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# **THE DOCTRINE OF PIOUS OBLIGATION AND ITS RELEVANCE UNDER THE HINDU LAW IN THE PRESENT TIME**

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## **ABSTRACT**

The doctrine of Pious Obligation is a fundamental concept in Hindu law, and its relevance in the present time is a matter of significant debate. This paper aims to shed light on this issue by exploring the history and evolution of this doctrine and its applicability in contemporary times. The concept of Pious Obligation can be traced back to ancient Hindu scriptures and was based on the belief that an individual's debts, both moral and financial, must be repaid. In the context of debt repayment, it was the responsibility of the male descendants to pay off the debts of their ancestors, as a religious and moral duty. This concept was widely accepted in Hindu society and formed the basis of the doctrine of Pious Obligation.

However, the Hindu Succession Act of 2005 brought significant changes to this doctrine. The amended act limited the liability of the male descendants to repay the ancestor's debts to the extent of ancestral property. This amendment has raised questions about the continued relevance of the doctrine of Pious Obligation in modern Hindu society.

In the present time, the doctrine of Pious Obligation has become a topic of significant debate, with some arguing for its relevance and others questioning its applicability. One of the critical issues raised in these debates is whether this doctrine should apply to daughters, given that they are also descendants of the deceased ancestor. This issue remains unresolved, and courts have taken varying positions on this matter.

The paper also examines the implications of the doctrine of Pious Obligation in modern Hindu society and the challenges it poses for the legal system. While the doctrine has a religious and moral basis, its application in the legal system has been subject to controversy and interpretation. The paper discusses the impact of the doctrine on inheritance rights, succession planning, and property distribution.

## **KEYWORDS**

Avyavaharika debt, Liability of daughters, Pious Obligation, and Vyavaharika debt

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## INTRODUCTION

The concept of Pious Obligation in Hindu law is a long-standing tradition that holds sons liable for their father's debts. However, this liability is limited to legal debts (vyavaharika) and excludes immoral and unethical debts (Avyavaharika). The doctrine of Pious Obligation is a religious obligation that requires sons to repay their father's debts, with the belief that it will lead to the salvation of their souls.

The doctrine of Pious Obligation has evolved over time, and its interpretation has been subject to debate and controversy. Prior to the 2005 amendment, sons were held liable for their father's debts, regardless of the gender. However, the amendment limited the liability of sons to the extent of ancestral property, and daughters were granted equal rights to ancestral property. This change has impacted the applicability of the Doctrine of Pious Obligation and has given rise to questions about its continued relevance.

In conclusion, the Doctrine of Pious Obligation is a long-standing tradition in Hindu law, and its interpretation has evolved over time. The paper highlights the changes brought about by the 2005 amendment and the impact on the applicability of the doctrine. It also examines the relevance of the doctrine in contemporary Hindu society and the challenges it poses to the legal system. The paper concludes by calling for a nuanced and comprehensive approach to the Doctrine of Pious Obligation, taking into account both its religious and legal implications.

## HISTORICAL BACKGROUND

The doctrine of Pious Obligation is a fundamental principle in Hindu law that is based on the idea of piety and religion. According to Hindu tradition, when a Hindu dies and his or her soul is indebted, they may have to face negative consequences in the afterlife. Therefore, it becomes the responsibility of the deceased's son to free his father's soul from indebtedness.

In this regard, Brihaspati, an ancient Hindu scholar, stated that anyone who receives a sum of money or property and fails to repay it to the owner will be born in the creditor's house in their next life as a slave, a servant, a woman, or a quadruped<sup>2</sup>. The purpose of the doctrine of Pious Obligation is to ensure the spiritual well-being of the deceased, rather than to benefit the creditor.

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<sup>2</sup> Vijender Kumar, Basis and Nature of Pious Obligation of Son to Pay Father's Debt Vis-à-vis Statutory Modifications in Hindu Law, available at [http://intranet.nluassam.ac.in/docs/course%20materialas/done/family\\_law\\_2.pdf](http://intranet.nluassam.ac.in/docs/course%20materialas/done/family_law_2.pdf). (last visited on MAR. 2023, 19, 09:00 PM).

As per Hindu scriptures, it is considered the holy and pious duty of a son, grandson, and great-grandson to pay off their father's debts. This religious obligation is attached to them by virtue of their birth in the family, as they are all coparceners. It is believed that failure to pay off a debt is a sin and that anyone who dies leaving behind unpaid debts cannot go to heaven.

The son, by paying off his father's debts, relieves his departed ancestor from the debt and enables him to attain Moksha or liberation from the cycle of birth and death. This obligation of a son to repay the debts of his deceased ancestor is based on the special doctrine of Pious Obligation, which only applies to non-Avyavaharika debts.<sup>3</sup>

According to Hindu religious books and jurists, the son and grandsons have a duty to pay off the debts of their deceased father, even if he has died or gone abroad or is facing difficulties. Failure to do so not only has temporal consequences but also follows the debtor in the next life, as stated by Brihaspati.

The doctrine of Pious Obligation is not a gratuitous obligation, but rather a counterbalance to the son's right in the property by virtue of his birth in the family. This principle was upheld in the case of *Anthonyswamy v. M.R. Chinnaswami*.

In Indian legal literature, it is believed that a son has a significant responsibility to pay off the debts of his father. This responsibility is considered as a pious obligation because it is based on the authority of religion. It is important to note that this obligation only applies to the debts that are considered religious in nature. Debts that are deemed to be irreligious do not fall under the purview of this obligation.<sup>4</sup>

There are two main reasons for not holding the son liable for his father's irreligious debts. Firstly, just as there are religious authorities that impose liability on sons to pay off the debt of their fathers, there are also religious authorities that absolve the son from the liability to pay off irreligious debts. Therefore, it would be inconsistent to hold the son liable for debts that are not considered religious. Secondly, holding the son liable for irreligious debts would be considered as the contribution and augmentation of irreligious acts of the father.

When it comes to repaying the father's debts, the son is responsible for paying both the principal amount and interest. In contrast, the grandson is only required to pay the principal amount, and the great-grandson is only liable to pay to the extent he has joint family property in his

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<sup>3</sup> Doctrine of Pious Obligation, SRD Law Notes, available at <http://www.srdlawnotes.com/2017/01/doctrine-of-pious-obligation.html> (last visited on MAR. 2023, 18, 07:15 PM).

<sup>4</sup> *Supra* note 1 at 7.

possession. The great-grandson is not personally liable, unlike the son and grandson, who are personally liable for the debt.<sup>5</sup>

The Privy Council, in the case of *Sat Narain v Rai Bahadur Sri Kishan Das*<sup>6</sup>, observed that the doctrine of pious obligation is based on the pious obligation of the sons to pay off their father's debts and not on the necessity for the protection of third parties.

According to the Dharmashastra, paying off debts is of great importance. If a man has to pay both his and his father's debts, he must pay the latter first. Furthermore, among the father's and grandfather's debts, the grandfather's debts should be paid first. This shows that paying off debts is not only a religious obligation but also a social obligation that has been recognized in Indian legal literature for centuries.<sup>7</sup>

The doctrine of Pious Obligation is a fundamental principle in Hindu law, which imposes a religious obligation on a son, grandson, or great-grandson to pay off their deceased father's debts. This principle is based on the idea of piety and religion and is aimed at ensuring the spiritual well-being of the departed soul, rather than benefiting the creditor. Failure to fulfill this obligation can have temporal and spiritual consequences, and it is, therefore, considered a holy and pious duty of a son to discharge his father's debts.

### **SCOPE OF LIABILITY IN DOCTRINE OF PIOUS OBLIGATION**

The obligation to repay the debts of the father, grandfather, or great-grandfather is limited to the principal amount and not the interest accrued on it<sup>8</sup>. In earlier times, both sons and grandsons were personally liable to repay the debt, while the great-grandson's liability was restricted to his share in the joint family estate. However, during the British era, the son, grandson, and great-grandson's liability was limited to their share in the joint family estate. Therefore, even if the son has personal property, he is not obligated to repay the debts of his father.<sup>9</sup>

### **TYPES OF DEBTS AND LIABILITY OF SONS**

When discussing the doctrine of pious obligation, which is a son's liability to pay off his ancestors' debts, it's important to note that there are two types of debts: Vyavaharika and

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<sup>5</sup> Dr Paras Diwan, *Modern Hindu Law* 334 (Allahabad Law Agency, Prayagraj, 23rd edn., 2016).

<sup>6</sup> *Sat Narain v. Rai Bahadur*, (1936) 38 BOMLR 1129

<sup>7</sup> *Pr. N. v. Official Assignee of Madras*, (1940) 2 MLJ 621

<sup>8</sup> *C.F. Ladu v. Gobardhan Das*, AIR 1925 Pat 470

<sup>9</sup> *Peda Venkanna v. Sreenivasa*, AIR 1918 Mad WN 55; *Thaj Mohamed v. Balaji*, AIR 1934 Mad 173

Avyavaharika. A son's pious obligation is only to pay his ancestors' Vyavaharika debts, which are debts taken for legal purposes. Avyavaharika debts, which are debts not justified by religious tenets or a person's dharma, are not binding upon sons.

In the case of *Vyavaharika Debts*, a father is liable to alienate family lands to pay off just debts, whereas his sons are not. Just debts are those that are due but not immoral, illegal, or opposed to law and public policy. Debts that are contracted for defending oneself in a lawsuit, conducting business, or other legitimate purposes are binding upon sons.<sup>10</sup> However, debts contracted recklessly, for extravagance or seeking illicit pleasure, are not binding upon sons.

When it comes to *Avyavaharika Debts*, a son is not liable to pay his father's, grandfather's, or great grandfather's debts if they were not contracted for a just purpose according to religious tenets or a person's dharma. Such debts are not the spiritual debts or religious duty of sons.<sup>11</sup> As Narada said, "A father must not pay the debts of his son, but a son must pay a debt contracted by the father excepting those debts which have been contracted from love, anger, spirituous liquor, games, or bailment."<sup>12</sup>

Pious Obligation refers to the liability of sons, grandsons, and great-grandsons of the deceased Hindu male to pay off his Vyavaharika debts so that his soul can rest in peace in heaven. Sons, grandsons, and great-grandsons are responsible to pay off their father's, father's father, and father's father's father's debts because they are coparceners to the deceased, included in the fourth generation counting from the deceased. The liability on them is not personal, and the debts are to be paid from their share in ancestral property depending upon who is liable to repay the debts at that time.

However, there are instances when a son is liable to pay and not liable to pay even in the case of Vyavaharika debts. A son is liable to pay for his father's debts if the father contracted the debt when coparcenary was intact or if the debt contracted was before partition but repayment arose after partition. A son is not liable to pay if the debt was contracted by the father after the partition of the joint family property, as the son would have separated and taken his share, which has now become his personal property and thereby not liable to pay off his father's debts.

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<sup>10</sup> Dr Poonam Pradhan Saxena, Family Law Lectures Family Law II 198 (Lexis Nexis, India, 3rd edn., 2013).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

## AVYAVAHARIKA DEBT AND BURDEN OF PROOF

Initially, sons could easily evade their responsibility by simply claiming that the debt was Avyavaharika. However, this resulted in losses for creditors who had lent money. As a result, the courts shifted the burden of proof onto sons to demonstrate that the debt incurred from the creditor was an Avyavaharika debt. This step was taken to protect the rights of creditors.

## JUDICIAL INTERPRETATION ON DOCTRINE OF PIOUS OBLIGATION

When discussing the Doctrine of Pious Obligation, it is essential to discuss case laws in relevance to it.

### *Venkatesh Dhonddev Deshpande v. Sou. Kusum Dattatraya Kulkarni*<sup>13</sup>

In the case of Venkatesh Dhonddev Deshpande v. Sou. Kusum Dattatraya Kulkarni, the Supreme Court stated that if the father is the Karta of a Joint Hindu family and the debts are contracted by him as the manager and head of the family for family purposes, then the sons, as members of the joint family, are obliged to pay the debts to the extent of their interest in the coparcenary property. Additionally, if the sons are joint with their father and the debts are contracted by the father for his benefit, then the sons are responsible for paying the debts, provided they are not incurred for illegal or immoral purposes.

### *Pentala Raghavaiah v. Boggawarapu Peda Ammayya*<sup>14</sup>

The case involves Yellamanda, the plaintiff's father, who conducted a tobacco business with the respondent and incurred debts. To pay off the debts, Yellamanda sold his property to the defendant. However, the respondent opposed the petition, arguing that Yellamanda's tobacco business was for the benefit of the joint family, and the debt he incurred is not considered an 'Avyavaharika debt.' Therefore, the petitioner is not responsible for discharging the debt that his father incurred in connection with such business.

### *Luhar Marit Lal Nagji v. Doshi Jayantilal Jethalal*<sup>15</sup>

The apex court enunciated the principle:

The principle laid down by the Supreme Court states that "the sons who challenge the alienations made by the father have to prove not only that the antecedent debts were immoral

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<sup>13</sup> Venkatesh Dhonddev Deshpande v. Sou. Kusum Dattatraya Kulkarni, 1976 0 AIR(Bom) 1901

<sup>14</sup> Pentala Raghavaiah v. Boggawarapu Peda Ammayya, 1998 (1) ALD 11

<sup>15</sup> Luhar Marit v. Doshi Jayantilal Jethalal, 1960 AIR 964

but also that the purchasers had notice that they were so tainted." The judge notes that while this principle has been modified by judicial decisions, the obligation of the sons is still limited to the assets received by them in their share of the joint family property or their interest in it. This obligation remains whether the sons are adults or minors and whether their father is alive or deceased. If the debts were contracted by the father and are not immoral or irreligious, the interest of the sons in the joint family property can be made liable for such debts.

***Suraj Bansi Koer v. Proshad Singh*** <sup>16</sup>

In this case, Adit Sahai incurred a debt of Rs. 13,000 from Bolaki Choudhury, pledging his entire property and shares in a mouzah as collateral. After Adit Sahai's death, the onus fell on his minor sons, represented by their mother, to pay off the debt. Bolaki auctioned the property to a third party, prompting Suraj Bansi Koer, the mother of the minor sons, to file a suit on their behalf, arguing that they are coparceners to their late father's property and that the alienation of the property was unjust. The lower court ruled in favor of the plaintiff, stating that there was no justifying necessity for Adit Sahai to take the debt and that it was *Avyavaharika* debt, for which the sons had no obligation to pay. However, since the third party was not at fault, only Adit Sahai's share in the joint family property was to be given to them.

It is important to note that after the enactment of the Hindu Succession Act in 2005, and the subsequent amendment to section 6 subsection 4, no court shall recognize any right of any person to recover any kind of debt contracted by their father, grandfather, or great-grandfather on the grounds of Pious Obligation. However, if such debt was contracted before the 2005 amendment, the sons and descendants shall be liable to pay as per Section 6, subsection 4 clause b of the Hindu Succession Amendment Act, 2005.

**PIOUS OBLIGATION OF DAUGHTERS: A MODERN PERSPECTIVE**

The feminist movements that emerged in the 20th century have played a significant role in challenging the discriminatory status quo prevalent in various fields. In the legal arena, feminist activists and scholars have advocated for the elimination of gender-based biases in the legal system, particularly with respect to property and inheritance laws. One significant development in this regard was the enactment of the Hindu Succession Amendment Act in 2005, which granted daughters equal rights as coparceners in their father's property, a privilege that was earlier restricted only to sons.

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<sup>16</sup> Suraj Bansi Koer v. Proshad Singh, (1872) 14 Moo Ind App 205



Section 6 of the Act lays down the provisions for the devolution of interest in coparcenary property, stating that on and from the commencement of the Hindu Succession Amendment Act, 2005, a daughter of a coparcener shall, by birth, become a coparcener in her own right in the same manner as a son. Additionally, a daughter shall have the same rights in the coparcenary property as she would have had if she were a son and would be subject to the same liabilities as a son in respect of the said coparcenary property.

Thus, it can be concluded that daughters, as coparceners in their father's property, enjoy the same rights and privileges as sons, but they are also subject to the same liabilities. Earlier, the doctrine of pious obligation held that sons had an obligation to pay off their father's debts, including the Vyavaharika debts, even if the debt was incurred for immoral or illegal purposes. However, this doctrine has been challenged, and post the amendment, it has been clarified that the pious obligation no longer exists, and neither sons nor daughters are liable to pay off their father's debts unless the debt was incurred for legal and moral purposes.

The inclusion of daughters as coparceners in the Hindu Succession Amendment Act has been a significant victory for gender equality in India. It has empowered women to claim their rightful share in ancestral property and has challenged the patriarchal norms that have been prevalent for centuries. The amendment has helped to promote gender parity and has paved the way for a more equitable society, where women have access to the same opportunities as men.

As given in section 6 –“Devolution of interest in coparcenary property. —

(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005 in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall, —

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son”<sup>17</sup>

It is important to note that the liability of the sons is not personal in nature, meaning that the creditor of the father cannot proceed against the person or separate property of the sons. Instead, this liability is restricted to the interest of the sons in the joint family property. If the debt was

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<sup>17</sup> Hindu Succession Act 1956 (30 of 1956)

contracted by the father after partition, the son cannot be held liable. However, if the debt is a pre-partition debt, the share of the sons would be liable even after partition, provided that the debts of the father were not immoral or illegal and the partition arrangement did not make any provision for the repayment of such debts.

The Hindu Succession Amendment Act of 2005 brought about a significant change in the inheritance laws in India, recognizing daughters as coparceners to their father's property, with the same rights and liabilities as sons. This means that daughters are no longer excluded from inheriting ancestral property or being burdened with the responsibility of repaying their father's debts. The amendment also abolished the doctrine of Pious Obligation, except in certain specified cases.

Overall, the changes brought about by the Hindu Succession Amendment Act of 2005 have been positive steps towards gender equality in inheritance laws in India. Daughters can now inherit and manage their ancestral property without being discriminated against on the basis of gender. They are no longer unfairly burdened with the responsibility of repaying their father's debts, which is a significant milestone towards gender-neutral inheritance laws in the country.

## **CONCLUSION**

The Doctrine of Pious Obligation is a traditional legal concept that has been practiced in Hinduism for centuries. Under this doctrine, the male descendants of a Hindu coparcener (father) are held responsible for paying off his debts, especially if they are legal (Vyavaharika) in nature. However, if the debts are immoral or illegal, then the pious obligation doctrine cannot be applied.

This liability of the sons has evolved over time from an obligation to a legal liability, but it only extends to the interest that the sons have in the joint family property. This means that the creditor of the father cannot proceed against the separate property of the sons or their personal assets. Additionally, the liability of the sons is limited to the joint family property and not their personal assets.

If the father incurs debts after the partition of the joint family property, then the sons cannot be held liable for those debts. However, if the debts were incurred before the partition and were not immoral or illegal, then the sons' shares in the joint family property could be used to repay those debts, provided the partition arrangement does not make any provision for their repayment.

It is important to note that post-2005, after the amendment to the Hindu Succession Act, daughters are also considered coparceners and have the same rights and liabilities as that of a son in their father's property. However, the doctrine of pious obligation has been abolished post-2005 amendment, and thus there is no legal obligation on the part of sons or daughters to pay off their ancestor's debts.

In summary, the doctrine of pious obligation is a complex legal concept that has been an integral part of Hinduism for ages. While it has evolved into a legal liability for sons, it only extends to their shares in the joint family property and not their personal assets. Additionally, daughters now have the same rights and liabilities as that of a son under the Hindu Succession Act, but the pious obligation doctrine has been abolished.