodied and capable of earning an income. In this regard, *vide* judgment titled "*Shamima Farooqui Vs Shahid Khan*"<sup>2</sup> the Hon'ble Supreme Court of India has held as under:

*"15. ... Sometimes, a plea is advanced by the husband that he does not have the means to pay, for he does not have a job or his business is not doing well. These are only bald excuses and, in fact, they have no acceptability in law. If the husband is healthy, able bodied and is in a position to support himself, he is under the legal obligation to support his wife, for wife's right to receive maintenance Under Section 125 Code of Criminal Procedure, unless disqualified, is absolute right."*  
(Emphasis Supplied)

However, in certain cases, the law does accord for exceptions to the above mentioned rule as well. For instance, *vide* judgment titled "*Sanjay Bhardwaj vs. State & Anr.*"<sup>3</sup> the Hon'ble Delhi High Court has expressed a divergent opinion, as under:-

*"Under prevalent laws i.e. Hindu Adoption & Maintenance Act, Hindu Marriage Act, Section 125 Cr.P.C. - a husband is supposed to maintain his un-earning spouse out of the income which he earns. No law provides that a husband has to maintain a wife, living separately from him, irrespective of the fact whether he earns or not. Court cannot tell the husband that he should beg, borrow or steal but give maintenance to the wife... We are living in an era of equality of sexes. The Constitution provides equal treatment to be given irrespective of sex, caste and creed. An unemployed husband, who is holding an MBA degree, cannot be treated differently to an unemployed wife, who is also holding an MBA degree. Since both are on equal footing one cannot be asked to maintain other unless one is employed and other is not employed."*  
(Emphasis Supplied)

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<sup>1</sup> Padmja Sharma Vs Ratan Lal Sharma (2000) 4 SCC 266 (India)

<sup>2</sup> Shamima Farooqui Vs Shahid Khan, AIR 2015 SC 2025 (India)

<sup>3</sup> Sanjay Bhardwaj vs. State & Anr, 171 (2010) Delhi Law Times 644 (India)

Furthermore, *vide* the judgment titled “*Mamta Jaiswal Vs Rajesh Jaiswal*”<sup>4</sup>, the Hon’ble High Court of Madhya Pradesh decided a question of law on a similar point as the one discussed in the previous judicial pronouncement, that is, whether a spouse who has the capacity of earning but chooses to remain idle should be permitted to saddle the other spouse with his or her expenditure?

In this regard, the Court held as under:

“6. A spouse who is well qualified to get the service immediately with less efforts is not expected to remain idle to squeeze out, to milk out the other spouse by relieving him of his or her own purse by a cut in the nature of pendente life alimony.

8. In fact, well qualified spouses desirous of remaining idle, not making efforts for the purpose of finding out a source of livelihood, have to be discouraged, if the society wants to progress. The spouses who are quarrelling and coming to the Court in respect of matrimonial disputes, have to be guided for the purpose of amicable settlement as early as possible and, therefore, grant of luxurious, excessive facilities by way of pendente lite alimony and extra expenditure has to be discouraged.”

Thus, as seen from the above judgments, the views of various courts in India are bifurcated in so far as they pertain to maintaining one’s wife. While usually, the man is directed to fulfil his statutory obligation in this regard, in certain situations, the man is also exempted from doing so if he is able to show cogent reasons as to why his wife is not entitled to financial maintenance from him.

#### **LIABILITY OF UNEMPLOYED HUSBAND TO PAY MAINTENANCE FOR HIS CHILDREN:**

However, in relation to maintenance for one’s children, no exemption whatsoever has been accorded to the husband; in fact, *vide* judgment titled “*Padmja Sharma Vs Ratan Lal Sharma*”<sup>5</sup> the Hon’ble Supreme Court of India has affirmed the view taken by the Indian judiciary across several states, to the effect that the husband cannot deny maintenance to his children merely because the wife is earning, and that both parents have to contribute to the child’s financial maintenance. The relevant extract is as follows:

“11. If we take the approximate salary of the husband as twice as much as that of the wife, they are bound to contribute for maintenance of their children in that proportion.”

Furthermore, *vide* judgment titled “*Farooq Ahmed Shala Vs Marie Chanel Gillier*”<sup>6</sup>, the Delhi High Court has reiterated the sacrosanct obligation of the husband to maintain his children as under:

“18. Mere fact that the respondent wife is earning does not absolve the petitioner of his responsibility to maintain his three minor daughters.

21. ...Petitioner has a legal, social and moral responsibility to not only maintain his wife but also his children. Even if assuming that the respondent is earning, the same cannot be a reason for the petitioner to avoid the responsibility and duty of maintaining his minor daughters.

22. ...One cannot put value to the time and effort put in by the mother in upbringing of the child. ... No doubt, mother, if she is earning, should also contribute towards the expenses of the child but the expenses cannot be divided equally between the two.”

The rationale behind such a stringent view in matters of child maintenance, is that courts try to ensure that the husband does not shirk responsibility for his child by purposely reducing or eliminating income or to make the children suffer for no fault of theirs.

#### **BUT WHAT ABOUT SITUATIONS WHERE THE HUSBAND’S EMPLOYMENT HAS BEEN ADVERSELY IMPACTED BY THE WIFE WHO HERSELF IS CLAIMING MAINTENANCE FROM THE HUSBAND?**

The cases described in the paragraphs above have a common theme running through them; the husband would have deliberately suppressed his income and / or acted in bad faith in order to

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<sup>4</sup> Mamta Jaiswal Vs Rajesh Jaiswal, 2000 (4) MPHT 457 (India)

<sup>5</sup> Padmja Sharma Vs Ratan Lal Sharma (2000) 4 SCC 266 (India)

<sup>6</sup> Farooq Ahmed Shala Vs Marie Chanel Gillier, (2019) 261 DLT 536 (India)

satiate his vested interests and to *malafidely* shirk his parental responsibilities for maintaining his children on the pretext of having NIL income or less income than what it actually is.

What the author seeks to discuss, is a separate variety of cases which have certain extenuating circumstances beyond the control of even a well-meaning husband, i.e. circumstances wherein the husband has been rendered unemployed on account of the *mala fide*, deliberate and intentional actions and inactions of the wife, and not by his own doing. A few such instances could be: the wife may have illegally ousted the husband from the business jointly run by the couple; the wife may have circulated false rumours about the husband at his workplace which would have made it virtually impossible for him to continue to work there and would have compelled him to leave the same; or the wife would have roped the husband into a multitude of false litigations, which would take up a substantial amount of his time, effort and money thus resulting in him being unable to sustain his work productivity and his services being consequentially terminated, or even posing hurdles in background checks conducted by companies for fresh job prospects. It is quite surprising that even such adverse situations are often adjudicated by courts in a mechanical fashion. The husband is generally shown no mercy by the Indian Judiciary and is categorically ordered to maintain his wife and children in accordance with the same standards of living to what they have been used to, while no such mandatory burden is placed upon the wife irrespective of the quantum of her earnings.

In this article, the author seeks to question whether even in such cases as enumerated above, would it still be reasonable for the courts to assume that the husband must contribute for the maintenance of his children and his wife? Opining in the negative, the author propounds that with respect to the situations discussed in the previous para, a more progressive attitude ought to be adopted by the Indian Judiciary, as entailed in the suggestions put forth in this article.

#### **SUGGESTIONS PROPOSED BY THE AUTHOR ALONG WITH CONCLUSION:**

Prior to determination of the maintenance to be afforded to the children by the father / husband, the courts must determine the reasons for the unemployment of the husband / father, and attempt to make a sincere and genuine effort to ascertain whether the actions and inactions of the wife had any bearings on the husband being rendered unemployed. In the event the answer is affirmative, the husband ought to be exempted from his legal liability to maintain the wife and children, for as long as his unemployment or such other inhibitive circumstances subsist. The underlying basis behind this suggestion, is that in situations where the husband's very source of income has been snatched away by the wife, or if she has created a situation so adverse that it is practically impossible for the husband to earn a living, it cannot be reasonably expected of the husband to continue to support his wife and children by the same standards / level of lifestyle that he was able to afford for them while he had been sufficiently earning. Moreover, the Courts must also consider whether it is morally and ethically correct to allow a wife to derive undue benefits from the legislations allowing her to claim maintenance from her husband, when she herself has inhibited the source / quantum of his income from which her maintenance is to be derived, in order to satiate her *mala fide* and vested interests. Further, in the event the wife is found to be sitting idle, especially when she has adequate qualifications; or is earning but suppresses her true income, or otherwise states herself to be unemployed or not having adequate source of income, the Court should scrutinise such conduct from the same neutral and objective lens as it does with respect to the husband's conduct.

On this thought provoking note, the author would like to end by citing the observations of the Hon'ble High Court of Rajasthan in a recent judgment passed in January 2019 titled "*Antima Vs Jitendra*"<sup>7</sup>, *vide* which the High Court seems to have adopted a more liberal, reformative and broad minded approach. The High Court rejected the claim for maintenance of a wife, who blocked her husband's enrollment as a lawyer by reporting to the Bar Council of Rajasthan about the pendency of a case under Section 498A of the Indian Penal Code, 1860 against her husband. Terming the wife's case as a "self-goal", the High Court held:

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<sup>7</sup> *Antima Vs Jitendra*, 2019 SCC Online Raj 4850 (India)

*“7. The only material wherefrom some income of the respondent can be inferred is that he is helping a lawyer in his Chamber, but cannot appear in Court because he does not have any license from the Bar Council to do so ...*

*8. ... Only inference the Court can draw would be that the senior with whom the respondent works would give him some stipend and not a junior fee because the respondent cannot appear in Courts. The stipend would be meagre.”*

However, as the parties to the above case did not have any children, one is left to ponder upon whether the High Court's decision would have changed in any manner had the sustenance of a child also been a point of consideration. It remains to be seen whether the Courts in the coming future will adjudicate upon such matters with a sympathetic and balanced approach, with the objective to ensure that justice is rendered not only to well-meaning wives and children, but to well-meaning husbands as well.