

## **Abrogation of Doctrine of Pious Obligation - Debt of a Deceased Father/Ancessor - Liability of the Legal Heirs**

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***Does a Legal Heir have an obligation to satisfy the debt of his/her  
deceased Father/Grandfather/Great-grandfather?***

### **Ancient Hindu Law - Mitakshara Law:**

Mulla Hindu Law, under the chapter “Debts-Mitakshara Law” concludes with the Summary of the chapter as thus—

*1) The separate property of a Hindu is liable for the payment of his debts in his lifetime as well as after his death.*

*(2) The undivided interest of a coparcener in coparcenary property is always liable for the payment of his debts in his lifetime.*

*(3) Sons, grandsons and great-grandsons are liable to pay the debts of their ancestor if they have not been incurred for an immoral or unlawful purpose. Their liability, however, is confined to their interest in the coparcenary property; **it is not a personal liability so that a creditor of the ancestor cannot proceed against the person or against the separate property of the sons, grandsons or great-grandsons.***

*(4) As sons, grandsons and great-grandsons are liable to pay the lawful debts of their ancestor to the extent of their interest in the coparcenary property, a creditor of the ancestor is entitled to attach and sell not only the interest of the ancestor, but also the interest of the sons, grandsons and great-grandsons in the joint family property in execution of a decree obtained by him against the ancestor alone.*

*(5) As sons, grandsons and great-grandsons are liable to pay the lawful debts of their ancestor to the extent of their interest in the*

*coparcenary property, the ancestor can sell or mortgage not only his own interest, but the interest of the sons, grandsons and great-grandsons in the joint family property, to pay an antecedent debt of his own.*

*(6) The undivided interest of a coparcener in coparcenary property is not liable for payment of his debts after his death, if it has devolved by survivorship only upon collateral members of the coparcenary.*

### **Doctrine of Pious Obligation: -**

In addition to the obligation imposed by the Mitakshara Law on the Son/Grandson/Great-Grandson, the doctrine of Pious Obligation is also applicable to a legal heir to satisfy the debt of his ancestor provided the debts are not of an immoral character. In *Naradasmiruti Dharma sastras*, it was illustrated that the obligation of the son was an independent obligation irrespective of the fact whether the son inherited any property from the father.

Furthermore, the Doctrine of Pious Obligation is not of a religious character applicable only to the Hindus. The issue, whether the doctrine of pious obligation according to the Mitakshara school of Hindu law is applicable to *Vanniya Tamil Christians* came up for consideration before the Hon'ble Supreme Court Three Judges Bench in *Anthonyswamy v. M.R. Chinnaswamy Koundan, (1969) 3 SCC 15: AIR 1970 SC 223* and it was observed:

*“But it was argued that the doctrine of pious obligation originated in Hindu religious belief and was opposed to the tenets of Christianity. It was said that the doctrine was not applicable to Tamil Vanniya Christians of Chittur Taluk. We are unable to accept this argument. It is not a correct proposition to state that the doctrine of pious*

*obligation is of religious character or is inextricably connected with Hindu religious belief. ....*

*7. It is evident therefore that the doctrine of pious obligation is not merely a religious doctrine but has passed into the realm of law. The doctrine 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 co-related. 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.”*

Therefore, in view of the scope of the Pious Obligation, the son, even though, has not inherited any property from his ancestor, is duty bound to satisfy the debts of his ancestor, if the debt is not of immoral character. In other words, the son is liable to pay the debt of his ancestor even from his separate property.

### **Hindu Succession Act, 1956**

The Hindu Succession Act, 1956, which applies to Hindus governed by both the schools, has brought about some radical changes in the law of succession without abolishing the joint family, coparcenary, and joint family property. The effect of that enactment is very far-reaching, having repercussions also on the rights of coparceners and their legal position. So far as the liability of the specified heirs to satisfy the debt of ancestors on the ground of pious obligation is concerned, it was not initially disturbed by the Act, 1956. However, an amendment to *Section 6* by the *Hindu Succession (Amendment) Act, 2005* makes radical changes in the pious obligation.

### **Abrogation of the Doctrine of Pious Obligation:**

The Hindu Succession (Amendment) Act, 2005 has finally abolished the doctrine of son's pious obligation. Amended Section 6(4) says as follows:

*“Section 6. Devolution of interest in coparcenary property —*

*.....*

*(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, **no court shall recognize** 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 subsection 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 enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.*

*Explanation —For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case maybe, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.”*

As per the amended Section 6(4), after the commencement of the amendment, no court shall recognize the right of a creditor to proceed against the son, grandson or great-grandson of a debtor, for debts contracted by the father, grandfather or great-grandfather solely on the ground of pious

obligation. The proviso to the sub-section stipulates that the right of a creditor to proceed against the specified heirs, or any alienations made in respect of, or in satisfaction of any such debts or obligations, before the coming into force of the amendment, are protected. An Explanation has been added to the effect that the expressions "son", "grandson" or "great-grandson" would be deemed to refer to such specified heirs who were born or adopted prior to the commencement of the amendment.

The doctrine of pious obligation thus stands abrogated to the extent that the specified heirs are not liable to satisfy such debts solely on the ground of pious obligation. The meaning and consequence of the amendment is that, if a debt has been contracted by the specified ancestor, the specified heirs are not under any obligation to satisfy the debt on the ground of pious obligation alone. However, if such heir has expressly agreed to bind himself to fulfill the obligation, the provision will become redundant and inoperative. Thus, now the liability of the legal heirs to discharge debts of their father or ancestor extends only to the extent of the assets inherited by them as per the Mitakshara Law and the same has not been disturbed by the Hindu Succession Act. The children cannot be made to pay the debts out of their personal assets.

### **Provisions Under Civil Procedure Code:**

It is also necessary to allude into the following provisions under the Code of Civil Procedure which states the liability of the Legal representatives.

***50. Legal representative-(1)** Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to*

*the Court which passed it to execute the same against the legal representative of the deceased.*

*(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.*

**52. Enforcement of decree against legal representative-***(1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.*

*(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.*

**53. Liability of ancestral property-***For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of a deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.*

### **Conclusion:**

A debt may be contracted by a Hindu male for his own private purpose, or it may be contracted by him for the purposes of the joint family. A Hindu may possess separate property and he may also be entitled to an

undivided interest in coparcenary property. The property of a Hindu, whether it is joint or separate, is liable for the payment of his debts both in his lifetime and after his death. The undivided interest of a coparcener in coparcenary property is always liable for the payment of his debts in his lifetime. His undivided coparcenary interest is also liable after his death, so far it is in the hands of his legal heirs. Where a father or paternal grandfather or paternal great-grandfather dies leaving private debts, in such a case, if the debts are not of an immoral character, the entire joint family property, including his son's undivided interest therein, is liable for the payment of his debts even after his death. This liability, however, is not a personal liability, i.e., the separate property of the legal heir is not liable to pay the personal debts of the ancestor. Thus, a son/descendant as a legal heir has liability to the creditor to satisfy the debt contracted by his deceased father/ancestor to the extent of the property of the deceased which has come to his/her hands and has not been disposed of and also from their own interest in the joint family property but, not from the separate property of the said legal heir.

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Reference:

1. Mulla Hindu Law, 23<sup>rd</sup> Edition – Lexis Nexis

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