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An Appraisal on Doctrine of Pious Obligation & Its Competent Responsibility upon Daughters

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ABSTRACT

Doctrine of pious obligation is a religious duty of the sons to repay the vyavaharika debts taken by their deceased father. This doctrine has created a lot of confusion and controversial decisions in the past due to which it was abrogated post the Hindu Succession Amendment Act, 2005. This paper analyses the various aspects connected with the doctrine and also examines the various ways in which legal heirs could be made responsible for paying off their deceased father's past debts in the present situation. This research article also aims to appraise the doctrine of pious obligation which is aid to be a biased doctrine as it only imposes the liability to pay-off past debts upon the son even though daughters have an equal right in property inheritance. Post the 2005 Amendment to the Hindu Succession Act, the doctrine has been abrogated but the obligation to repay the debts carried out before the amendment is still applicable. This research paper is aimed at exploring the irregularities with relevant case laws that led to its abolition and also aims at examining Daughter's responsibility in paying-off past debts. The paper also highlights suggestions that can be adopted to reduce the wilful defaults arising post its abolition.

Keywords: *Biased, Amendments, Deprived, Liability, Mitakshara, Pious Obligation.*

I. INTRODUCTION

"He that dies pays all debts. I defy thee! Mercy upon us"

-Stephano

In "The Tempest" by Sir William Shakespeare, the above statement was used to portray the bright side of death but in reality, it's the obligation of the legal heirs to repay the debt during their inheritance. Which is usually related to the assets inherited but another common scenario is when liabilities are inherited with or without assets.

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According to “Hindu Law” a son is obligated to pay off his father’s pending debts which is termed as “pious obligation” and non-payment of obligation is considered a crime, the same didn’t apply to a debt tainted with immorality or illegality. According to Narada, “if a very religious and devoted person died indebted, the whole of the merit of his sacrifice and devotion will belong to his creditor” but several other disregarded this opinion and opined that not only the sons are liable to repay but also the grandson with the mere distinction of inclusivity of interest on son and only the principal for grandson.

But now, children’s liability to discharge pending debts of their father is dependent on the limit of assets they inherit as doctrine of pious obligation got abolished post the 2005 Amendment of HSA. So, the son cannot be made liable based on his religious obligation. To make it clearer, it is optional for the children to pay off the debts of their father and no one can force them or hold them liable for the same but the children cannot inherit the assets without discharging the liabilities attached to it, e.g. Taxes, unpaid expenses, dues or liabilities against the assets.

Generally, the responsibility to discharge the liability is associated with the guarantor and co-borrower but in their absence, legal heirs can be made responsible. But this doesn’t mean that the legal heir would be responsible for all the debts as it differs from situation to situation and to the extent of their inheritance. At present, a lot of confusion persists as to the daughter’s role in repaying debt as they are legally allowed to inherit a right in the property but the amendment stays silent on their obligation to repay the debt.

The researcher in this study examines various questions regarding the transformation of doctrine of pious obligation over the years and its competent responsibility upon daughters to repay the debt. Along with that, the researcher also makes an attempt to examine the various situations of disposal of debts post the 2005 amendment and the rights of the creditors with the help of certain case laws and other relevant literature.

II. ISSUES AND IRREGULARITIES CAUSING ABOLISHMENT OF PIOUS OBLIGATION

Post the 2005 Amendment of HAS, the need for abrogation of the doctrine of Pious Obligation arose the Hindu Law favoured males with absolute right of ownership. It couldn’t justify why woman’s right to inheriting the estate was limited and only the sons were responsible to be obligated for the disposal of father’s debt. This socio-legal issue created a major inconsistency with the modern jurisprudential trends. The doctrine of Pious Obligation dealt with various difficulties during its legal enforcement even after the right to inherit property was granted to women (Wife, Daughter, Sibling or Widow). Issues were raised

related to leftover interests in the reformation process in relation with to coparcenary rights of women. Questions were raised when women were granted inheritance rights in father's property but no responsibility of repaying debt was ascertained.

In “Keshav Nandan Sahay v. Bank of Bihar”,² the widow wasn't made liable for the past debt whereas the sons were held liable for the recovery of the same and justified it in a way that raised several issues around the doctrine. It stated that the widow's allotment was not a representative of her husband but her own right which differentiates her sons from her with respect to pious obligation. Later, “High Court of Karnataka” (operating new amendments) viewed it similarly. In “Padminibai v. Arvind Purandhar Murabatte”³ it was held that wife won't be bound by the doctrine of pious obligation as she is not entitled to a share by birth in Mitakshara coparcenary. Will the daughter now liable for pious obligation if we apply this reasoning?

By following the reasoning of the Karnataka High Court it can be opined that a daughter now be liable for disposal of debts occurred by her deceased father if she gets a share by birth in the Mitakshara Coparcenary. To achieve certainty on this matter, this would have been adjudicated upon the courts. Reunion and other aspects of Mitakshara coparcenary also created a lot of irregularities as only father's sons, his brothers, his nephews and paternal uncles would be a part of it and women were totally excluded. If we again follow the reasoning of the Karnataka High Court, it will result in tampering the uncodified law if the daughter (or sister or niece) becomes eligible to participate in reunion as coparceners. Because of such persisting irregularities, need for a change in doctrine of Pious Obligation was inevitable and so an Amendment in 2005 finally decided to abrogate the same.

III. RIGHTS OF A CREDITOR (POST THE 2005 AMENDMENT)

Hindu law (religious aspect) stated “He who having received a sum lent or the like does not repay it to the owner will be born hereafter in his creditors house a slave, a servant or a woman or a quadruped”. Before the 2005 Amendment, son's obligation to pay off his father's debt was considered as a holy duty and this religious obligation was applicable on the son, grandson and the great grandson as they had a right to inherit the coparcenary property by birth. It is to be noted that in case the debt taken by the father was for an illegal or immoral purpose, the burden to prove the same lies on the son and not on the creditor so, the creditor is capable of claiming the lent sum with interest until proven illegal/immoral by the son.

² Keshav Nandan Sahay v. The Bank of Bihar, AIR 1977, PAT 185.

³ Padminibai v. Arvind Purandhar Murabatte, AIR 1989, KANT 120.

Post the enforcement of HSA, 2005, one notable fact is that right of a creditor to recover debts contracted by the father/ grandfather or great grandfather termed as Pious Obligation won't be recognised by any court under Section 6(4) but it is to be noted that if the debt was taken by the father/ grandfather or great grandfather before the commencement of the 2005 Amendment, the rights of the creditors will be preserved in that case.

To clarify further on the above-mentioned amendment to Section 6(4), son/ grandson or great grandson in the above expression only applies to those born or adopted before the enactment i.e. 9th Sept, 2005 of the 2005 Amendment and the same won't be applicable to a partition done prior to 20th Dec, 2004. 3 . The provision will become inoperative in cases where the heir has expressed his/her will to bind them to fulfil the obligation.

To protect the rights of creditors and to tackle tax evasion and wilful defaults, a survey conducted by "The Economic Times" led by Chief Economic Adviser KV Subramanian suggests that the Doctrine of "pious obligation" could be invoked given the importance of religion in India coupled with the principles of behavioural economics.

IV. DISPOSING INHERITORS LIABILITY

The various cases in which a legal heir or an executor of the will be held responsible for the pending dues of the deceased father are discussed below:

i. Home/Mortgage Loans – Post the demise of the borrower, guarantor (if present), co-borrower (in case of absence of guarantor) will be held responsible by the bank/lender for the repayment of loan. If both are absent, a legal heir can be approached and be made responsible by transferring the loan to him but in presence of a will, the beneficiary of the concerned property will be held responsible. Taking a life insurance of the borrower aids the legal heirs in disposal of debt without unnecessary financial burden. The legal heirs are entitled to receive the surplus amount if the property is auctioned by the lender for settling dues.

ii. Unsecured Loans – Usage of credit cards or short-term personal loans to meet liquidity crunch can be termed as unsecured loans. The recovery of the same depends on the terms and conditions of the banks but usually, outstanding loan can be claimed from legal heirs only out of the liquid assets of the estate. Legal proceedings against the estate can be opted for in case of insufficiency of funds. Personal assets of the legal heir or executors of will can't be used for repayment due to the nature of loan being unsecured.

iii. Personal borrowings – A loan taken from friends and family based on trust has no legal documents for the same. In that case, the legal heirs are morally obligated to repay that debt but in case the loan has a legal document it would be carried out like an unsecured loan.

iv. Statutory Liabilities – It is the liability of the legal heirs or an executor of the will to pay or close off such liabilities as it has the first charge on an estate, e.g. outstanding income tax and the income tax return of the deceased. It is the responsibility of the legal heir or the executor to file the income tax return of the deceased and return the PAN to the department. The heir who inherits the property has the responsibility to clear other taxes on the property, etc.

v. Loan against securities – In order to get the securities (shares, mutual funds, bonds, etc.) released and transferred to the legal heirs, the loan amount against the pledged securities should be paid off by the guarantor or in his absence by the legal heirs. In case of a default, the lender can sell the securities in the market to recover the debt. For timely release of collateral securities, it is the duty of the legal heir to inform the lender and agree on a timeline for repayment of the dues.

vi. Business Liabilities – In case the deceased happened to be a sole proprietor, the liabilities (statutory dues, salaries and taxes) according to the books should be cleared by the executor or the legal heirs. In case the sole proprietorship isn't wound up, it is the responsibility of the legal heir/executor to carry it out to the limit of their share in the estate.

V. RESPONSIBILITY OF DAUGHTERS IN DISPOSING PAST DEBT

Females were rejected as property holders in the ancient Hindu society due to its patriarchal nature. Even if it was earned by a female, she couldn't enjoy it herself and as it would be under the control of her father or husband or her son. After the commencement of HSA, 1956, this system continued to operate but it recognized the daughter's right in inheriting father's self-acquired property but not the coparcenary property as she was not recognised as a coparcenary in the Joint Hindu family.

The greatest achievement of the Indian society is considered to be the 2002 amendment which gave complete rights to women over her property and daughters were recognised as coparceners in the JHF. This was a historic breakthrough in the Indian culture. Another issue raised post the recognition of woman's right in property was her duty towards pious obligation which caused difficulties in the context of women and the codified law.

In “*Pondicherry Kokilambal v. Pondicherry Sundarammal and Ors.*”,⁴ 1924” it was the first time the issue of pious obligation of the daughter was dealt with by the Privy Council and it was observed 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 controversial judgement was *ITO v. K. Krishnamachari*⁵, a father had left property and unpaid debt for his two, being class I heirs, they inherited the property immediately after the death and the debt too. But it was held that “Unlike the case of the sons, the daughters have no obligation to pay off the debts of their father. However, the daughters would be responsible to pay the debts of the father only to the extent of the value of the assets inherited by them through their father.” It was thus held that the debt won’t be paid by the daughters and they can’t be made responsible for the same.

The doctrine of pious obligation was abrogated post the 2005 amendment to remove all the irregularities but an issue arose when the Karnataka High Court interpreted the doctrine post the amendment. If we were to apply its reasoning in the current scenario when daughter is recognised as a coparcener then it can be understood that she is bound to have the duty to repay the debts of her father like a son. It won’t be incorrect to state that daughters would be equally responsible to pay the debts of her father as the son when the doctrine was applicable (pre- 2005 amendment).

An analysis of Section 6(1)(a, b & c) is essential to conclude that daughters would have been responsible to repay the vyavaharika debts had the doctrine been in existence. But due to its abolition under section 6(4) with some exceptions post the 2005 amendment the legal heirs won’t be responsible to dispose off any sort of debt. Under section 6 of HSA, if the daughter expresses her intent and agrees to pay off her father’s debt, then she could be held liable for the same.

VI. CONCLUSION & SUGGESTIONS

To sum up, the legal heirs aren’t liable to satisfy any debts based on pious obligation due to

⁴ *Pondicherry Kokilambal v. Pondicherry Sundarammal and Ors.*, AIR 1925, MAD 902.

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

its abolition. This provision won't be applicable if a legal heir has expressed his/her intent to fulfil the obligation. Debts provided prior to the 2005 amendment are not considered to be governed under its purview, those are to left alone and can be enforced against the legal heirs. It has to be highlighted that post 2005 Amendment, daughters are provided the same rights as a son in inheritance and liabilities but due to the doctrine's abolition no such liability exists.

The rights of the creditors are protected in cases where the debt was carried out before the abolition which has resulted in a lot of default at present as the creditor lies powerless to hold the legal heirs/executors responsible for the debt. In such a situation, Thomas Jefferson believes that, "it is best suited if every generation pays off its own debt, this principle would save one-half the wars of the world if implemented correctly."

To clear the ever-building ambiguity, the implementation of a uniform civil code could prove to be a boon. Confusion and defaults could also be avoided if the creditor advances funds by making a legal document and stating the terms and conditions for its disposal clear. Loans should only be given to individuals having a life insurance covering at least 50% of the debt to reduce the moral burden on the heirs/executors. If any insufficiency lies post the life insurance claim, then the legal heirs or an executor of the will should be held responsible if their inheritance amounts to at least thrice of the pending dues.

To conclude, it could be rightly highlighted that had the Doctrine of Pious obligation be valid at present, daughters would could have qualified as duty-bearers and their liability to dispose the father's debt would be equal to the sons.
