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# **DOCTRINE OF PIOUS OBLIGATION AND ANTECEDENT DEBT**

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## **Abstract**

The doctrine of pious obligation emphasizes the duty of sons to repay their father's debts out of religious devotion and spiritual welfare, rooted in the belief that failure to do so may result in adverse consequences for the father's soul. This doctrine is not for the benefit of creditors but aims to ensure the spiritual well-being of the deceased father. Antecedent debts, on the other hand, must be truly independent of the impugned transaction, both in time and nature, for the sons to be bound by them

**Keywords:** Doctrine of pious obligation, antecedent debts, Hindu law, joint family property, sons' liability, religious duty, spiritual welfare, moral obligation, legal necessity.

## **Introduction**

The doctrine of pious obligation and antecedent debts are integral aspects of Hindu law, governing the liabilities of sons towards their father's debts and the circumstances under which joint family property can be alienated to discharge such debts. These legal principles stem from religious, moral, and legal considerations deeply entrenched in Hindu society.

## **Doctrine of pious obligation**

The DOCTRINE OF PIOUS OBLIGATION is not based on any necessity for the protection of third but is based on the pious obligation of the sons to see their father's debts paid. (Sat Narain v. Sri Kishen Das, 63 LA. 384: A. I.R. 1936 P.C. 277). The doctrine of pious obligation under which sons are held liable to discharge their father's debts is based solely on religious consideration. It is thought that if a person's debts are not paid and he dies in a state of indebtedness, his soul may have to face evil consequences, and it is the duty of his sons to save

him from such evil consequences. The basis of the doctrine is thus spiritual and its sole object is to confer spiritual benefit on the father. It is not intended in any sense for the benefit of the creditor.

The doctrine inevitable postulates that the father's debts which it is the pious obligation of the sons to repay must not be avyavaharika. If the debts are not vyavaharika, or are avyavaharika, the doctrine of pious obligation cannot be invoked. (Luhar Amrit Lai Naggi V. Doshi Jayantilal Jethlal, A.I.R. 1960 S.C. 964). The doctrine of pious obligation applies (or the liability of the sons to pay father's debts exists) during the life time as well as the death of the father. Muniswami v. Kuitty, A.I.R. 1933 Mad. 708 and ThadiMurali Mohan Reddi v. Medapati Gangaraju, 197 I.C. 199: A.I.R. 1941 Mad. 772 (F.B.)]. The creditors can proceed against the entire joint family properly for the debt of the father (grandfather and great grandfather included) during his life time and after his death provided that debt is not tainted with illegality or immorality. If the debt is so tainted there is no liability on the son for its payment. It should, however, be noted that the son cannot be sued alone during the father's life-time. The Vanniya Tamil Christians of ChiturTaluk are governed by the Mitakshara School of Hindu law in regard to inheritance and succession. The son of a member of such community gets by birth an interest in ancestral property owned by the father. The doctrine of pious obligation applied and the son is bound to discharge his father's debts not tainted by illegality or immorality. The doctrine of pious obligation is not merely a religious doctrine but has passed by the realm of law. It is a necessary and logical corollary to the doctrine of the right of the son by birth to a share of the ancestral property, and both these conceptions are correlated. The liability imposed on the son to pay the debt of his father is not a gratuitous obligation thrust on him by Hindu law but is a salutary counterbalance to the principle that the son from the moment of his birth acquires along with his father an interest in joint family property, it is therefore, not possible to accept the argument that, though the community of Vanniya Tamil Christians of Chittur Taluk is governed as a matter of custom by the Mitakshara School of Hindu law, the doctrine of pious obligation is not applicable. (Anthonyswami v. ChinaswamiKoundan, A.I.R. 1970 S.C. 223: (1969) 2 S.C.W.R. 706).

The doctrine of pious obligation is an integral part of the Mitakshara School of Hindu law. It is in consonance with Justice, equity and good conscience and is not opposed to any principle of Christianity. In V. Narasimhulu v. V. Ramayya, A.I.R. 1979, A.P. 36 it has been laid down that a father as a manager of a joint family can mortgage the family property and incur debts. He

represents the family as a whole, when he incurs the liability. The sons cannot impeach the mortgage unless the debt is for illegal or immoral purposes. The sons are bound to pay the debt by virtue of the force of pious obligation. There was conflict of opinion between the High Courts of India on the point whether any pious obligation on the sons to pay the debts of the father exists in the life-time of the father or whether the pious

obligation arises for the first time after the father's death. The difference of judicial opinion has been set at rest by the decision of the Privy Council in the leading case of *Brij Narain Rai v. Mangla Prasad*, 51 I.A. 129 A.I.R. 1924 P.C. 50. Their Lordships of the Privy Council held that the sons were liable for the father's debts, whether the father was alive or dead when the liability attached. This decision modified the old Hindu Law, on that point. According to ancient Hindu Law this liability of the sons did not arise until after the death of the father.' Under the law, as it now stands, the obligation of the sons is not a personal obligation existing irrespective of the receipt of any assets it is a liability to the assets received by him in his share of the joint family property or to his interest in the same. The obligation exists whether the sons are major or minor or whether the father is alive or dead. If the debts contracted by the father are not immoral or irreligious, the interest of the sons in the coparcenary property can always be made liable for such debts. It has been further held that to saddle the sons with this pious obligation to pay their father's debts, it is not necessary that the father should be the manager or karta of the joint family or that the family must be composed of the father and his sons and no other member. It is also not necessary that the sons should be made parties to the money suit or to the execution proceedings. (*Sidheswar Mukherjee v. Bhubneshwar Prasad Narian Singh*. 1954 A.L.J. 54: (1954) S.C.R. 177: A.I.R. 1953 S.C. 487). The pious obligation of the sons to discharge the father's debts lasts only so long as the liability of the father subsists. The son's liability is neither joint nor joint and several. An illustration can be given in order to elucidate the point. Suppose the father is adjudged insolvent for the debt incurred which release the father from the debt. As no suit can be filed against the father in respect of debts, none can be maintained against the sons in respect of that debt. The son is not liable for a debt contracted by the father after partition. But the son is liable after partition for a debt contracted by the father before partition. (*Annabhat v. Shivappa* 110 I.C. 269 : A.I.R. 1928 Bom. 252 ; *Bankey Lal v. Durga Prasad*, 135 I.C. 139 : A.I.R. 1931 All. 512 ; *Subramania v. Sabapati* 51 Mad. 361 : A.I.R. 1928 Mad. 657 F.B. : (*firm GovindramDwarkadas v. Nathulal*, A.I.R. 1937 Nag. 45 etc.). After partition it is necessary that the creditor should institute the suit against the father as well as against the son so that the decree can be executed against the son. (*Firm GovindramDwarkadas v. Nathulal*, I.L.R.

1938 Nag. 10 and Atul Krishna Roy v. Nandji (1935) 14 Pat. 732 F.BL A.I.R. 1935 Pat. 275). In the Case of Panna Lal v. Naraini, A.I.R. 1952 S. C. 170, the Supreme Court has held that a son is liable even after partition for the pre-partition debts of his father which are not immoral or illegal and for payment of which no arrangement was made at the time of the partition of the joint family property. It has further held that a decree passed against the separated sons as the legal representatives of the deceased father in respect of a debt incurred before partition can be executed against the shares obtained by such sons at the partition and this can be done in execution proceedings and it is not necessary to bring a separate suit for the purpose. According to the Supreme Court the major-ity decision in Atul Krishna Roy v. Nandji, 14 Pat. 732 over-looked the point that Sec. 47 C.P.C. could have no application when the decree against the father was sought to be executed against the sons during his life-time and consequently the liability of the latter must have to be established in an independent proceedings. In cases under Sec. 50 and 52 C.P.C., on the other hand, the decree would be capable of being executed against the sons as legal representatives of their father.

### **Antecedent Debt**

Antecedent Debt “Antecedent” literally means prior or preceding in point of time, but the words “antecedent debt” as used in Hindu Law implies two things, (a) antecedent in time, and (b) antecedent

in fact in nature, that is to say, the debt must be truly independent of and not part of the transaction impeached. Lord Dunedin defined the antecedent debt as “antecedent in fact as well as in time”. Thus, two conditions are necessary— (a) The debt must be prior in time, and (b) The debt must be prior in fact. The Supreme Court re-affirmed that the “antecedent debt” means antecedent in fact as well as in time, that is to say, that the debt must be truly independent of and not part of the transaction impeached. The debt may be incurred in connection with a trade started by the father. The privilege of alienating the whole of joint family property for payment of an antecedent debt is the privilege only of the father, the grand-father and great grand-father qua the son or grand-son only. Where the father executed a simple mortgage and total consideration of Rs. 10,000/- was received by the mortgagor in which Rs. 7,000/- was received in installments and Rs. 3,000/- at the time of mortgage. Rs. 7,000/- was advanced on express condition that a mortgage would be executed later. In this case it was held, that the amount of Rs. 7,000/- was not an antecedent debt so as to fasten the liability on sons of mortgagor. Thus, it is now well settled that the father

of Hindu joint family enjoys full right to sell or mortgage the joint family property including the son's interest therein to discharge antecedent debt. A sale of joint family property, which is made to discharge a debt taken at that very time or as a part of the sale transaction, is not valid because the debt in this case is not an antecedent debt. Thus, the father has got the power to sell or mortgage the joint family property for the payment of the debt, may it be for his personal benefit. It would be binding on sons, provided—(a) the debt was antecedent to the alienation, and (b) It was not contracted for an immoral purpose

In *Brij Narain v. Mangala Pd.* the Privy Council laid down the following propositions:—

1. The Karta of a joint family except for legal necessity cannot alienate the joint property nor can mortgage it.
2. If a decree has been passed for the payment of the debt it can be executed against the entire estate, provided the son and the father living jointly.
3. He cannot mortgage the joint family property unless the mortgage was done for the payment of some antecedent debt.
4. "Antecedent debt" means a debt which is prior in time as well as in fact.
5. The fact that the father is alive or dead does not affect the liability.

1. Alienation by Father: The father of a joint family may sell or mortgage joint family property including the son's interest in the property to discharge a debt contracted by him for his personal benefit, provided the following two conditions are satisfied:— (a) The debt, for which alienation is made, must be antecedent in time. (b) The debt must not have been taken for an illegal or immoral purpose. The Kerala High Court has held that in absence of a plea that the debt, for the discharge of which a Hindu father has alienated the ancestral property was vitiated by illegality or immorality, the sale is not liable to be challenged, if it is shown that it has been executed for the discharge of the antecedent debt of the father. If the alienation has been shown to have been made by the father for the payment of an antecedent debt, the son can still get rid of it, provided he is able to prove that the debt was tainted with illegality or immorality. The burden of proving both these facts is not on the alienee but on the son himself.

2. Moral Obligation: It is also a moral duty of the sons to pay the debt of the father as they inherit the property from him. One, who inherits the estate of another, must pay such other's debt. A Hindu heir is, therefore, liable to pay the debts of the deceased out of the assets; he has inherited from the deceased.

The liability is moral and therefore absolute irrespective of the fact that the debt was incurred for moral or immoral purposes. The successor is bound to pay his ancestor's immoral debts out of such property.

3. Legal Obligation: Besides religious and moral duties, there is also a legal obligation to pay back the debt secured by the father. With respect to a money debt of the father, sons may be bound by proper proceedings taken in a Court of law by a creditor against the father, although the sons are not made parties to the suit. The whole family property is liable for debts, incurred for the benefit of the family, by the father as manager. Reasonable interest on such debt is also payable by the family.

## **Conclusion**

In Hindu law, the doctrine of pious obligation and antecedent debts serve to uphold familial and societal responsibilities. Sons are bound by religious, moral, and legal obligations to discharge their father's debts, ensuring the spiritual welfare of the deceased and maintaining the integrity of joint family property. These principles reflect the intricate balance between religious beliefs, moral duties, and legal responsibilities within Hindu society

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