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DOCTRINE OF PIOUS OBLIGATION UNDER THE HINDU LAW.

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Abstract:-

The antique principle of pious obligation was ruled by smriti law. There is a pious obligation on the sons and grandsons to pay the debts contracted by the father and grandfather. According to privy council this obligation extends to great grandsons also because all the male children active to three compeers create coparcenary and every coparcener is under a religious responsibility to pay the liability contracted by their ancestor, provided such debt was not taken for wicked or illegal purpose. Thus the responsibility of the attention of the sons in such cases to free the debts incur by the father is undoubted, although the technique and way of its implement by the creditor would differ and the sons must be pay for each chance, be it in an ensemble or effecting events to query the compulsory scenery of the arrears or liability. The huf system is an only one of its kind trait of the indian society and the idea of pious obligation proceed as a yarn which attach the relations as one and put off it from breakdown. Pious commitment comprises together devout as well as fabric features and makes the successor(s) in charge/answerable for holy duties, like the theater the last finances of the departed, paying reverse sum unpaid accumulate through the late and too rewarding further tasks gone unfinished in admiration. On one occasion pious obligation is abrogated, the notions of combined family also experience a gust.

Keywords: -

Hindu law, Indian Penal Code (IPC), the Indian Succession Act (ISA), 1956.

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Introduction:-

A son is under this doctrine to release debt of his father out of his inherited assets still stipulation he had not been advantages and presented the overdue are not avyavaharika (Unreasonable), Under the Hindu Law. The sons get forgave from their commitment to liberation the debit of their father from the family assets only if the debt was one contaminated by means of wickedness before illegality.

The responsibility that is troupe upon the son actuality holy and ethical, the accountability of the son for the liability must be observed with allusion to its personality when the duty was first incurred. If at the foundation there was nothing unlawful or unacceptable to straight mores, the following subornation is in not liquidating his compulsion will not absolve the son from liability for the debt.

Meaning: -

‘Pious obligation’ means the moral liability of son, he has to pay or discharge their father’s non-avyavaharik debts. The unpaid rented might not be of officially permitted need or for profit of land. Thus, if the father is the Karta of a HUF, he may estrange the coparcenary material goods for release the precursor arrears. The sons are under the duty to get well such estranged possessions by reimbursing.

Origin: -

The doctrine has its source in the beginning of Smriti writers who observe not paid of debt as a positive indulgence, the wickedness penalty of which go after the un-liberate debtor still in the later than universe. It is for the purpose of keeping the parents from his suffering in the after that earth that obligations forced ahead.

A sequence of verdicts in the court of law of recent India have progressed the customary explanation of the responsibilities of the boy-child, grandson, and great-grandson. The old-style difference was that the son was legally responsible to recompense the main and the interest. Usually, the grandson was accountable to wage only the principal but no interest, and the great-grandson was liable only to the extent that the paternal estate came into his hands. The son, grandson, and the great-grandson are liable equally for inherited obligations, but not individually answerable, and that their liability is co-extensive and limited to the level that they have joint property in their possession.

Reasons for Liability: -

The reason for liability of a son may be said to be,

- Religious and piety.
- The son taking interest in the ancestral property by his very birth.

That is why the Doctrine has been named as.

Nature of Liability: -

The liability of a son is not personal. It is limited to the son's may be a minor or a major; application of the doctrine has no exception. Moreover, this obligation cannot be abrogated by the Indian Succession Act, 1956.

Avyavaharik debts: -

According to Colebrooke, he defined that, "it as an accountability invite for a reason disgusting to high-quality ethics. If it is unrighteous or wholly improper they cannot be called vyavaharik or legal debts. It may be that the debts incurred by the father for defending himself against criminal action against others or defending himself in an action brought by others are legal in several circumstances. If a debt was incurred to defend the rights of the family and to safeguard its interests, it is certainly legal in nature. If a debt is not tainted with illegality at its inception it may be binding on the son. The son may unable to claim immunity from the debts in such cases. But, where the father's conduct which prompted the incurring of the debt, is utterly repugnant to good morals or is grossly unjust or flagrantly dishonest, then certainly the son can claim immunity from its liability.

In a decision of a Full Bench in Bombay High Court it was held that Impractical debt against the law, untruthful or unethical debt. The son does not have to prove the father's criminal liability to sue for immunity. Therefore, where a person owns property, which he is not entitled to acquire, disposes of the property and removes the faithful owner of the property, his behavior is dishonest and the son is not liable to give Such behavior by Lord Dunedin of the Privy Council also leads to the fact that predecessor debts were actually defined as a predecessor as well as over time i.e. not part of the transaction. So two circumstances are required:

1. The sum unpaid must be earlier in time and
2. The amount overdue must be prior in fact.

A son can sue for imperviousness only when the debt at his core was unethical because the

money was obtained from the commission of the crime; but where the father came legally with money, but then abused them embezzle. This corresponds only to the narrative of impractical debt in the previous case. If the initially was not unethical, i.e. If there was no crooked opening or it was based on scam, that money owing cannot be classified as unjust and that debt pleasing son cannot be released. An external event, i.e., abuse will not change the scenery of the arrears later. The vices must be innate.

Morally wrong debts are also committed to keeping a prostitute. Thus, it is illegal to bribe a granddaughter or a Hindu woman to espouse or gamble with one of their sons. The result of the most brutal actions with those who were initially convicted of evil is impractical. The father has power to avoid past debts.

The knowledgeable adjudicator keen away to a judicial point of view, it did indeed change the doctrine contained in the novel text in some respects. According to the current law, the son's obligation is not an existing personal obligation, regardless of whether he has purchased any property or not, it constitutes a limited obligation to the son's share of assets or rights and interests in the common family property the same.

Regardless of whether the son is mature or juvenile, if the guardian is lively or lifeless, he has a commitment. If the debit is constricted by the father and is not depraved or unreligious, the son can always be held responsible for such debts in the common property owner's property.

The father can transfer the property of the common family to pay his individual amount overdue and the son can face the arrears only if the debt is corrupted. This means that even the father can do this not directly. The duty of the son's piety to his debt of father must be paid, whether the father is alive or not alive. During the father's lifetime, it is wish of the father that he can repay the property of the united family, including the son's interest and can also pay previous claims arising from the needs or interests of the family (if it is immoral, the debt cannot be found). Parents cannot do this after filing for separation.²

Laws Related to Doctrine of Pious Obligation.

- The Hindu Succession (Amendment) Act, 2005

². <https://www.shareyouressays.com/knowledge/understanding-the-concept-of-pious-obligation-under-the-hindu-law/117717>

The Hindu Succession Amendment Act of 2005 was passed by Parliament to address the unequal treatment of daughters in Joint Hindu families, granting them equal rights to sons. It was based on recommendations from the 174th Law Commission report on Women's Rights in Property under Hindu law, which advocated for gender equality in inheritance laws.

Following the enactment of the Hindu Succession (Amendment) Act, 2005, courts are not permitted to enforce the pious obligation doctrine to hold sons, grandsons, or great-grandsons liable for their father's, grandfather's, or great-grandfather's debts.

Daughter's Right to Property Under Hindu Succession Act

Traditionally, ancient Hindu society was patriarchal, restricting women from owning property in their own names. Even if a woman earned property, it was controlled by her father, husband, or son.

The Hindu Succession Act of 1956 continued this system, granting daughters rights in their father's self-acquired property but not in coparcenary property, as they were not recognized as coparceners in joint Hindu families.

The Hindu Succession (Amendment) Act of 2005 aimed to rectify this by granting daughters of coparceners equal rights in coparcenary property as sons.

Its objective was to challenge the patriarchal mindset, remove gender discriminatory provisions, and provide gender equality in matters of inheritance.

While the amendment addressed some issues, there were still ambiguities in its interpretation, leading to challenges in fully implementing its intentions.

The Issues and Irregularities that Caused the Abolishment of the Doctrine of Pious Obligation.

The doctrine of pious obligation was abolished after the 2005 amendment to address existing irregularities.

An issue arose when the Karnataka High Court interpreted the doctrine in the case of Padminibai v. Arvind Purandhar Murabatte (1987) before the amendment. Following the court's reasoning in that case, it could be argued that a daughter would now be liable for her

deceased father's debts if she inherits a share in the Mitakshara Coparcenary by birth.

The concept of reunion and other aspects of Mitakshara coparcenary led to further irregularities, as it only included the father's sons, brothers, nephews, and paternal uncles, excluding women entirely.

If the Karnataka High Court's reasoning were to be extended to allow daughters, sisters, or nieces to participate in the reunion as coparceners, it would disrupt the uncodified law.

Due to such persistent irregularities, the need for a change in the doctrine of Pious Obligation became unavoidable, leading to its abrogation through the 2005 amendment.³

Related Case laws: -

1. Hemraj V/s. Khemchand(1943): -

In this case, the Privy Council studies the temperament of the Avyavaharika debt that, the similar with allusion to the occasion when it instigate. Hemraj and Danpal are orders shared between the two brothers apart from Hemraj. It can be expected that Danpal will file a notice within 7 days after receiving the court order; otherwise he will be liable for the interest collected. Danpal unloaded the bills until the time was up. Hemraj then sued Danpal and ordered Danpal about the amount.

Danpal waiting plead of this decree Danpal was died. In the implementation actions against the children of Danpal, they objection about the donation which, it had been made through “misconduct and stupidity” of him. So they were not responsible for paying their share of the familial property.

Amounts outstanding which are not bound to set free: under Smrities.

- It incurred wasteful gifted for drinking
- It acquire for lust
- betting
- not paid fines
- due shulka

³. <https://www.drishtijudiciary.com/doctrines/family-law-doct/doctrine-of-pious-obligation>

- commerce shulka
- It by for being guarantee

Debts judicially held to be Avyavaharika.

- Render the father for Criminal breach of trust (Sec- 409 of I.P.C.)
- Father receiving money by of fact or by cheating (Sec- 415 of I.P.C.)
- Liability arise out of crime of theft up a false will.
- Cost of defending a suit by setting.
- Debt incurred to provide one's concubine with misappropriation.
- Liability arising out of funds for the expenses of her granddaughter's marriage.
- Subscription for the conduction of lottery.
- Monetary fine imposed by a court for committing crime.

2. Keshav Nandan Sahay Vs. The Bank of Bihar: -

In this case, the son is said to be responsible for the preparation debt borne by the father. The principle of piety in the pie constitution does not apply to women. Therefore, it cannot hold creditors accountable for boys. In the area of quarantine between the co-conspirator and her son, the woman was given a portion of her rights, and she could not be considered the sole representative of the husband. This doctrine is based on ancient Hindu scriptures, and does not mention women in the category of boys, and there is no legal act to include this doctrine.⁴

Socio-Legal Impact of Doctrine of Pious Obligation:

The socio-legal impact of the teaching of pious duty is at odds with the current jurisprudential trends in the field of exclusive jurisprudence. The existing Hindu law has been altered by several laws in favor of absolute ownership of Hindu women; it cannot be explained or reasoned that by abolishing limited ownership of women, the status of children in joint family property can be removed from the teaching of pious duty. In this regard, the provisions of pious duty must be changed to absolute duty and made similar to the Dayabhaga school of Hindu law, as has been the case with the impact of the Chandersen judgment of the Supreme Court.

Burden of Proof of the Debt:

The obligation on son to pay off their father's personal debts is a religious obligation and on

⁴. http://www.legalserviceindia.com/articles/sons_p.htm

the off chance that they need to wriggle out of it? They can do as such just if the debts are polluted the son also need to show that loan boss had the notice or information that the debts was corrupted.

The Apex Court in *Luhar Marit Lal Nagji v. Doshi Jayantilal Jethalal*, depending upon the judgments of the Privy Council alluded to (*supra*), articulated the principles thus: “the sons who challenge the alienations made by the father need to demonstrate that the precursor debts? were immoral as well as that the purchasers had seen that they were so corrupted.”

Ramasamayyan v. VirasamiAyyar ((1898) I.L.R. 21 Mad. 222) Indeed, even where the home loan is not for legal necessity or for an installment of precursor debt, the lender can, in the execution of a home loan declare for the acknowledgment of a debt which the father is personally subject to reimburse, sell the estate without getting a personal pronouncement against him. After the sale has occurred, the son is bound by the sale, unless he shows that the debt was non-existent or was corrupted with immorality or illegality⁵

Conclusion: -

“The doctrine of pious, under which sons are held accountable for paying the responsibility of their father, is based exclusively on spiritual ideology; the theory basically shows that fathers' amount outstanding must be practical. If debt is not practical or impractical, this principle cannot be applied.” The principle of the son's task for debts from the father may soon be reused. Both of these principles specify holy beliefs, but in some cases, the son is legally responsible for repaying and repaying debts for the decent intention of the father's life. In this regard, the son is only in charge for the extent of their attention in the ordinary family property, and therefore does not bear personal dependability for this type of payment.

However, the field of responsibilities does not include heirs, widows or daughters, so there is a big gap in Hindu law in the neutral gender system of the family. Given that they now enjoy equal rights to family property, they still need to be reformed like men as heir. Since the Hindu Succession (Amendment) Act, promulgated in 2005, no court will accept any right to take action beside of a son, grandson or grandson to improve the debts of the father, grandfather or great-grandson. Only on the basis of the duty of piety under Hindu law, such sons, grandsons

⁵. <https://gyansanchay.csjmu.ac.in/wp-content/uploads/2023/10/DOCTRINE-OF-PIOUS-OBLIGATION.pdf>

or great-grandsons can pay any such debts. The law of obligation refers to a person's legal duty to do something. This legal duty arises in situations where a person, or a group of people, is required to take a particular course of action under the law. These kinds of obligations are binding ties that are covered by legal terms and can be enforced by a court. The obligation is limited to lawful and moral debts. Debts incurred for immoral or illegal purposes (such as gambling or unethical behavior) are excluded, and descendants are not held responsible for their repayment. Historically, creditors could claim repayment from joint family property owned by the descendants under the Hindu Undivided Family (HUF) system. However, the personal property of descendants was protected unless it had been inherited. The liability was restricted to the extent of the descendants' interest in the joint family property.⁶

References: -

1. http://www.legalserviceindia.com/articles/sons_p.htm)
2. <https://www.shareyouessays.com/knowledge/understanding-the-concept-of-pious-obligation-under-the-hindu-law/117717>
3. <https://www.lawnotes.co.in/2019/09/family-law-iidoctrine-of-pious.html>
4. <https://advocatetanmoy.com/2018/12/20/the-doctrine-of-pious-obligation>
5. Family Law, by Peeyushi Diwan Paras Diwan (Author), publication- Allahabad Law Agency.
6. HINDU LAW (Family Law - I) - Dr. S.R.Myneni (Author) Asia Law House publication (2018).

⁶. <https://legal-wires.com/lex-o-pedia/doctrine-of-pious-obligation-hindu-law/>