CHAPTER V

The Concept of Adoption
(a) **Meaning and Definition**

The epithets *datta*, *dattaka* and *dattrima*, which have oft been employed to denote the adopted son in Hindu jurisprudence, have been derived from the verb *dā* 'to give, grant'. The word *datta* is formed by appending the past passive participle affix *kta* to *dā* and then *kan* to it to make *dattaka*, giving the same sense as does the term *datta*. The word *dattrima* is obtained by suffixing the terminals *ktri* to *tri* and *mao* to the root *da*. These three words have been used either as substantive nouns or as adjectives qualifying the noun *suta* or *putra*, in each case denoting a 'son given'. A *datta*, *dattaka* or *dattrima* son in the sanskrit and Sanskrit-English lexicons is stated to have been enumerated as one of the twelve sons and heirs acknowledged by the Hindu law and as the one given away by both the father and mother or by either of them to a person engaging to affiliate him as his own son.

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1. कालः- पु. (वत एव खानेन खर्ण)। दात्मण्यः पुत्राणकारः। विकृष्टः।।।।...।

कालः पुः (कालं पुः)!। दात्मण्यः पुत्राणकारः।।।।...।

'अर्थावली-कालः'।

...अर्थावलीविशेषः तथ। जन्मवत्त्वः प्रकृतिवतः। आदि पाठायेव

सुविदः वालः दात्मण्यः पुत्रानकारे गौराणुनं विदेः।।।।...।
One of the essentials required for an adoption to be valid on which all the old Hindu jurists have a general consensus is that the boy must be given by his natural parents, to persons engaging to adopt him; one of the twelve heirs acknowledged by the old Hindu law.

अत्र पुत्रम् (प्रति) - Α son given away by his natural parents, to persons engaging to adopt him; one of the twelve heirs acknowledged by the old Hindu law.

एक्षेत्रीन - एक्षेत्रीन - 1. Given, 2. Produced or effected by gifts.

एक्षेत्रीन - 1. A slave who is given by another.
2. A son given by his parents

Wilson, Prof. Horace Hayman: गद्यप्रदेशः

दिहाय - दिहाय - given, given away, presented, made over, delivered

दिहाय - 1. one of the twelve kinds of sons in Hindu
parents or by either of them. On account of the fact that a son proceeds from the virile seed of the father and the uterine blood of the mother as does an effect from its cause, it is the father and mother alone who have the right and capacity to give (sell or abandon even) their son. He belongs to the man whom he has been given

law; (also called दत्तिज्ञ); "पाता फिंका वा ध्याता..."

- An adopted son; ....... ‘व्यान्याता वा यं स पुत्रे दलील छहाती’

दत्तिज्ञ a.1. Received by gift. 2. Belonging to a gift; निका गाते दत्तिज्ञः-क्योंेः प्रौ�. 1.13. -म!
One of the twelve kinds of sons;

VIII. 415; IX. 141.

- Apte V.: Pabu

दत्त- datta min. -निति given, granted, presented ....
(with पुत्रा) सत्रीमा, नृश. VIII. 2616.

सत्राक, min. (with पुत्रा) = सत्रीमा, Krause.

Vaj. II. 133; An. IX. 141 Kull.

सत्रामा min. received by gift (son, slave), Mn.

- Monier-Williams, Sir Monier: सत्रामा.
to. The son so given must be received for the sake of progeny. The definition of the dattaka, as given by Manu would appear to be most comprehensive and has been accepted and adopted by both the old and modern jurists and has, for the most part, provided the general format for the KAMA 1956. "The son, whom the father and mother give, in distress, with libations of water, who is alike (i.e., worthy or of the same caste as the donee) and who is pleased, may be called the son-given."

On perusal and analysis of various definitions of the dattaka as given in fn. 2, the following conclusions may be drawn:


i. The indeclinable particle *va* has been used as a conjunction of either aggregation or alternation indicating that 

ii. the boy must be given away by both the father and mother as is evident from the fact that either the agent of the verb *da* 'give', viz., 'the father and mother' has been used in the *dvandva* compound or the verb *da* itself has been used in the dual number; or, 

iii. he may be given away by the mother alone, in the absence of the father, or by the father alone, in the absence of the mother as is unambiguously indicated by the use of the word *anvatarena* in BGS II. 2.3.20 as well as the verb *da* in the singular number. 

The arguments based on Vasîtha's rule 6 that a woman especially, a widow, has no right and capacity either to give or to receive the gift of a son would be set at naught by Vasîtha's own rule 7 preceding it and by the unambiguous use of the particle *anvatarena* by Baudhâyanâ 8. Vasîtha's rule under reference here lays down a prohibition on a woman only when she has no sanction of her husband which leads one to the conclusion that she does have the right and capacity to give away or receive the gift of a son, though

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6. *दा न रज्ञा पूर्व दातदात्रिकुदात्रिनां दाता भानु न दातानां* 
   - *VDS* XV. 4.


8. *BGS*, II. 2.3.20.
with the prior sanction of her husband. This is also borne out by several of the medieval Hindu legal writers who have glossed on the texts referred to in the fn. 2, and the like. The gift of a son, as a matter of fact may be made by her with her husband's sanction, if he be alive and judicially capable of giving his consent, but even without it, i.e., be dead or be judicially incapable of doing so, having completely and finally emigrated, or renounced the world by entering a religious order and the like. The assent of the husband is implied by his silence, too, and the independence of the woman is, indeed, suggested by Yājñavalkya. This independence is, however, exercisable only in case of the husband's incapacity. On the other hand, it may be noted that as 'the child belongs to both the parents', he or she 'cannot be given away, if either of them is unwilling'. He can only be given away by the mother or the father with mutual consent. The best course, therefore, seems to have been set forth as:

9. तिलेया का शक्ति योधि क्रिया है न द्वायुः ।—सायण वृज्जश तद्विनारायण च।
10. The gloss of Visvarupa, Aparârka, Vîrâmîtrodavya Tîkâ on Yâjñavalkya, Vîrâmîtrodavya (pp. 609-10), Mitaksâra; Jha, G.N.: \[MLIS, Vol. II, pp. 213-17.\]
11. वृज्जश का सायण लोक लोक तदनानी । नेपीरिष्ठते पृथ का तदनानीः विनापित।
-\[IC, p. \ldots\]

The incapacity of the husband to assent implied here may include his lunacy as one of several causes of his incapacity. cf. G.N. Jha's report on Balâmbattis notes on the subject: \[MLIS, p. 214., Medanaparânata, p. 652.\]

12. कुमारीधर भ्रातियोऽथि भक्ति, भ्रातिषिष्टि परस्परम

13. Lalit Mohan's gloss on the above text, IC, \[p. \ldots\]
the son may be given away

i. by both the parents jointly, in general,

ii. by the father, with the mother's consent, if she be fit and alive and present in the house, i.e., has not permanently and finally emigrated, or renounced the world,

iii. by the father alone, if the mother be dead, or insane, or otherwise disabled, or if she has permanently and finally renounced the world, or if the emergency is specially urgent,

iv. by the mother, with the consent of the father, if he is abroad, but capable of consenting,

v. by the mother alone, if the father be dead or insane or otherwise disabled, or has permanently and finally renounced the world or if the emergency is specially urgent.

Adbhih preceded by libations of water in the text of Manu defining a 'son-given' stands for the entire sacramental procedure that has been prescribed in connection with the making of gifts and confirming such gifts with the puring of water. 17

14. Madhathithi on MS IX. 168.
15. Kullūka on MS IX. 168.
17. Anarārka, p. 736.
The word आदि 'in distress' has been variously interpreted and made to give a meaning which does not seem to have been intended by Manu. It has been construed with the agent of the verb 'give', viz., 'the father and mother' and made to yield the meaning 'in distress in the shape of scarcity of food', i.e., when the parents are themselves unable to support the child. Thus, it would appear that the parents can give away their son in adoption only when they are unable to feed him and that they incur sin if he is given under normal circumstances. Thus this prohibition is taken to regard the giver and not the recipient. It has also been interpreted by some as 'distress in the form of death, either of the father or of the mother, or in the shape of such disabilities of the mother as her insanity and the like.

Alternatively, it has been construed with the object of the verb 'give' which is wanting in the sentence, but which is clearly implied, since the act of giving presupposes the existence of a recipient. Thus, आदि has been taken to stand for 'in distress in the shape of the intending donee being issueless'. Accordingly, the parents can give away their son only to a person who has no son of his own and the intending donee can receive the gift of a son only.

18. बाबूसर प्रजा राजा \| \| बाबूसरकरणनांदिन न हैम।
धारणयुं प्रतिपूर्ति गति फिरातार।

19. Mit. on Yaj. II. 130, p. 694; Whit., p. 609.
if he be sonless. And, this, indeed, is the law.

The inclusion of the word pritisamvuktau in the sentence clinches the issue beyond doubt in favour of this interpretation. If pritisamvuktau is taken as an adjective qualifying the noun putram, it would mean that the son is happy over his transfer to the adoptive family. It indicates that he agrees to be gifted away not forced by any gloomy circumstances like the starvation obliging his parents to part with their son. Moreover, a gift (dana) is essentially a spontaneous act willingly done which does not presuppose the existence of unhappy circumstances as the compulsive motive.

In case pritisamvuktau is used as an adverb qualifying the verb dadvatam indicating that the parents are happily giving their son or in case the alternative reading pritisamvuktau is preferred qualifying the noun phrase mata pita va to mean that 'happy parents give', the conclusion as drawn above would not be changed, rather it would only be confirmed. The pleasant feeling that pervades the whole act

20. Kull. on Ik IX. 168, VR, p. 568; VR, p. 107;
21. Vide Jha, G.N.: HLIS. p.217. He also reads, in place of...
precludes the existence of any unhappy situation as the motivating force.\textsuperscript{24} Incidentally, by corollary, it also excludes a profit as a motive for the gift of a child in adoption.

There is no agreement also on the interpretation of the word sadṛṣaṃ, in Manu's text under perusal here. The two differing interpretations put on this word are represented by Medhatithi on the one hand and by Kullūka and other commentators of Manu on the other. Medhatithi holds that what is meant by sadṛṣaṃ is not similarity of caste but that the boy to be affiliated as a son should have qualities worthy of the donee's family, so that a boy of the kṣatriya and other inferior class can also be the adopted son of Brāhmaṇa.\textsuperscript{25} According to Kullūka and others the boy must be of the same caste as the adoptive father.\textsuperscript{26} But in practice\textsuperscript{27} and in law boys of different castes are also seen affiliated. This apparent contradiction is

\textsuperscript{24} For a detailed analysis, vide chapter VI, under Explanation of Apadi...
Also cf. Medhā. on MS IX. 168; Apar., p. 736; Vi, p. 568.

\textsuperscript{25} Kull. on MS IX. 168; P. 150, Vi, p. 107-9.

\textsuperscript{26} Bharadvāja, son of Brhaspati, a brāhmaṇa, was adopted by the kṣatriya king Bharata and he then became a kṣatriya. "Bharadvāja, son of Brhaspati, a brāhmaṇa, was adopted by the kṣatriya king Bharata and he then became a kṣatriya. vice versa."

\textsuperscript{27} Bharadvāja, son of Brhaspati, a brāhmaṇa, was adopted by the kṣatriya king Bharata and he then became a kṣatriya.
resolved by the Dattakacandrika which declares that in the absence of a real legitimate son, the filial relation of boys of the ksatriya and other inferior castes is held to be valid on account of their being beneficial in the celebration of his name and the like, although, since they are inferior in class, they are not entitled to offer oblations of minda and water. Basing its arguments on the texts of Kātyāyana, Saunaka, Yāj. and Vṛddha- Yājñavalkya, it further declares that on account of their benefiting the adoptive father in a small degree, such sons adopted from the different castes are not entitled to inheritance, but to food and raiment only. It then proceeds on to conclusively construe, Saḍaśrama as signifying 'of the same caste' on account of the fact that the adopted sons of the same caste alone are entitled to inheritance and not the others.

28. 

29.
Baudhāyana adds vopatvārthे parigrhyte in the qualifications of the dattaka son meaning that he is affiliated by the adopter for the purpose which a son is supposed to achieve. After the execution of adoption is complete, the filial relation of the son with his natural father is snapped and he now for all intents and purposes, belongs to his adoptive father with the only provision that he cannot have a matrimonial alliance in the natural family with a female whom he could not have married in the absence of such adoption.

Thus, it may be concluded that:

A dattaka son or a son given is the one whom his father and mother jointly, or either of them, in concurrence with the other where possible, or independently, where in law not possible, give with libations of water confirming the gift to a sonless person; who is worthy and is similar in caste as far as possible and who is pleased over his given being/in case he so understands to the person engaging to affiliate him as his own son.

Son includes Daughter

Nilakantha holds that the dattaka must be a male and not a female and rallies support in favour of his contention from the analogy of the sacramental ceremony of upanayana.

which is performed on a male only. Courts have held to this principle and decided cases accordingly.

But taking their cue from such instances as the adoption of Sāntā, the daughter of Dasāratha, by King Lomapāda and of Pṛthā, the daughter of Śūra by King Kuntibhoja, the Dattakamāmaṇi, the Sāmkārokaustubha

31. दक्षेषु पुपानेव पुत्रिः स सृष्टिः पुत्रः कलिः संहा-
-जीवित-संप्रहितानि नामानि न उत्ति वैधानानि वाला-
-विद्युक्तग्रीतिः जनेन्द्र-काण्डितिमिलक्रमाद ब्रह्म-मूर्ति स्वारत्सी-प्रसे गते व अद्वय ग्राहमण्डलयोते
-तपश्चक्ष्यित-विद्यते तहद्वीतिर्नान्तरस्ते ग्राहमण्डलसन्यासीकान्तस्य विषयेन परारथितः


33. For the adoption of Sāntā, vide Kanaṇana, Hālekanā, Ch. 9, and of Pṛthā, vide Mābh (Aṣīparva), 111, 2-3 (cr. ed. Ch. 104).
and the Dharmasindhu hold that as in the case
of a boy, so a girl may also be taken in adoption
as a substitute for a legitimate natural daughter.\footnote{34}
With the passing of the Hindu Succession Act, 1956,
which treats sons and daughters equally in the
matter of succession\footnote{35}, it became possible to
simplify the law of adoption among Hindus which
provides for the adoption of boys as well as girls.\footnote{36}

\footnote{34. Dharmasindhu, Dr. Nandavarmanaguru,\footnote{\textit{\`{S}r\textit{\`{I}j\textit{\`{a}}}}, p. 188; and
\textit{\`{S}r\textit{\`{I}j\textit{\`{a}}} III, Purvardha, p. 162.}}

\footnote{35. HSA, 1956 (No. 30 of 1956), S. 8, 10 and 15.}

\footnote{36. HAMA, 1956, Prefatory Note, S. 10 and S.11 (11).}
(b) **Scope and Application**

It is proposed to study in this work, the evolution of adoption and its concept including the promise it might hold of giving emotional satisfaction. The work has a plan to study, with special reference to the DC and the DM, various topics under the main heads of (i) **Execution of Adoption**, (ii) **Rights of the Adopted son over property** and the last but not the least (iii) **Socio-legal Consequences of Adoption**. The **Execution of Adoption** will include the study of who may give or take or who may be given in adoption. The second head will comprise the study of the rights of the adopted son on property in the natural as well as the adoptive family. Under the third will be studied the social and legal consequences of adoption in both the families.

Gautama, Apastamba, Vasistha and Baudhayana contemplated the **Application** of their law to none but the Aryas. While the Sutras texts expressly or implicitly confined the application of their law to Aryas, Yajnavalkya and Manu contemplated their codes to apply to all classes of the progressively growing composite community including Pasendi-s, Gana-s, and mixed castes etc. No one was outside the scope of the law of these codes.37

The Aryas or the Hindus to whom the law of adoption is applicable, are divided into four classes or castes called **varnas** which are -

1. the Brāhmaṇa-s, or the priestly class,
2. the Kṣatriya-s, or the warrior class,
3. the Vaiśya-s, or the agricultural and trading class,
4. the Śūdra-s, or the serving class.

Each of these castes is further divided into a number of sub-castes. In fact the variety of castes and their sub-division in modern times and their religious and social customs and usages are bewildering.\(^8\)

The first three classes are called the dvija-s, i.e., 'the re-born or regenerate castes' and their members the dvija-s by virtue of their undergoing the various smāskāra-s and the study of the Veda which are denied to the Śūdra-s save the smāskāra of marriage. According to some these sacramental rites are denied also to women who are classed with the Śūdra-s.\(^9\)

The classification of castes and sub-castes is very important as far as the law of adoption and Hindu marriage are concerned. The adopted son must belong to the caste of the adopter and the parties to a marriage must also be of the same caste, though of different gotra-s. The Indian courts have on several occasions undertaken to determine the caste in their judicial decisions.\(^{10}\)

\(^{10}\)
The division of Aryan society into these classes is very old and dates as far back as the RV. The great Aryan race which immigrated from Central Asia, through the mountain passes into India, settled first in the territory drained by the Sindhu (the Indus) river system corresponding to the North-West Frontier and the Punjab. The Persians pronounced this word as Hindu and their Aryan brethren on the Indian side of the Sindhu were called Hindus by them and the later western invaders. The Supreme Court considered the question as to who was a Hindu and explained that the Aryan settlers in the Sindhu valley were called Saindhava-s after the name of the river Sindhu from which the term Hindu is derived. Originally, the term 'Hindu' had no credal significance and stood for the people living in a well-defined geographical area. Aboriginal tribes, savages and half-civilized people, the cultured Dravidians and the Vedic Aryans were all Hindus as they were the sons of the same mother.

41. RV X. 90.12.


44. Radhakrishanan: HVL, p. 12.
During the growth of the law from the dharmasūtra-s to the metrical smṛti-s 'Vedic culture and society must have suffered great shocks from heterodox societies' or opinions ...' which is evidenced by 'the reference to Pakhandīs and Vṛatas in the smṛti-s who are said to be governed by their own laws ... Manusāhīta, however, purports to say that its laws apply even to Pakhandīs. Even the Buddhists apparently purported to follow the law of Manu, though much altered, as would appear from the fact that the Dhammatat of Burma professes to lay down the law in Manu's name. 45 Hindu law growing under the tremendous influence of the non-Aryan communities brought about a complex body of creeds and doctrines in the course of time and brought under its sway the members both of these communities as well as the followers of the various forms and developments of the Ārya or Hindu religion. The entire society, being governed by the Hindu law, tended to consolidate under Hindu religion which, unlike other religions in the world, does not claim any one prophet, or worship any one God, or subscribe to any one dogma, or believe in any one philosophic concept, or follow any one set of religious rites or performances, or satisfy the narrow traditional features of any religion or creed. 46 It may be described as a way of life with a composite culture which 'may be compared to the

gathering together of the mighty volumes of the Ganges, swollen by a continual influx of tributary rivers and rivulets, spreading itself over an ever-increasing area of country, and finally resolving itself into an intricate delta of tortuous streams and jungly marshes... the Hindus... are not one people but many. 47 Therefore, the application of the doctrine of adoption, which assumed its shapely form only in the period following the dharmasutras and the smrtis and which forms part of a whole body of Hindu law, extended to the entire community of these people. Accordingly, the HAMA, 1956 applies 48

a) to any person, who is a Hindu by religion in any of its forms or developments, including a Viyashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
b) to any person who is a Buddhist, Jain or Sikh by religion, and
c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

47. Monier Williams: RTLI, p. 57.
48. S. 2(1).
Again the law of adoption as part of the Hindu law is not a Lex Loci. Its extent is not confined to a particular place or country. As personal law of the Hindus, it will apply to a Hindu wherever he might go, in respect of the matters that are dealt with in Hindu law. He carries with him, on his emigration, the customs and usages by which he was governed in the country of his origin and will not be ruled, in such matters, by the law of the country to which he has emigrated. Any change in the customs and usages prevalent in his former country, at the time of his leaving, will not affect either the emigrant or the members of his family.\(^\text{49}\)

(c) Importance

The Aurasa and the Dattaka Sons

(i) Natural Affection for a Son: It is natural for a man to love his progeny, but the pleasure and satisfaction that he has felt for having a son sans all comparison and have eluded description right from the hoary past down the centuries to the present day. He is said to have been born from each of the limbs, as it were, from the heart of his father; putra 'son' is verily only the other name for his own self and has been blessed by the father to live for a

\[49. \text{Kesari, U.P.L.: Hindu Vidi, p. 3.}\]
hundred autumns. Father is the son reborn. His self indeed is born a son. In the utmost anxiousness of establishing the identity of the father’s self with his son he is described first to have entered his wife in the form of a child in her womb, only to be reborn later as his own son. A son is treated with so high an affection that he is said to produce the greatest embalming effect on the soul of the father. A contact with the son’s body is considered far more cooling than even the paste of sandal-wood. He warms the cockles of a man’s heart even if he were an ugly impudent corrupt fool. The birth of a son has been welcome to the father, the grandfather and the great grandfather as is the fruit of the banyan tree.

50. शान्तेन्द्रूपाय रमणयािक द्रवाकपित्याः।
श्रवणे पुनामारसिः स जोप शरसः। जन। दश

51. पतिलावां प्रतिवशति गच्छे पुलकै भालवेः।
तथा पुनः गच्छे पुलकै पालिते भालवेः।

52. पुलकात्र ग संस्कृतं वन्दनादतिरिवर्षय।

53. व्रत्चत्र पत्रेऽ पुलकै हुमानान्तकोकः।
दुर्विनीतः त्रृत्रादि पुराणोऽर्घी ताः।
to the birds. A son is called *Brahma*, *vaśa* and the heavenly world and it is through the son that he conquers the world of men. 

(ii) Religious Importance: This inordinate indulgence in the son is perhaps the consequence of the instinctive affection that a man has for his progeny as well as the religious and civil importance which the Brahmanical religion has invested the son with. *Vedic*, *sūtra* and *sūrti* texts are all one in emphasizing the importance of a son for the spiritual benefit of a man. A man is said to be born with three debts which he owes to the *rajas* 'sages', the *deva*-s 'the gods' and the *pitr*-s 'the ancestors' and by *brahmacarya* 'studentship', by performing *vaśa* and by procreating sons he frees himself from these debts respectively. The duty

54. रिता रिताशैय तलेत प्रपिलाकः।
उपासते एवं जानं भूलताः स्व विपक्षम्।
- *Devalayama* (q.BB, p.63); *Jha, G.N.*

55. तथा बुधमात तस्मि इत्य इयस्तव तचि वतित।

56. यों यत्र मुख्यालीकः तु० जयं नायौ नायौ नायौ किं न।

57. नायमानो नाप्राप्तिचित्तुः कुरुतास्य जायथि, ब्राह्मण कृपायः येन
देहम्, क्रृष्या नित्याः एवं न अनुवत्तेयं ये: पुरोचन तथा बल्लारि च।
- *Tait. VI.3.10.15;*

कुणं ये जयाते योः शिरम, व नायमान येन धेरैः कृपायः पितुः
- *Mukhya*.

*ŚB I.7.2.11.*
to pay off these debts is obligatory and not left to his choice.\footnote{3}{Jal. VI. 2.31.} According to Manu, a man becomes entitled to Moksha only after having paid off these debts, without doing which he is sure to be doomed.\footnote{4}{MS VI. 35.} With the mere birth of the first son he frees himself from the debt he owes to his ancestors and having transferred his debt to him he attains immortality.\footnote{5}{MS IX. 106.} It is prayed that the god Agni may bless him with immortality through progeny.\footnote{6}{MS IX.107.} Through the son he conquers the heavenly worlds, through the grandson he attains immortality or permanence there and through the son’s grandson he obtains the region of the sun.\footnote{7}{Hirla; q. EM, p. 18.} These

58. ब्राह्मणम् न सोमाक्षयः प्रज्ञानतास्तैः स्वेगादि !

59. \(क्रमानिः सोमाक्षयः) \(णा मो यद्य विनिकाशैः \) कर्माविनाशः मोक्षः यु कैलास्ती।

60. ब्राह्मणम् मनु स्वरूपायुक्तं च गच्छति।

\(पिता) \(पुत्रस्य वाता) \(मपि) \(पवित्रोज्जवलो) \(पुतुः) \)

61. \(ऋषिपरमेव नूतनिमथाय)\!

62. \(पुत्रोऽि) \(पवित्रोज्जवलो) \(परिशारणान्त्याय)\!

\(उन्हु) \(पवित्रोऽि) \(परिशारणान्त्याय)\!

\(Manu IX.137; VS XV.46; Vais. 17-5; Sankhalikhita; Harita; q. EM, p. 18.\)
worlds are lost to the sonless. It was perhaps from this notion of the religious efficacy of a son that the word 'putra' has been derived from put, i.e., 'Hell of this name'. A Putra is so called because he redeems his father from the Hell called put.

From the very old times to the present day, the son has been entrusted with the very important religious duty of offering oblations of water and funeral rice-ball to his father and other deceased ancestors for the peace of the departed souls. It is in this context that a man has been advised to desire to have several sons so that one of them, at least, may repair to Gaya and offer oblations of water and *pinda*, to the deceased ancestors. A son is also desired for the celebration of his name and the continuation of the family line.

(iii) Secular Object: One may not suppose that purely secular purpose of having a son was not thought of at all at the time when the influence of the Brahmanical religion was at the top of its glory. A son was

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63. नापुस्कृत जैसौ स्तनीति तत्सि पुजाय विन्दुः।
   अद्भुत XXXIII. 1, 2 DM, p. 8.

64. (i) पुजः पुनः अग्निन्यगुणात् ा पुजारसं के लिए शरीर शरीर से नीति वा। नवी. 11.11.
   (ii) पुजामात्र यथः स्वायत्त्वाय। विषयं हृत:।
   तत्त्वात्मु विन्दुः प्रस हृतः। रत्नेच्छस। रत्नेषु पुजाः। नवी. 11.11.
   अद्भुत (दृष्टप, n. 10); वै. xv. 44.

65. अष्टक्ष्यार्थ वाचः पुजः कैलाशपिग्यानुपूजाः।
   वै. v. 5, 67; पत्र. 32.1; वै. 150.10; ब्र. प. p. 220;
   (with some variations, like
   पत्र. 21; ब्र. प., वै. (वंट. प.) 34.97 cf. *AtriSmrta*
   verse 55.)
much sought after as an object of affection, a protection in old age and an heir to succeed. 66 The father in later life subsisted on the son and the son in early life subsisted on the father. 67 But these benefits were lost in the din of the extravagant eulogy of the spiritual benefits derived from the sons. 68

(iv) A Sonless Person is Indescribable: Asvins is replete with the yearning for a son at every step 69 and invokes the blessings of ten sons on the newly wedded bride. 70 So much store was set by the birth of a son that one is simply astonished at the preposterousness of King Harisandra obtaining a son after untall penances and at the same time promising to sacrifice him after his birth to Varuna whom he propitiated for the purpose. 71

66. बापृति पिता: पिता नर्मक्षेत्रपीरायः ।
गयं वारष्क से: क्रिष्णज्ञापनस्तव्यायायायमः ॥

67. Satr., Br. XII. 4.3.1.
69. AV I.91.20; I.92.13; III.1.23 etc.
70. AV. iii. 25.45.
71. After III. 2.
The appearance of a sonless man was considered to be inauspicious\(^72\) and a sonless wife was thought to be possessed with \textit{Miryti} 'ill-luck'.\(^73\) This superstition has not spared even guiltless innocent maidens on whom it so ruthlessly cast its gloomy shadows. Brotherless women have been described as passing their prime in their father's house with their splendour gone.\(^74\) A man was forbidden from marrying a brotherless maiden for fear of her having been appointed a son, \textit{viz.}, \textit{Putrika}. Manu declares 'women are created for procreation and men have to propagate the race.\(^76\) This goal of a woman's life and the supreme importance attached to the son were instrumental in allowing a sonless man in the \textit{dharmaśūtra} and \textit{smṛti} texts to marry again even when the first wife was living.\(^77\)

\(^72\) Sarkar, \textit{VC: \textit{Dehi}}, p.27.
\(^73\) \textit{SB} V. 3.2.2. (\textit{S.B.L. Vol.} 41, p.65).
\(^74\) AV I. 17.1; explained by \textit{Nir.} III 4 with the variant reading: जन्मग्नि तद्वीप पत्नी लग तत्त्व न यहन्द: \textit{man}: ; also \textit{RV.} II. 17.7 which speaks of spinsters growing old in their parental home.
\(^75\) Nir. III.5;

76. also cf. \textit{Mānava Gr.} I.7.8 & \textit{Yāt.} I.53.
\(^77\) Kane, P.V.\textit{ HD, Vol. II(1), p. 561, Poona, 1974.}
(v) **Substitution for the real son and the Dattaka:** On account of the great affection a son was treated with and the supreme significance attached to the religio-spiritual benefits associated with him, it was thought better to have a substitute in case a man failed to beget a real legitimate son than to have none at all. So, an extensive class of secondary sons had come up through a long course of evolution. Sons were affiliated either by a form of adoption or by raising issue on the women of the family with or without stipulation with other men out of the lawful wedlock like the ksetraja, the putrika and others. Although there was a strong contention that a son belonged to the begetter and not to the one who affiliated them and that the description of sons sprung from the seed of strangers was done only by the way, yet a substitute was treated for all intents and purposes as equivalent to the real son in his absence. According to Manu, secondary sons like the ksetraja and the rest were affiliated as substitutes for the real son—in order to prevent the cessation of obsequies performed for the peace of the departed ancestors.

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78. 2. दीन बयार्थिन: पुनः बयार्थिन: पुनः हविकालिन ने।

Vasiṣṭha (VR, p. 577).

79. नौबाद नौ: पुलालिकाद्वष्ठ दश्मिकितानुः।

MS IX, 181.
According to Yājñavalkya and others, from among the legitimate and other subsidiary sons, the one that succeeds on failure of each preceding inherits the estate and offer the ṛinda. This compromise of the rigid principle has been attributed by P.V. Kane to the natural human tendency to simplify matters and water down strict injunctions and it began to be thought that even subsidiary sons conferred some spiritual benefits though not as much as the aurasa did. After a reference to the thirteen kinds of

80. निष्ट्रे स्वरूपकथा युक्तप्राप्ते परं पर:। Yaj II. 132

81. प्रथममकल्पनम is very significant. The purport seems to be that the legitimate, son who has been regarded as the 'first in order' confers the highest benefit upon his father. Other kinds of sons also do confer some benefits upon the father, though not as much
sons as enumerated in order by Manu, Brhaspati records that
only the *aurasa* and the *putrikā* continue the family line,
while in their absence the rest eleven kinds of sons may be
taken as the substitute for the real one, just as oil is
made a substitute for clarified butter in sacrifices (*vānīga*)
by the noble.\(^\text{83}\)

But, in fact, by the time of the *sūtris* all except
the *aurasa* and the *dattaka* sons had started disappearing
or had already become obsolete. The son of a daughter,
whether appointed or not, had already acquired the same status
as did the son of a *putrikā*. The texts emphasizing the
equality of a son's son and a daughter's son practically
nullified the provisions about the *putrikāoutra*.\(^\text{84}\)

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\(^{83}\) *Pūrāṇa*: *prakaraṇa* *bhūna* bhūyavasā: ।

\(^{84}\) *Pūrāṇa*: *prakaraṇa* *lakṣāna* ।

\(^{84}\) *Pūrāṇa*: *prakaraṇa* *kutāḥ* ।

\(^{84}\) *Medhatithi* on this text as q. in *DM* p. 39;

\(^{84}\) *Br.* q. in Lalit Mohan's *Dattakabodhinī*, p. 3;

\(^{84}\) *Abar.* p. 735; *VR*, p. 575; *Vvā-Nir.* p. 439.

\(^{84}\) *MS IX.* 536;

\(^{84}\) *MS IX.* 130-134, 140.
institution ceased to be of any practical utility. The putrika did not even find a place in Manu’s list. The later smritis hardly went beyond mentioning her or her son’s name in the list of secondary sons. The sons like the ksetraja and the rest were treated as condemned by the gentlemen. It was further pointed out by Brhaspati that various kinds of subsidiary sons, who were affiliated in the past, had now become obsolete. According to P.V. Kane, the institution of several kinds of subsidiary sons was not very common or generally recognised ... and was dying out even in the times of ancient smritis. The Kālikāpurāṇa shuts the door upon all other secondary sons except the dattaka in Kali age and recognised only the surasa and the dattaka. The dattaka, in later days, assumed very great

85. अनीत्रा: कृता पुत्रा अन्यायिनिः: पुरातनः: 1
   न कश्चनोपरात्र कृतः अन्यायिनामिः: पुरविनः: 11
   अनु. q. in the Dattaka-bodhīṇa on the DC, p.2;
   Apar. (on Ya.1. 66-69); p.97; Kull. (on Manu IX.
   169); cf. DC p. 4.

86. HD Vol. III, p. 652

87. 'दत्तक-दत्तक-पुत्रोऽन्तर नियते' हति कानिकायुगाधिनाचार्य
   कन्या दत्तकरूपाणिनं भवाय: 1

   Dattaka-bodhīṇa, p. 2.

   कन्या दत्तकरूपाऽन्तर नियते 1
   हति कानिकायुगाधिनाचार्यः: 11
   कन्या दत्तक-दत्तक-पुत्रोऽन्तर नियते: 11

   Saunaka, Nārāyaṇa Purāṇa, Adityapurāṇa, q. in Apar. p. 739; SmC, p.669; Para-Madh.,
   p. 352.
importance. He was found most acceptable and was treated in more details than any other secondary son in the smrtis and other treatises. Adoption has engaged the attention of the courts more than any other branch of Hindu Law in the modern times through the British Indian period down to date. The dattaka now reigns supreme and is regarded a complete and only substitute for the real son in his absence. He not only offers the pinda and oblations of water to the deceased adoptive father and his ancestors, but also perpetuates his name and propagates his family. The courts today recognise only two kinds of sons, viz., the purasa and the dattaka and detailed provisions have been laid down in the HAMA, 1956 regulating the institution of adoption.

(d) Various kinds of the Adopted Son

Of the twelve or thirteen kinds of sons recognised by the jurists of the past, properly speaking only one may be called the dattaka. But there are generally speaking five kinds of sons who may be classed under one title, viz., 'the Adopted son'. A regularly affiliated son was called the datta, dattaka or dattrima, but a different nomenclature was given to him according as he failed to satisfy this or

83. The purpose of a substitute son is laid down in the texts as under

- Atri, q, in DC, p.2; दिन, p.3; and
- Manu (DC, p.2 and XI, p.15).
that condition of the regulations of adoption. Such sons were distinguished as krita, svayamdatta, anaviddha and krtrima on slight variations in the circumstance of affiliation as already pointed out in the last chapter. From an analysis of the various definitions of these sons, it may be noted that a common characteristic that marked a son of this class was that he was a son of one man and was taken up or received by another in a different family with a view to affiliating him as one's son.

It may be pointed out that the adopted son was essentially a gift. A son given away by both or either of the natural parents is the dattaka or the krita according as he is made over as a gift or for a consideration to the person engaging to affiliate him as his son. On the other hand, the parents are not directly involved in the case of the svayamdatta and the anaviddha sons, where the parents have since died or deserted the child. He becomes a man's self-given or abandoned son according as he, without being

89. Ch. IV. pp. 71-72.

90. I. माता पितां श्वेतादन्तरणः का गौर्यां न बुद्धः स क्रितः ।

Baudh. (VR, p. 570).

ii. परिक्षेत् क्रितः ।

Arth. II, p. 40.

iii. क्रितब्रह्म लस्यां स्विक्षितः ।

Yas. II, 131.

iv. क्रितनिपुषि यथा सप्तां नामाम तिरिक्तविषयः ।

स क्रितकः चूतारक: गृह्याः स्वेताः स्वित: तिर्यः वा इ]

Mār. IX. 174.
requested, offers himself or is otherwise taken up by him to be his son.\textsuperscript{91} Like the \textit{Apaviddha}, the \textit{Krtrima}, i.e., the son made is also approached by the intending adopter himself with the offer to make him his son.\textsuperscript{92} Several commentators hold that the boy must be an orphan and be approached by the man with the request that he be his son, if either of his parents is living, he is not free\textsuperscript{93}, while on the other hand, the texts defining the \textit{krtrima} son are silent about the position of the natural parents vis-a-vis the act of giving. The only important feature that

\begin{itemize}
  \item \textbf{A. The svayandatta is defined as under:}
  \begin{enumerate}
    \item \textit{स्वयं चाप्यागल्} दम्पतिः। \textit{Vishnu (VR, p.570);}
    \item \textit{रक्षास्वरूपायुः पुष्पावायुः}। \textit{Arth. II, p. 40;}
    \item \textit{दत्तवतु रत्नपन्नवशः}। \textit{Yajñ. II. 131;}
    \item \textit{दत्तवतु रत्नपन्नवशः}। \textit{MS, IX. 177.}
  \end{enumerate}
  \textit{Madanapariprata, p. 653, holds that he also must belong to the same caste as the man receiving him.}

\item \textbf{B. Hereunder follow the definitions of the \textit{Apaviddha}}
  \begin{enumerate}
    \item \textit{कपिली तंत्रवतुः। यम नालापिरत्याम्} लम्बक युक्तयावापुलेन। \textit{Vasistha (VR, p.572); V.Mit, p.612.)}
    \item \textit{वपिविवेदने यस्य मार्ग नित्या वा परास्तेनु}। \textit{Viremitra Vishnu (VR, p.571, V.Mit, p.612).}
    \item \textit{Arth. II, p.40.}
    \item \textit{उत्त्यद्वरु मनु यदेश व शास्त्रोपायेण पवेतु}। \textit{Yajñ. II. 132.}
    \item \textit{माता-दत्तवतुः पुलेन तथा औरतेन्द्राय वा}। \textit{MS IX. 171.}
  \end{enumerate}

According to Balabhattach, in all these cases, from \textit{Krtrima} onwards (in the \textit{Yajñavalkya's} text) the 'son' must be of the same caste as the person who has received him.
distinguishes the krtrima from the apayiddha is that the former is capable of discerning right and wrong, is known to be endowed with filial virtues and is of the same caste as the man engaging to make him his son. Medhatithi on Manu IX.169 avers that the boy, in this case, must have attained majority; until then he is not in a position to distinguish right from wrong. Sakasam, i.e., 'willing' in the definition as given by Baudhāyana also leads to the conclusion that the boy must have attained the age of discretion when, aware of the effect of his affiliation, he must be willing to be received as son.

It would appear from his definitions of svayandatta and apayiddha sons that Kautilya had envisaged the substitution of a guardian in place of the parent for the purpose of giving away the child in adoption. Different epithets were given to these sons on account of the difference in the circumstances of giving or receiving. All the same, they

92. The krtrima is defined as:

i. कृत्रिमः क्षरामयः सः क्षरातूः सः कृत्रिमः:।
   Baudh (VR, p.572);

ii. पुत्रलालितः कुलः।
    Arth. II, p.40.

iii. कृत्रिमः रागुः सयः कुलः।
    Yaj. II. 131.

iv. कृत्रिमः दुः प्रकुलारितं यं गुणार्थविचेतापः।
    पञ्चु प्रत्येकसं च निदिर्शतः कृत्रिमः:।
    MS. IX. 169.

93. Visvaśrama, Miti, Viraśmitrodeya tīkā, Madanapārijāta, Viraśmitrodeya (on Yaj II. 131).
ere the adopted sons for all intents and purposes. Sarvajña-nārāyaṇa maintains that the *krtrima* son is merely taken up, while the *avayandatta* is accepted as a perpetuator of the line of descent. But it is an arbitrary view based, probably, on orthodox beliefs which is not borne out from the definitions noted above. The definition of *krtrima* son given by Kautilya is peculiar and appears to have led to the rendering of the term as 'the Appointed son' by some and is suggestive of the purely legal position held by such a son supporting Sarvajña-nārāyaṇa's view cited above. It would be fruitful to refer, in this connection, to the *karta-putra* of the modern law.

L.F. Mulla treats these five as the adopted sons and asserts that modern law recognizes only three of the twelve kinds of sons, namely the *aurasa*, the *dattaka* and the *krtrima*. Treating the *krtrima* and the *karta-putra* as equivalent he states that the *krtrima* form of adoption has been prevalent in Mithila and the adjoining districts and was recognised by the law. In this case the consent of the adopted son was necessary and so, a minor who had attained the age of discretion, might be adopted with the parents' consent.

94. On *Manu* IX. 177.
95. 'One appointed to the position of a son is the *Adopted Son*'
   For Sanskrit text see fn. 92 (ii), p. 138.
A krtrima son does not lose his rights of inheritance in his natural family. In his adoptive family, however, he can only inherit to the person actually adopting him and to no one else.97 The rights of the adopted son under the system of kartāputra depended on the contract between him and his adoptive father.98

A close examination of the 9th, 10th and 17th sections of the HAMA 1958 as amended by Act No. 45 of 1962 reveals that the statutes of adoption recognise the svayandatta and apavidha sons who are either orphans or abandoned by their parents; only some one has to act as a guardian to formally transfer the child to the adoptive parent. The krtrlaa son is not recognised in so far as certain payments in consideration of the adoption have been prohibited except for those as the court may sanction. The krtrma son as understood by the system of kartāputra is not recognised by it, while the adoption of a grown up person who has completed the age of 15 years is accorded recognition only if it is authenticated by the custom or usage permitting it.

The datta again, is of two forms the absolutely adopted son and the dvaramusवायवेन who is a son of two fathers.

Mayne, J.D.: THL, section 226;
Trevelyan , HL, pp. 159-161 and 205, 206.
Furthermore, the latter is of two descriptions. If a son is adopted with the stipulation that he will be a son both of the father and the adopter, he is an absolute dvvāmusvāvana, while on the other hand, if he be initiated by his father in ceremonies ending with that of cūḍā and by the adopter in those beginning with the upanavāṇa, he would be called the anityavād-dvvāmusvāvan, i.e., incompletely so. Should a son be adopted directly on being born, since his initiation under the family names (citra-s) of both the fathers would be wanting, he would belong to the family of the adopter alone. The last one, namely the absolute adopted son is called as the Suddha-dattaka or the Kevala-dattaka.

(e) The Content of Emotional Satisfaction of Adoption

It has been seen in the context of the importance of the adopted son that the Vedic and inferably the pre-Vedic Āryan communities attached great significance to the male issue, which progressively increased in the later and post-Vedic periods with the evolution of the svāddha and other related rituals from the Vedic ritual of pitr-vajña. It has also been noted earlier that the Vedic society has been exogamous in nature right since its traceable history till today, inspite of its all out strenuous efforts to admit the daughter and her son into the scheme of legal and religious kinship. Notwithstanding the fact that the daughter
or her son has been invested with the capacity to offer pinda and water and other obsequial ceremonies and has been given the right to inherit to a sonless man, the son of the daughter will not continue the line of descent of his maternal grandfather unless he were formally and legally taken in adoption and his status as such prevails even today. In his quest of an object of affection and someone to succeed to him and later, also to perform his obsequies and celebrate his name as a substitute for a natural son, man explored all possible avenues and his search resulted in the evolution of a number of secondary sons. Originally, perhaps, it was his earnest concern for finding social, political and economic security that led man into taking into the fold of his family various kinds of secondary sons. The root cause of the whole Mahābhārata episode was evidently the quest on the part of the members of the Kuru Dynasty for a son to succeed for social and political stability and preservation of the large kingdom in general and of the family in particular. Later, the religious importance that a son had come to acquire in the post-Vedic period also reinforced his search for the most effective alternative. The trial of all secondary sons left the adopted son, the only survival as a substitute for the real one.

Hence, the content of emotional satisfaction that one seeks by taking a son in adoption relies upon the degree of his religious efficacy recognised by the śāstra-s, his filial sentiments and the promise that he may hold to be a viaticum in old age. The adopted son like the rest of the secondary sons has been regarded as a pratinidhi, i.e., 'a substitute for the real son' to guard against the cessation of obsequies and has been equated with oil which is made a substitute for clarified butter by the good in sacrifices. Obviously, the substituted oil cannot be as efficacious as the clarified butter. Likewise, an adopted son cannot be as effective as the natural born one; rather, he is only a working substitute for the latter. Sabara expresses similar views and holds that a pratinidhi does not yield the desired result of a religious act in full. Satyāśādaśrauta-sūtra does not at all recognise a substitute for the sacrificer, the wife, the son, the place, the time, Agni, the deity etc.,

100. i. जीवनार्द्ध युगुः नैनवेद्यायां ज्यौदिततम्। पुरुषप्रतिनिधिनांतः सुतैनवेद्यायां विविधाः॥
   मनु,IX.180.

ii. अन्तः विता यथा तैरं कुरिन्त: प्रतिनिधिनितां।
   तैलवादु पुत्र सुतु प्रतिबीतिविता ॥
   Br. q. by Auar., p. 735; VR, p. 575; Vvava Vr., p.439.

iii. जात्वापनां तेन प्रतिनिधिं तुम्हारी विज्ञापकी यदायः तद्विनिधायां वाजुशः सत्यकारायाम्।
   q. by Kjr., p. 73;
   Maitrā.P.

iv. वन्धु सुवाः पुरिणां वारणायां नैव द। सूच. III.1.

101. सनायध किचिद्युक्तं: प्रतिनिधिः। इत्यातः अंक्ता उत्खं:। प्रतिनिधिः
   विकलत:।

Sabara on Jaimini VI. 3.35.
prescribed by the Vedic texts in a ritual. Later on, however, it came to be recognised, as noted above, that the substitute of a son did provide some benefit though not in full. One has to be content with having something than to have none at all. It must, however, be pointed out here that the EM and other treatises on adoption purport to hold that the substitute for a son does have the capacity to produce the religious result for which he is adopted, namely the performance of the obsequies and the rest.

According to Manu, it is not proper to make a distinction between a son's son and a daughter's son and he further asserts that the latter leads a man across the sea of Hell in the same fashion as does the former. Both he and Brhaspati also aver that if one of the many brothers born of the same father, has a son, all of them have been declared to be putrinah, i.e. 'men having son.' Saunaka,

102. न सामिलय पायया: पुत्रय देवतान मातापत्रेश्वरः
क्रेण:
कारणोऽवस्थितात्मिनिधारिताः।

 Wik (pp. 33-34) explains this sutra as not forbidding the substitute of a son everywhere, but in certain grauta matters only, being opposed to Manu's rule (IX.180) referred to above.


104. दोष-दौष्टि-हि क्षेत्र-नीपढ़ते।
दौष्टिकथित्युपपूणं संतारवति पाँचवाळु।

105. 1. प्राप्तकाति पैक जातानालेखापेक्षु पुत्रवा पावेऽ
तद्वै तै तै तै तै पुत्राः पुत्राः पुत्राः।

II. जातगतात्व भवति भारि घातकः
सुचिपणि युवाति सर्वं तै दृष्टिः।
in laying down the procedure for taking a son in adoption, ordains that only that boy may be adopted who bears the reflection of a son. It may, therefore, be conclusively asserted from the foregoing remarks that the adoption of a son of a daughter or of a brother or of the nearest asapattra-sapinda will have the capacity to give a greater measure of emotional satisfaction than what the adoption of a stranger or of one distantly related would do. The use of such a discretion in the matter of adoption will not only go a long way in meeting his religious demands but will also have the capacity to offer an object of paternal affection and satisfy his instinct of parenthood to a large extent. It goes without saying that the son of a daughter or of a brother is always held dear to one's heart irrespective of the fact that his own issue exists for him to dote upon.

The adoption of a child in his very early days, his rearing with due affection and care coupled with proper training and education will certainly foster in him filial sentiments for his adoptive parents which it is natural for a body-born son to nourish towards his natural parents. The due affection and diligent care with which the adoptive parents treat their adopted child will also not fail to produce the desired result in the parents themselves. The third part of the emotional

\[106. \ldots \text{vide Appendix to P. V. Kanes, } H_2, p. 114, 116, p. 1011. \]

\[D, p. 144; DC, p. 114. Also Appendix III to this work.\]
The appeal of adoption, viz., provision of a successor and someone to look after during the infirmity of declining years is only a natural sequel of the successful conclusion of the preceding one. It may be seen here that it was certainly not without examination in depth of the reasons why the old jurisprudence of Hindus laid a forceful stress on the early age of the adopted child and the propinquity of his relationship to the adoptive parent, although the rules have sometimes differed with different expounders of law at different times and places with regard to the age and relationship of the adoptee to the adopter. It may, therefore, be conclusively asserted that the amount of emotional contentment of adoption will be in direct proportion to the promise of filial relationship that the adopted son may hold to the adoptive parent and the possibility of inclination that the latter may bear towards the former.