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Doctrine of Pious Obligation and its Competent Authority upon Daughters

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ABSTRACT

There are several components to family law, particularly when it comes to Hindu practises and traditions that are explicitly followed in Indian society. It has dealt with several aspects of life. Smritis Vedic descriptions, such as “Dharmasastra”, which are founded on historic institutions and practises, have been legalised as customary rules comprising both substantive and procedural frameworks, taken from the frameworks of famous Vedic people since time immemorial. The “Doctrine of Pious Obligation” holds sons responsible for their father's debts. Pious responsibility “refers to the moral obligation of sons to pay off or discharge their father's non-vayavaharik obligations”. In methods that have struck the discriminatory status quo in politics, culture, and the economy, feminist groups have questioned 'male-stream' thinking. The legal ramifications of those changes in the economic sector, notably in the domain of women's property rights, are the focus of this study. Such adjustments have not been simple, and they have resulted in debates that have called into question the basic foundations of feminism. Though feminist groups applaud the Hindu Succession Act's legislative posture on the notion of pious obligation, there is a gap in the intelligible differentiation of such intent, resulting in ambiguity when it comes to the legitimacy, which is why this research is conducted. Using non probability conveyance sampling with a sample size of 1573, it was discovered that “the exclusion of the doctrine of pious obligation under the Hindu Succession Act is legal”. According to the research, a unified civil code should be created for this purpose, and legal ambiguity should be resolved in its entirety.

I. INTRODUCTION

The Family law, which is such an important aspect of a person's life, has a large following in the general public. India's odd display of unique laws can be traced back to the outset, when standards and the majority of substantive law did not exist. Individual laws play an important role in expressing the people's community; yet, the peculiarity of Indian family law ensures that it is applicable to all citizens of the country. It encompasses a vast zone of local

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interactions, such as “marriage, wedding cures, children's authenticity, care, guardianship, reception, intestate and testamentary succession and so on”, which influence a vast majority of Indian laws. For decades, India, which prides itself on its secularism, has practised a variety of religions that are recognised by all people and followed by various segments of the community. Various laws and enactments have been enacted to provide legal protection to these religions. In this sense, Hinduism, which is only practised in India and is well-known for its age-old rites and customs, was given legal validity after the Vedic period by the creation of “Hindu Law”. Hindu law included a wide range of topics, including marriage, inheritance, divorce, adoption, succession, maintenance, and custody. As a result, traditionally derived Hindu law has evolved into a personal law that affects a community's practise through conventions, text, principles, and doctrines. Smiritis Vedic descriptions such as Dharmasastra, which are based on traditional institutions and customs, have existed since time immemorial and they have been turned into modern customary rules that incorporate both substantive and procedural frameworks taken from the frameworks of illustrious Vedic individuals. Since ancient people emphasised the importance of all parts of life, the philosophies and conceptions were separated into two schools: Mitakshara and Dayabhaga. Several schools of Hindu law evolved as a result of the formation of comments and digests, which are one of the sources of Hindu law. The strength of ancient writings resulted in the classification of Hindu law concepts, which were once related to all of India but have since been divided to “two schools and sub-schools”. The only focus of these schools is Hindu succession and property inheritance, as well as rights and ownership, which this study attempts to address from a variety of angles.

II. HISTORICAL BACKGROUND

The word “pious” refers to something sacred or religious. “Pious responsibility” refers “to a Hindu man's obligation to his religion as a result of his strong dedication to it”. According to Hindu law, “anyone receives a money lent or the like and does not restore it to the owner will be born a slave, a servant, a woman, or a quadruped hereafter in his creditors house.” It is a noble, pious, and sacred responsibility for a son to pay off or discharge his father's debts and most importantly, devout, according to Hindu scriptures. This religious obligation is imposed on a Hindu's son, as well as his son's son and son's son's son, on the idea that all three are born coparceners with others.

Non-payment of debts is a sin (paap), and anybody who dies with debts would be unable to enter paradise (Swarg). The “Putra”, i.e., “the son, grandson, and great-grandson, releases his parted grandfather of the burden and allows him to reach heaven, letting him to obtain Moksha,

by paying off such commitments". The idea known as "The Doctrine of Pious Obligation" underpins a son's duty or obligation to repay a deceased ancestor's debts. This criterion, however, only applies to loans that are not *avyavaharika*.³

Reading what Hindu religious books and Hindu jurists have to say on the concept of Pious Obligation, with a focus on what history has to say about it, will be fascinating. "If the father is deceased, gone abroad, or in difficulties," Yajnavalkya writes, "his due shall be paid by his sons and grandsons; if on denial, it is confirmed by witnesses."⁴ "When a devotee, or a guy who kept a sacrificial fire, dies without having paid his debt, the entire merit of his devotions, or his continuous fire, belongs to his creditors,"⁵ Narada states again. "The son born should, without regard for his own self-interest, diligently liberate his father from debts so that he (father) may not go to hell", says another Narada saying⁶. According to Hindu jurists, the repercussions of non-payment of debt are not simply transitory; a debtor's indebtedness follows him into the next life. "Whoever receives a money lent or the like and does not restore it to the owner will be born hereafter in his creditor's house, a slave, a servant, a woman, or a quadruped" Brihaspati says⁷.

According to Indian law literature and most traditional traditions from the past, a son is wanted because he will settle his father's spiritual and material debts. Because the religious obligation of the son is based on religious authority, the son is not obligated to pay his father's irreligious debts for the following reasons: (i) Firstly, religious authorities exempt the son from any need to pay the father's irreligious debts, just as religious authorities require sons to pay their fathers' debts. (ii) Second, holding the son responsible for an irreligious debt would be a contribution to and augmentation of the father's irreligious deeds⁸.

When it is stated that "repaying a father's debts is a religious obligation of a son and his descendants, the son is obligated to pay both the principal and interest, whereas the grandson is only obligated to pay the principal amount, and the great-grandson is only obligated to pay to the extent that he held joint family property". He was not personally accountable, despite the fact that his son and grandson were⁹. The Privy Council stated in the case of "Sat Narain v

³ Doctrine of Pious Obligation, SRD Law Notes, (Oct. 2020, 18, 07:15 PM), <http://www.srdlawnotes.com/2017/01/doctrine-of-pious-obligation.html>.

⁴ Vijender Kumar, Basis and Nature of Pious Obligation of Son to Pay Father's Debt Vis-à-vis Statutory Modifications in Hindu Law, (Oct. 2020, 19, 09:00 AM), http://intranet.nluassam.ac.in/docs/course%20materialas/done/family_law_2.pdf.

⁵ Ibid

⁶ Dr Poonam Pradhan Saxena, Family Law Lectures Family Law II, 195, (3rd edn.2013).

⁷ Supra note 2.

⁸ Supra note 2.

⁹ Dr Paras Diwan, Modern Hindu Law, 334, (23rd edition 2016).

Rai Bahadur Sri Kishan Das” that “the concept of pious responsibility was established on the pious obligation of the sons to pay off their father's obligations, rather than the need to safeguard third parties”¹⁰.

Originally, the focus on debt payments was so strong that “if a man had to pay both his and his father's obligations, he had to pay the latter first, and if he had to pay both his and his grandfather's debts, he had to pay the grandfather's first”¹¹.

III. DOCTRINE OF PIOUS OBLIGATION

Hindu religious customary regulations, dating back to the Vedic period, dealt explicitly with the idea of legal duty for debt repayment and the premise of minimal morality. The distinct concept of Pious Requirement in ancient Indian literature grew as “a legal right from a moral obligation, and therefore the study of Vedic teachings in Hindu law received legal codified acknowledgement to Pious Obligation theory via contemporary achievements”. Sons were believed to meet the pious duty procedure applicable for spiritual as well as secular debts, including monetary debts, as a result of Mitakshara's school of thought. According to the “Precept of Pious Obligation”, children have an ethical obligation to pay off and liberate their father's debts, and failing to do so is a transgression and a crime. This responsibility or commitment of a child to repay an absent father's obligations is founded on a distinct concept known as "The Doctrine of Pious Obligation." As a result, a Hindu beneficiary is obligated to repay the responsibilities he received from the deceased, regardless of whether they were properly acquired or gained through an indecent or unlawful purpose¹². Whether the children are minors or adults, and whether the father is alive or dead, the responsibility persists. The father's obligation lasts his entire life and continues as long as he is subject.

IV. DOCTRINE OF PIOUS OBLIGATION DETERMINATION

Despite the fact that women were granted property succession rights in the degrees of wife, daughter, sister, or widowhood, the concept of Pious Obligation failed to gain legal legitimacy. Various questions raised in a codified legal environment concerning women's coparcenary privileges, which provided them inheritance from their fathers or family property, a question was raised concerning the pious obligation theory and its responsibility to women in debt repayment, which is reserved for sons alone.

¹⁰ Sat Narain v. Rai Bahadur Sri Kishan Das

¹¹ Pr. N. Sm. Chockalingam v. Official Assignee of Madras

¹² Anon, 2013b. Pious Obligation of a Hindu Son to pay his Father's Debts. World's Largest Collection of Essays! Published by Experts. Available at: <http://www.shareyouressays.com/knowledge/pious-obligation-of-a-hindu-son-to-pay-hisfathers-debts/117184>

All of the clauses of Hindu religious customs that had various transformations in the doctrines and principles adopted were deemed to uphold all of the clauses of Hindu religious customs that had various transformations in the doctrines and principles adopted, in the modern legality clause "Hindu Succession Act," 1956 after amendment ensured daughters the same rights as sons in the process of inheritance has left the inheritance of pious obligation doctrine, a process of repentance.

The legal jurisprudence's impugnanity in reconciling the pious obligation theory with the amendment clause finally resulted in a prejudice against sons who are totally liable for debt repayment. The girls received the same rights as the sons following the modification to "Section 6 of the Hindu Succession Act 1956", and the pious condition was repealed by the amending Act of 2005, but the need to repay the dead father's debt remained.

Analytically, Pious Obligation should be seen as a duty bearer in debt repayment, codified notions of law tied to Hindu religious practises should place debt repayment responsibility on daughters under the pious obligation principle.

V. JUDICIAL INTERPRETATION OF DOCTRINE OF PIOUS OBLIGATION

It is critical to discuss relevant case law when discussing the Doctrine of Pious Obligation.

➤ *“Venkatesh Dhonddev Deshpande v. Sou. Kusum Dattatraya Kulkarni”*

“Whether the father is the Karta of a Joint Hindu family and the debts are contracted by the father in his capacity as manager and head of the family for family purposes, the sons as members of the joint family are bound to pay the debts to the extent of their interest in the coparcenary property”, the Supreme Court stated in this case¹³. Furthermore, if the sons are joint with their father and the debts were incurred for the benefit of the father, the sons are obligated to pay the obligations if the debts were not committed for illegal or immoral purposes.

➤ *“Apental Raghavaiah v. Boggawarapu Peda Ammayya”*

In this instance, the plaintiff's father, “Yellamanda”, had tobacco business with the respondent and therefore got indebted to him, causing the father to sell the property to the defendant to pay off the liabilities. The respondent filed a counterclaim, arguing that “the petitioner's father conducted a tobacco company for the benefit of the joint family, that the debt he accrued” was not an "Avyavaharika debt," and that the petitioner is obligated to repay his father's debt

¹³ Family law son's pious obligation, Legal Service India, (Oct. 2020, 18, 08:45 AM), http://www.legalserviceindia.com/articles/sons_p.htm

incurred in connection with the business¹⁴.

➤ ***“Luhar Marit Lal Nagji v. Doshi Jayantilal Jethalal”***

“The sons who dispute the father's alienations must prove not only that the preceding loans were immoral, but also that the purchasers had notice that they were tainted”, the Supreme Court stated. The learned judge observes that court judgements have changed the notion from what it was in the original texts in a number of ways. That the sons' duty is a personal obligation that exists regardless of the acquisition of any assets under present law, and that it is a liability limited to the assets acquired in his portion of the joint family property or his interest in it. Whether the sons are big or tiny, and whether the father is alive or dead, the obligation persists. The sons' part in the coparceners' property can always be held accountable if the debts were incurred by the father and are neither immoral nor irreligious¹⁵.

➤ ***“Suraj BansiKoer (Mother and guardian of the infant sons) v. Proshad Singh”***

In this case, “Adit Sahai, who was in debt, promised to pay Rs 13,000 to Bolaki Choudhury (from whom he took his debt)”. He put his whole estate on the line, as well as his mouzah shares. After failing to pay the obligation and dying, the burden was passed on to his young boys, who were in this action represented by their mother. Meanwhile, Bolaki sold the property to a third party at auction. The minor sons' mother, Suraj Bansi Koer, sued on their behalf, claiming that they are co-owners of their late father's property and that its alienation is unfair. It was recognised by a lower court, which ruled in favour of the plaintiff. It was recognised by a lower court, which found in the plaintiff's favour. The court decided that there was no compelling reason to assume the Rs 13000 debt. Bolaki also failed to ask as to why such debt was accumulated, despite knowing Adit Sahai and his life well. The loan was classified as avyavaharika debt, and the sons were not required to return it. Because the purchase, i.e., “the third party, was without fault, Adit Sahai's portion of the joint family property, rather than the entire land, would be granted to them”.

After the introduction of the "Hindu Succession Act," 2005 and change to "section 6 subsection 416¹⁶," no court will accept any claim of a person to collect any type of obligation contracted

¹⁴ Ibid

¹⁵ Ibid

¹⁶ After the commencement of the Hindu Succession (Amendment) Act, 2005 -no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt: Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect— (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be, or (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been

by their father, grandpa, or great grandfather on the basis of Pious Obligation. If the obligation was contracted before the 2005 amendment, the sons and descendants are responsible under “Section 6, paragraph 4 clause b of the Hindu Succession Amendment Act, 2005”.

VI. ISSUES & IRREGULARITIES CAUSING ABOLISHMENT OF PIOUS OBLIGATION

Following the 2005 revision to the Hindu Succession Amendment Act, the necessity to abolish the concept of Pious Obligation emerged. Males were given complete ownership rights under Hindu law. It didn't explain why only sons were responsible for repaying the father's debt, and why a woman's capacity to inherit the estate was limited. Due to this socio-legal conundrum, present jurisprudential developments are significantly out of sync. Even when women were granted the right to inherit property, the doctrine of Pious Obligation faced numerous challenges in its legal implementation (Wife, Daughter, Sibling or Widow). Concerns were expressed concerning the reformation process's continuing interests in women's coparcenary rights. When women were given inheritance rights in their father's property but were not forced to repay debts, questions were raised.

The widow was not judged liable for the prior debt in “Keshav Nandan Sahay v. Bank of Bihar¹⁷”, however The sons were held responsible for its recovery, and they rationalised it in such a way that it raised a number of concerns regarding the notion. It asserted that “the widow's allotment was not a proxy for her husband, but rather her own in terms of religious responsibilities, differentiating her sons from her”. Later, the “High Court of Karnataka” (with additional modifications) took a similar stance. “The wife will not be bound by the idea of religious obligation because she is not entitled to a portion by birth in Mitakshara coparcenary”, according to Padminibai v. Arvind Purandhar Murabatte¹⁸. If we use this logic, is the daughter now liable for pious obligations?

According to the rationale of the Karnataka High Court, if a daughter acquires a part through birth in the Mitakshara Coparcenary, she is now responsible for the disposal of her deceased father's duties. This would have been decided by the courts in order to achieve certainty on this topic. Reunions and other Mitakshara coparcenary elements resulted in many contradictions because only the father's sons, brothers, nephews, and paternal uncles were invited, and women were absolutely prohibited. If we adopt the Karnataka High Court's reasoning, the uncodified statute would be tampered with if the daughter (or sister or niece) is permitted to participate in

enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

¹⁷ Keshav Nandan Sahay v. The Bank of Bihar, AIR 1977, PAT 185

¹⁸ Padminibai v. Arvind Purandhar Murabatte, AIR 1989, KANT 120

the reunion as a coparcener.

VII. RIGHTS OF A CREDITOR (AFTER 2005 AMENDMENT)

“He who has received a sum lent or the like and does not restore it to the owner shall be born hereafter in his creditors house a slave, a servant, a woman, or a quadruped”, Hindu law (religious element) declared. Prior to the “2005 Amendment, a son's pledge to repay his father's debt was recognised as a holy duty, and this religious responsibility applied to sons, grandson, and great grandson who inherited coparcenary property through birth”. It should be noted that if the loan was received for an unlawful or immoral purpose, the burden of proof is on the son rather than the creditor; as a result, until the son proves that the loan was received for an illegal or immoral cause, the creditor can collect the lent money plus interest.

Following the enactment of the "Hindu Succession Amendment Act" in 2005, “one important fact is that a creditor's entitlement to collect debts incurred by the father, grandfather, or great grandfather, known as Pious Obligation, would not be recognised by any court under Section 6 of the Act (4)”. It should be emphasised, however, that creditors' rights will be protected if the loan was incurred by the father, grandpa, or great grandfather prior to the 2005 Amendment.

To clarify the above-mentioned change to Section 6(4), the word “son, grandson, or great grandson” in the above expression only pertains to individuals born or adopted before September 9, 2005, i.e. before September 9, 2005, and will not apply to a partition done before December 20, 2004. Under circumstances when the successor has stated a desire to be bound to the obligation, the provision will become ineffective.

Given the importance of religion in India, as well as behavioural economic concepts, a review conducted by Chief Economic Adviser KV Subramanian advises that the “Doctrine of pious responsibility” be utilised to protect creditors' rights and prevent tax evasion and willful defaults.

VIII. DISPOSING INHERITED PROPERTY

The following are some of the instances in which a legal heir or will executor may be held liable for a deceased father's owing debts:

- **Home/Mortgage Loans** – After the borrower's death, the bank/lender will hold the guarantor (if present) and co-borrower (in the absence of a guarantee) responsible for the debt repayment. If both are gone, the loan can be passed to a legal heir, but if there is no will, the property's receiver will be held liable. Obtaining a life insurance policy for the borrower will assist the legal heirs in repaying the debt without excessive financial

hardship. The legal heirs are entitled to the surplus payment if the property is auctioned by the lender to repay debts.

- **Unsecured Loans** – Credit cards or short-term personal loans are examples of unsecured loans that are utilised to remedy a liquidity crisis. The amount that can be recovered varies on the bank's terms and conditions, although most outstanding loans can only be recovered from legal heirs using the estate's liquid assets. In the event that monies are insufficient, legal action against the estate may be pursued. Because the obligation is unsecured, the legal successor or executors of the will cannot utilise their own assets to repay it.
- **Personal borrowings** – There are no legal documentation for a loan taken out on the basis of trust from friends and relatives. In that instance, the legal heirs are ethically compelled to repay the debt, but if the loan has a legal document, it will be classified as an unsecured loan.
- **Statutory Liabilities** – The legal heirs or the executor of the will must pay or close off any liabilities that have first charge on an estate, such as unpaid income tax and the deceased's income tax report. The legal heir or executor is responsible for filing the deceased's income tax return and returning the PAN to the government. The successor who inherits the property is responsible for paying any outstanding taxes on the property, among other things.
- **Loan against securities** - In order for the securities (shares, mutual funds, bonds, etc.) to be freed and passed over to the legal heirs, the guarantor or, in his absence, the legal heirs must pay off the loan amount against the pledged securities. The lender can collect the debt if the borrower defaults by selling the securities on the open market. To ensure that the collateral security is delivered on time, the legal successor must notify the lender and agree on a payback schedule.
- **Business Liabilities** – If the dead was a sole owner, the executor or legal heirs should discharge the responsibilities (statutory dues, salary, and taxes) according to the books. The legal heir/executor is responsible for the sole proprietorship up to their portion of the inheritance if it isn't wound up.

IX. DAUGHTERS' RESPONSIBILITIES IN RESOLVING PAST DEBTS

Due to the patriarchal structure of ancient Hindu society, women were not allowed to own property. Even if a woman earned it, she could not enjoy it since it was within the authority of her father, husband, or son. This structure persisted after the “Hindu Succession Act” was established in 1956, but it only recognised “the daughter's right to inherit her father's self-acquired property, not the coparcenary property, because she was not a coparcenary in the Joint

Hindu household”.

India's most significant success is the 2002 amendment, which allowed women entire control over their property and recognised daughters as coparceners in the Joint Hindu Family. In Indian culture, this was a watershed moment. Another issue that developed in the development of a woman's right to property was her dedication to religious responsibilities, which caused issues in the legal framework for women.

In “Pondicherry Kokilambal v. Pondicherry Sundarammal and Ors. 4, 1924¹⁹” it was the first time the Privy Council dealt with the subject of a daughter's religious responsibility, and it was noted that: “The entire law of the joint family, including right by birth, has to be applied, the only difference being that daughters took the place of sons and are entitled to such rights, as the sons would have in a joint family. If this view is correct the position will be that the plaintiff would have all the rights and liabilities of sons in a joint family. If you concede the right by birth, and apply the law of the ordinary Mitakshara joint family, you must also concede pious obligation of the daughter to discharge her mother's debts”.

Another contentious decision was “ITO v. K. Krishnamachari²⁰” in which a father bequeathed property and an unpaid debt to his two children, who received both the property and the debt immediately after his death as class I heirs. “Unlike the situation of the sons, the daughters have no obligation to pay off their father's obligations” the court said. The daughters, on the other hand, would only be responsible for paying the debts of their father up to the value of the assets they received from him. As a consequence, it was determined that the girls would be unable to pay the debt and hence could not be held responsible.

The concept of pious obligation was eliminated following the 2005 modification to eliminate any discrepancies, however the Karnataka High Court read it differently after the revision, posing a problem. If we apply this reasoning to the current situation, it is evident that a daughter who is recognised as a coparcener is responsible to repay her father's liabilities in the same manner that a son is forced to repay his debts. When the theory was in place, it would be fair to argue that girls would be held to the same standard as males when it came to paying their father's debts (pre- 2005 amendment).

If the concept had existed, a review of "Section 6(1)(a), (b), and (c)" would have shown that the vyavaharika debts would have been repaid by the daughters. However, with the 2005 modification, it was abolished under section 6(4), with few exceptions, and legal heirs will no

¹⁹ Pondicherry Kokilambal v. Pondicherry Sundarammal and Ors., AIR 1925, MAD 902.

²⁰ 5 ITO v. K. Krishnamachari, 1985 11 ITD HYD 194

longer be responsible for disposing of any debt. If the daughter announces her purpose and agrees to pay off her father's debt, she may be held liable under section 6 of the Hindu Succession Act.

X. CONCLUSION

Though old customary practise was explicitly biased against women's property rights, subsequent contemporary views corrected the prejudice via court judgements and directives that modify and reconstruct traditional practises. In the context of property inheritance, women were granted rights through the reform of Hindu laws, which immediately derecognised the pious obligation concept, which specifically excludes daughters as duty bearers, as a result of the change. Having a retroactive impact on the modification to protect creditors' losses, on the other hand, made sons' obligation to repay debts positive, which created a prejudice against sons by placing liability only on them. Because women are promised succession and inheritance, this paper suggests that “the pious duty doctrine be applied explicitly to them rather than implicitly, obviating their responsibility, because the pious obligation theory is founded on the interest over coparcenary right”.

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