

The the same rule in
nan bachchan v.



The obligation exists whether the son is major or minor, whether the father is alive or dead. If the debts have been contracted by the father and they are not immoral or irreligious, the interests of the sons in the coparcenary property can always be made liable for such debts. The Allahabad High Court reaffirmed the same rule in Nan Bachchan v.

Sitaram, and held that the doctrine of pious obligations binds the interests of the sons in the joint family property only when the debts have not been contracted for immoral or illegal purposes. The creditor can legally get attached the claims, rights and interests of the sons in joint family property and execute the sale thereof. In Anthony Swamy v. M. R.

Chinaswamy Koundan, the Supreme Court laid down 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 correlated. The liability 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 counter balance to the principle that the son from the moment of his birth acquires along with his father an interest in the joint family property.

The doctrine is in consonance with justice, equity and good conscience”. In Venkatesh Dhonddev Deshpande v. Son. Kusum Dattatraya Kulkarni, the court again observed that “ where the father as Karla contracted the debts of family purposes, the sons as members of the joint family are bound to pay the debts to the extent of their interests in the coparcenary property.

Further, where the sons are joint with their father and the debts have been

contracted by the father for his own personal benefit the sons are liable to pay the debts provided they were not incurred for illegal or immoral purposes.

The liability arises from an obligation of religion and piety which is placed upon the sons under the Mitakshara Law to discharge the father's debts, where the debts are not tainted with the immorality. This liability of the sons to pay the father's debts exists whether the father is alive or dead". In *K. M. Raghottama v. M. P. Kanappan* the Madras High Court, while examining the nature and the extent of the liability of the sons to pay the debts, observed that in respect of debts contracted by the father, even for his personal benefits, at a point of time when he is joint with his sons, the sons are liable to pay such debts, unless the debts were incurred for immoral or illegal purposes. This liability of the sons, which had its origin in an obligation of piety and religion, has since metamorphosed into one of legal liability but this does not, however, extend to debts tainted with immorality. The liability is not, however, personal in the sense that the creditor of the father cannot proceed either against the persons or separate property of the sons, but such liability is restricted to the interest of the sons in the family property. It is settled that if the debt is contracted by the father after partition, the son cannot be made liable.

If, however, the debt is pre-partition debt, the share of the sons would be liable even after partition, if the debts of the father are not immoral or illegal and the partition arrangement does not make any provision for the discharge of such debts. The above principle was re-affirmed by the Karnataka High

Court in Ningappa Desai v. Madivalappa, where it observed that the liability of the sons to pay the debts is religious and based on a presumption that the debt incurred by the father was for moral and legal purposes. The liability lies on the sons during the lifetime of the father and extends even after his death. The principle of pious obligation is not confined to the question of legal necessity at all.

A son is bound to defray his father's debt except the one which is tainted with illegality or immorality, irrespective of the fact that the father had no genuine necessity to incur that liability. Thus, where the father sold the joint family property to satisfy the debt incurred by him, not for any genuine necessity, and there was no evidence to show that the debt in question was 'Avyavaharik Debt' the sale was binding on the son to the extent of his share in the joint family property.

Liability when Arises:

The son's pious obligation to pay off his father's debt not contracted for illegal or immoral purposes, is a present liability annexed to both the father's and son's interests in the ancestral property and is not affected by the fact whether the father is alive or dead. His liability arises the moment, the father fails to pay or the father's share in the joint property or his self-acquired property is found insufficient to meet the debts.

Duration of Liability:

The pious obligation of the sons to pay the father's debts subsists only so long as the liability of the father subsists.

Their liability is neither joint nor several. It arises even in father's lifetime and not merely on his death.