

Welcome viewers. This session is on the paper Family Law 2. It is under Unit 1 joint family. The module is titled Debt, Doctrine of Son's pious obligation, and Antecedent debt. In this session. We would talk about our son's pious obligation to pay debt. When the debt will be binding. Debt need not be antecedent debt and the changes introduced by the Hindu Succession Amendment Act 2005.

By the end of the session you would be able to understand the nature of the debt a son would be liable to pay and also understand immoral debts. One may ask a question, why must a son pay his father's death?

The son must be the father's debt when he inherits his property. The son takes the property subject to liability. It is an obligation for the son. He has to pay his father's personal debt.

This doctrine of Son's pious obligation to pay the father's debt was enshrined in the Hindu law. The reason for the doctrine was that Hindu law paid great importance to death. It believed that debt must be paid back. Hindu law also believes in the concept of rebirth.

One of them noted sages Brihaspati. He opined that non payment of debt will see the Father Reborn, either as a slave servant, a woman, or a quadruple. Another sage Narada also emphasized on the son's need to pay for the father's death.

The son must liberate the father from debt so that the father may not go to hell. The obligation on the Son is a religious and also a spiritual duty. It is a moral obligation for the son. And the word son would mean not only the son. It would include son, son, son, and son, son, son. Which means the son has to pay the

debts of his father, Grand Father, and even the great grandfather's debt must be paid back. However. If the father was a karta. Then the son need not pay the debts taken by the Karta in the capacity to occur and those debts will be paid from the joint family.

The debt which are binding on the son would be those debts taken for payment of bills, to defend a father in a lawsuit, particularly those suits which arise out from defamation, forgery, etc. If a court passes a decree for any kind of damage that is caused to crops, particularly if the damage was done by obstructing an irrigation channel. Damage done to the father for wrongful cutting of trees. And any kind of liability arising from negligence or a torts liability are debts which the son would be bound to pay.

Various scholars have classified different kinds of debt which the son need not pay. The only situation in which a son will not be liable is that the son can prove that the debt was tainted, hence that would be a defense for the son not to pay the debt. One of the scholars based on such text has classified the debt into the following categories. Debts taken for spiritual liquor. Debts for lust. Unpaid tolls gambling, unpaid fine, any debt for surety, any promises made without consideration, commercial debt. But this is a very ancient classification.

There is still confusion on which debt the son should pay, so therefore different scholars have brought in different other heads with the change of times. So therefore there was need to define the term ayavarika. The son need not pay a debt which is an Ayavyarika debt. So which means a debt without good morals. Debt taken for any illegal or immoral purpose.

Accordingly, A debt will be unlawful if the debt arises out of a wagering contract. If it is a debt which was fixed cause of an offense which

prescribed a fine and the fine had to be paid as a penalty under the statutes in India, such a debt would be an unlawful debt. Unlawful debts also arise out of breach of law.

Immoral debts like for example any bribe given. Particularly bribes given to take a son in adoption. Or when some debt was taken to defraud marriage expenses of a granddaughter. Or expenses for criminal litigation, particularly our litigation against the Son, to deny him of a right to property.

So the defense available to the son not to pay for his father's death, arises in two cases. The son can prove that the debt is of ayavariika that means the debt was an immoral and an illegal act and would amount to a criminal offence.

Secondly, the son could prove that it was a time bound debt. It is necessary to discuss time bound, which means one has to find out at what stage the debt becomes time bound.

Which means we have to find out at what time the debt was taken. The material time for examining the debt would be very relevant, so the relevant time would be the inception of the debt. We must define the word antecedent debt. antecedent debt would be prior in time or prior in fact. Prior in time means that the debt should be taken prior to elimination. Alienation means transfer of property. It could include sale, gift, mortgage so the debt had to be taken prior to elimination. The second point that must be prior in fact. Which means allegation and debt must not be part of the same transaction.

So therefore. We come to the last part. Does the doctrine survive till today?

The answer is no.

After passing of the Hindu Succession Amendment Act 2005, Section 4 states that today the courts cannot enforce the doctrine of sons pious obligation to pay father's debt. The reason we have discussed the doctrine is for an academic purpose, since it is an integral part of the Hindu law.

However, Section 4 also states that if the debt was taken prior to the passing of the Hindu Succession Amendment Act 2005, then the doctrine would apply. Therefore, one needs to understand the doctrine of son;s pious obligation to pay Father's death.

These are my references.

Thank you.