

## AN APPRAISAL ON DOCTRINE OF PIOUS OBLIGATION AND ITS COMPETENT RESPONSIBILITY UPON DAUGHTERS

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### ABSTRACT

In Family law particularly dealing with Hindu customs and traditions expressly followed in Indian society have various aspects dealt in different prospect of life, which through societal and judicial developments gained a jurisprudential degree and a legal enforcement in the environment of practice. The comprehensive framework of legal enforcements altered many aspects of Hindu customs knowingly or unknowingly which help for a tangible betterment in the society, judiciary which was able to face all the hurdles encountered by the people through religious society reformed many aspects which removed the biased and inhuman environment. The schools which the Hindu customs followed through their sources like commentaries and digests Mitakshara and Dayabhaga schools of thought which has a difference of opinion with regard to property inheritance and succession, where Mitakshara school largely deprived women's rights over the property. Though various reformation empowered women which was also favourable for depressed and discriminated class and the enactments and amendments made for their betterment posed a biased conditions over other. This study deals about such concept "The Doctrine of Pious Obligation" which impose liability upon sons to repay their father's debts, this study discuss about the transformation of this doctrinal practice from the Vedic to modern society which through another clause made women as heirs for property inheritance but left the responsibility to repay their father's debts through pious obligation doctrine. Thus it is revealed

that by the recent amendments which derecognized this doctrine through its retrospective effects imposed a biased situation among the men.

Keywords: Amendments, Biased, Dayabhaga, Deprived, Liability, Mitakshara, Pious Obligation,

## I. INTRODUCTION

Family Law representing an indispensable piece of life of the person takes a firm stand in the general public, India having a weird display of individual laws, owe their assorted and the twisted variety of customs and tradition to the beginning, where standards and the majority of substantive law existed (Parashar & Dhanda 2008). The individual laws assume an imperative part in representing the community of the people, the uniqueness of Indian family law remains common for all the people in the country and has a consistency in application. It covers a colossal zone of local relations, for example, marriage, wedding cures, authenticity of youngsters, care, guardianship, reception, intestate and testamentary progression and so forth which impulse a sheer majority over laws in India. India, a country centuries known for its secularism has been practising various religions which are accepted by all the people and followed by different sections, to give these religions a legal enforcement different legislations and enactments have been formulated. In that notion Hindu religion which is exclusively practiced in India which is well known for its time old customs and traditions got its recognition post Vedic period by legal enforcement into "Hindu Law". Diversified laws dealing with marriage, inheritance, divorce, adoption, succession, maintenance and custody where also clearly dealt in Hindu law, thus traditionally derived Hindu law through its customs, text, principles and doctrines emerged into a personal law which shape the practice of one particular community. Derived from the frameworks of renowned people of Vedic age, Smritis Vedic description like Dharmasastra based on traditional institutions and customs became time immemorial, gaining a legal enforcement transformed into contemporary customary laws comprising both substantive and procedural frameworks. (Venkata Subbarao 1979) Sources of law derived two main schools of thought for their implementation and application of laws, as ancient people emphasised the importance of all the aspects of life the doctrines and principles were classified into two school Mitakshara and Dayabhaga, these schools of Hindu Law emerged with the rise of the period of

commentaries and digests which are one of the source of Hindu law. The power of the old writings gave rise to classified principles of Hindu law which initially was connected to the entire of India yet in this way it isolated into two schools and some sub-schools. These schools exclusively deals with Hindu succession and inheritance of property and about the right and ownership, which this study tries to discuss it from different dimension.(Agrawal 2010)

**Aim:**

The aim of this study is to find out whether, according to Hindu Law doctrine specifically with pious obligation doctrine, daughters have any such responsibility in paying back debt of their father.

**Research question:**

Whether inheritance of debt with respect to Doctrine of Pious Obligation under Hindu Succession Act permit daughters as duty bearers in the event of shift to contemporary period ?

**Objectives:**

1. To discuss in the various aspects of inheritance of debt by daughters under pious obligation
2. To study about the contemporary status of pious obligation doctrine with respect to daughters liability

**Hypothesis:**

H<sub>0</sub>: Indian daughters are not considered as duty bearers under pious obligation doctrine

H<sub>a</sub>: Indian daughters are considered as duty bearers under pious obligation doctrine

**Research methodology:**

Research is based on secondary sources using books, articles, government gazettes, legislations, documents on different authors opinion.

**II. ANALYSIS ON MITAKSHARA AND DAYABHAGA SCHOOL****MITAKSHARA SCHOOL OF THOUGHT**

The Mitakshara school of thought was general proposed by Vijnaneshwar which is the last piece of the eleventh century, this extremely extensive commentary work manages all the aspects of Hindu law. The tenets of Yajnavalkya contrasts various parts of Hindu law in legal enforcement, thus this school containing all the general and specific aspects of Hindu tradition was widely accepted in all the part of the nation, but subjected to criticism like lack of clarity in understanding the same piece of work thus was subjected to additional sub-divisions and therefore five sub-schools created in course of time. All the sub-schools were in accordance with the Mitakshara school of thought in excellence, Each sub-school under the Mitakshara ideally recognized the specialist of specific treatises and discourses. Various fluctuation arose between the subdivisions of the Mitakshara which showed up because of the way their are interpreted and applied in course of time, these fluctuations and differences which arose between the subdivisions of the Mitakshara identified with selection and legacy have now been cleared away by the two modern law enactments, Hindu Succession Act, 1956 and the Hindu Adoption and Maintenance Act, 1956. (Bhattacháryya 1885)

**DAYABHAGA SCHOOL OF THOUGHT**

Jimutavahana was the founder of the Dayabhaga School of thought during the 12th centuries, evidences witnessed revealed that he was an eminent Judge and a Minister of a King of Bengal. This school of thought by Jimutavahana had entirely different principles from a different point of understanding and was accepted by many such groups who believed the doctrine, expressed doctrines on the law of inheritance and the joint family system were totally

opposed to some basic rules of the Mitakshara School. Just possessed an opposing mechanisms with of Mitakshara school of thought it was not witnessed that this school of thought did not break away any form of the authoritative texts of the leading Smritikars. In introducing certain radical innovations in a number of incidents of the joint family and rights of the members of such a family, Jimutavahana purported to base his theories on certain precepts of “Manu”, thus the theories of this school shows appeal more to reason and stern logic, than to precepts or precedents, and his approach to most of the controversial questions is direct and forthright. Thus the such celebrated treatise, the Dayabhaga, soon gained recognition and acceptance from number of commentators.(Derrett 1977; Rocher 2014)

Springing from the same sources of Hindu law the works and writings of Smritis in the form of commentaries interpreted and expressed two schools of thoughts Mitakshara and Dayabhaga, these two schools followed their own doctrines and principles which gave treaties comprised with various aspects and branch of Hindu customs and practice. Various differences was witnessed between these two schools of thought with respect to inheritance and coparcenary rights, the relation was different in both the doctrine with regard to coparcenary rights one gave rights only to sin depriving other members of the joint family, where other school relied mostly upon the equality clause.

- **TWO SIDES OF ONE COIN**

Mitakshara and Dayabhaga schools being the two sides of one coin differed in major aspects of Hindu custom and legal traditions, with regard to coparcenary rights, inheritance, survivorship, succession and transfers which are the procedural aspects of property principle. Dharma sastra displays an exceptionally sober minded approach and recognized both the schools of thought as it was in the lines of Smritis Dharma sastra tries to defend the interests of various areas of the general public and here, the undertaking is to adjust the interests of the person inside the family, and in the meantime to counteract crumbling of the family as a social unit, and maintain a strategic distance from fracture of monetarily and practical units of property. Since Hindu society has dependably been a male centric culture, property privileges of male individuals from the family were constantly incomparable and were thought to be more suitable

than relatives. These schools of thought which emerged has an interpreted form of works of Smiritikars which gave a clearly knowledge about local customs and practices in India, which though differed in many aspects of principles gained its importance in the field of traditional and legal understanding. Having the cornerstone in the conceptual background of Hindu law both the school of thought equally prevailed (Rocher & Lariviere n.d.)

#### ● SCHEME OF DIVISION OF PROPERTY

Property privileges and the aspect of division had their own need and stand in the schools of thought, the scheme of which contradicted each other principle of the doctrine. In Mitakshara school of thought the Sapinda relationship is of blood, and the privilege to Hindu joint family property is by birth of a son instantly. The arrangement of devolution of property is by survivorship. The offer of coparcener right in the joint family property isn't clear or ascertainable, as their offers are fluctuating with births and passing overs. A women would never turn into a coparcener neither single or married or widowed of an expired coparcener can uphold segment of her significant other's offer against his siblings. Whereas in Dayabhaga School depends on the code Jimutavahana, Inheritance depends on the rule of other advantage like pinda offerers, this school followed the principle in which the privilege to Hindu joint family property isn't by birth however just on the demise of the father.(Goyal 1978) The arrangement of devolution of property is by legacy. The legitimate beneficiaries either son or daughters (children) have the privilege after the death of the father. Every sibling has responsibility for positive division of the joint family property thus can exchange his offer and a widow had also the privilege to prevail to spouse's share in the property as after death of husband the widow turns into a coparcener. This shows that while the applicability of the inheritance principle is needed in modern law the Mitakshara school of thought having a contingent and a conservative scheme of property division which de recognised women from coparcenary or inheritance rights of them deprived their status in the Hindu joint family. These difficulties about the property inheritance and succession prevailed until the modern concept for contemporary society came into force which gave a legal enforcement to Dayabhaga school which had a simple scheme and recognised women as well has a coparcener.(Derrett 1977)

### III. PIOUS OBLIGATION DOCTRINE

A doctrine of minimum morality and a concept of legal obligation of repayment of debt was clearly dealt in Hindu customary laws which has its existence from Vedic period.

Ancient Indian literature unique concept of Pious Obligation evolved as a legal right from a moral obligation, thus the perusal of Vedic doctrines in Hindu law through modern developments gained a legal codified recognition to Pious Obligation doctrine (Anon 2013b)

By virtue of Mitakshara school of thought son were deemed to fulfill the pious obligation procedure applied for both spiritual and secular debts, including monetary debts are incurred upon the son. Precept of Pious Obligation implies the ethical liability of children to pay off and release their father's debts and further non-payment of obligations is a wrongdoing and furthermore a crime. This obligation or commitment of a child to reimburse the obligations of the expired father is refreshed upon an exceptional doctrine, known as "The Doctrine of Pious Obligation". Thus a Hindu beneficiary is at a liability to pay back the obligations regardless of whether legitimately acquired or for an indecent or unlawful reason of the perished, out of the benefits he has acquired from the expired. The commitment exists whether the children are major or minor, or whether the father is alive or dead. The obligation exists notwithstanding amid the father's life-time and subsists inasmuch as the father is subject.

- **DOCTRINE IN DHARMASTRAS**

Ancient Indian law codes which is the basis for Hindu law and custom deals about various aspects, Dharmashastra which is considered as a treatise of Hindu law over 'dharma' principle forms as a radical for different patterns of living in Indian society. The Doctrine of Pious Obligation has its root in Dharmashastras, in which a non repayment may result in wrongdoing which bring about sufferings in the next life. Consequently the obligations must be paid off in all conditions gave it was not to corrupt and unlawful purposes. Vrihaspati has stated, "If the father is never again alive the obligation must be paid by his children. The father's obligation must be paid as a matter of first importance, and after that a man's own particular obligations". Son is deemed to pay debts even it is immoral or illegal, but the personal interest in payment of debts depends on the interest towards coparcenary rights (Anon 2013a)

- **AVYAVAHARIKA PROPERTY AND DEBT**

By the shifting stance towards judicial orders and decisions being accepted as sources of Hindu law, the son deemed to pay back had availed certain exceptions. Avyavaharika debts (illegal, immoral debts) tainted with illegality does not deem son to repay the debts, thus this commitment stretches out to Non-Avyavaharika (or vyavaharika) obligations only. Avyavaharika obligation is one, which is taken for illicit or corrupt purpose. Eg:- Gambling, Races and so forth. According to Hindu texts, the sons are not compellable to pay debts incurred for: (i) losses at play, (ii) alcoholic drinks, (iii) promises without consideration, (iv) promises made out of lust or under the influence of wrath; (v) suretyship or (vi) fines or bribes. The word avyavaharika does not cover merely those debts which are illegal or immoral, but also all debts which the Court regards as inequitable or unjust to make the son liable.

#### **IV. TRANSFER FROM VEDIC TO CONTEMPORARY PERIOD**

Pious obligation doctrine in a modern perspective aimed at removing discriminations and impartiality from the Hindu community. Feminist movements which struck the economic sphere largely which transformed women as a working class in the society urged for revolution in property rights. The consensus of opinion of various orders and decisions over equal protection clause and the Shridhar (women's property) over Vedic age through modern legislation suffered a revolution or turn over of significant clauses in customary Hindu law. Legally enforced property rights of women by Hindu Women's Right to Property Act, 1937 enlightened the deprived rights of the women in older days a reformation which uplifted the position of women in Hindu joint family (Goswami 2016)

The vast and a transparent approach over women's rights of inheritance and succession gained a wide welcoming in the modern society, with such reformation in personal laws an indirect move over women empowerment was constituted and by removing customary and personal laws a direct move was fruitfully attempted and uplifted women in the society. When pondering over the legal enactments, the revision to Hindu Succession Act of 2005, enabled the women to wind up as a coparcener like a male in familial property which was considered as a



noteworthy change established because of western impact. Under Old Law ,the doctrine(obligation to release the debts)arises after the death of the father but, according to the Modern law the commitment emerges notwithstanding amid the existence time of the father. Further,Under the Old Law,the child had a commitment to pay the obligations with interest.The Grand child was at risk for the primary sum only.The great gand child was not at risk ,unless he had gotten the property from the ancestor, but according to the Modern Law all son,sons' are at a liability to pay the obligations with intrigue. (Williams 1884)

## V. ANALYTICAL DETERMINATION OF THE DOCTRINE

Though the property inheritance right was granted to the women who in the degree of wife, daughter, sibling or a at the time of widowhood, the doctrine of Pious Obligation gained legal enforcement encountering various difficulties. In codified legal environment various questions raised with respect to leftover interests in the reformation process, with respect to coparcenary rights of the women which granted them inheritance of father's or the family property encountered with a query about the pious obligation doctrine and its responsibility upon women in repayment of debts which remains as a obligation only for sons. Tangible improvement in the statutes of women which abolished biasness in coparcenary rights was deemed to upheld all the clauses of Hindu customs which had various transformations in the doctrines and principles adopted, in the modern legality clause Hindu Succession Act, 1956 after amendment ensured rights to daughters the same rights as that of sons in the process of inheritance has left the inheritance of pious obligation doctrine, a process of repayment of debt. The repugnancy of the legal jurisprudence in incorporating the pious obligation doctrine with the amending clause later witnessed a biasness with son who are alone deemed for pay back of debts. As per the Section 6 of the Hindu Succession Act, 1956, after the amendment the daughters who gained the same rights as the son and by this amendment the pious obligation has been deleted after the amendment Act of 2005 but the liability to repay the debt of the deceased father before the enactment remained working, therefore the rights of the creditors will be preserved if the debt was taken before the commencement of this amendment. Analytically Pious Obligation should be deemed that daughters should be a duty bearers in repayment of debts,

therefore the codified concepts of law regarding Hindu customs should pose responsibility upon daughters for repayment of debt procured by father under pious obligation doctrine. (Singh 2017)

## VI. CONCLUSION AND SUGGESTIONS

Though the ancient customary practice was directly biased upon women's rights in respect with property right, but the later modern theories reformed the biasness through reformation and reconstruction of the traditional practices through judicial decisions and orders. With regard to inheritance of property, the rights were granted to women also through amending process of the Hindu laws which also after the amendment the law directly derecognised proceeds against pious obligation doctrine which expressly does not hold daughters as duty bearers. But having a retrospective effect upon the amendment to curb the loss of the creditors made sons liability to pay back the debts positive, which by leaving women aside made a bias against son by imposing liability only upon them. Thus this paper recommend that as the succession and inheritance are ensured to women, same as that pious obligation should be expressly applied to them rather in a implied manner leaving out their responsibility as the pious obligation doctrine depends on the interest over coparcenary right.

## REFERENCES:

### Books:

1. Essays in classical and modern Hindu law: current problems and legacy of the past - John Duncan, Martin Derrett
2. Family law in India - K.B. Agarwal
3. Studies in Hindu law and Dharmasastra - Ludo Rocher
4. Hindu Succession - P. K. Das
5. The Joint Hindu Family - Krishna Kamal Bhattacharya
6. Supreme Court on Hindu Law - Dr. Hari, Dr. Kohli
7. Hindu Law beyond tradition and modernity - Werner Menski

**BIBLIOGRAPHY:**

- Agrawal, K.B., 2010. *Family Law in India*, Kluwer Law International.
- Anon, 2013a. Difference between the Ancient Doctrine of Pious Obligation and the Modern Doctrine. *World's Largest Collection of Essays! Published by Experts*. Available at: <http://www.shareyouressays.com/knowledge/difference-between-the-ancient-doctrine-of-pious-obligation-and-the-modern-doctrine/117380> [Accessed June 12, 2018].
- 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-his-fathers-debts/117184> [Accessed June 12, 2018].
- Bhattacháryya, K.K., 1885. *The Law Relating to the Joint Hindu Family*,
- Derrett, J.D.M., 1977. *Essays in Classical and Modern Hindu Law: anglo-hindu legal problems*, BRILL.
- Goswami, P., 2016. Inclusion of daughter in Mitakshara coparcenary: a radical change. *The Clarion- International Multidisciplinary Journal*, 5(1), p.109.
- Goyal, P.C., 1978. *Effect of Hindu Succession Act, 1956, on Direct Taxation of Mitakshara Hindus*,
- Parashar, A. & Dhanda, A., 2008. *Redefining Family Law in India: Essays in Honour of B. Sivaramayya*, Routledge India.
- Rocher, L., 2014. *Studies in Hindu Law and Dharmasāstra*, Anthem Press.
- Rocher, L. & Lariviere, R.W., Schools of Hindu Law. In *Studies in Hindu Law and Dharmasāstra*. pp. 119–128.
- Singh, S.K., 2017. *Women Rights In India Under Legal Provisions*, RED'SHINE Publication. Pvt. Ltd.
- Venkata Subbarao, G.C., 1979. *Family law in India: Hindu law, Mahomedan law, and personal*

*law of Christians, Parsis, etc., including law of testamentary and intestate succession ...*

Williams, T.C., 1884. *Statutes Affecting the Practice of Conveyancing Passed in the Years 1874, 1881, 1882: Comprising the Vendor & Purchaser Act, 1874, Conveyancing Acts, 1881 and 1882, Settled Land Act, 1882, and the Married Women's Property Act, 1882, with the Rules of Court, Notes and Precedents: Intended as an Introduction to the Present Practice of Conveyancing,*

Dr.Lakshmi T and Rajeshkumar S “*In Vitro Evaluation of Anticariogenic Activity of Acacia Catechu against Selected Microbes*” IRJMST, March 2018.

Trishala A , Lakshmi T and Rajeshkumar S, “*Physicochemical profile of Acacia catechu bark extract –An In vitro study*” IRJMST, April 2018.



