CHAPTER VI

Execution of Adoption
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(a) Who may adopt

A man destitute of a son: His obligation

A member of the three regenerate classes is said to be produced a debtor in three obligations directly on being born - to the rsi-s for the study of the Vedas as a student, to the gods for the performance of sacrifice and to the ancestors for producing offspring and he, indeed, is absolved of the debt who has a son, has performed sacrifices and has studied the Vedas.¹ He becomes entitled to enjoy heavenly bliss through the birth of a son only. Through a son he achieves two-fold objective of securing funeral offerings of cake and water and the performance of other obsequies on the one hand and of celebration of his name through the propagation of his family line and an heir on the other.

Nandapandita holds that as the precept enjoining the production of a son is possible, its contravention is a cause of religious offence. The fact of being sonless is a cause obliging a man destitute of such issue to constitute a son,

¹ जापानि अ प्रवरणाः सापि गवा जानि कर्तव्यं अण्म्यां यस्मात् अन्नां स्त्रियां सुभाषिता च आवद्धाः पुजोऽ चाचारी च।

Alt Br. (DN, p.9).
the omission of which entails an offence. The Privy Council, in a very famous case, emphasized the religious significance attaching to a son and referring, in this context, to MS IX. 106-07, 137-38, held this obligation of constituting a son, which every Hindu owes to his ancestors, to be the foundation of the Brahminical doctrine of adoption. The Council also held that in this doctrine, the devolution of property, the inherent right of a son, was altogether a secondary consideration.

Quoting Atri and Manu, both Nandapandita and Raghu- mani argue, that 'a man destitute of a son only' (aputrenaya) must constitute a substitute for the same. Taking their cue from a text of Saunaka on the subject, they have explained the state of being so destitute as of two kinds. He is a sonless man to whom a son has not been born at all or whose son has died. A man becomes the father of a male issue immediately on the birth of a son and is absolved of his debt to the ancestors. However, on the death of such son, he is

2. अपूत्रेण व्यक्ति पुरुष्कर्माओऽवश्यं पूजा विधि गृहेः। पुत्रोपनाप्य नैनित्तिकतया तत्तत्वस्य प्राध्यात्मिकप्रकृति- तायं कार्यानां।


4. अपूत्रेण ज्ञ: कायं गायेः ताहै प्रयत्नत।

रिवैरावक तत्ततात्मानस्यकान्ताय च च।

अपूत्रेण कर्तव्यं पुत्रप्रतिनिधिः सदाः।

रिवैरावकानां नैस्वित्तिकमात्मानाध्य प्रयत्नत। || आदि (DM, p.3; DC, p.2)

अपूत्रेण ज्ञ: कायं गायेः ताहै प्रयत्नत। || आदि (DM, p.3; DC, p.2)
again called upon to adopt another son for the sake of obsequies and the rest.\textsuperscript{5}

**The Competence of a Bachelor**

The state of being destitute of a male issue is the result of two different circumstances. The first case is where a man has taken a wife but has remained issueless on account of his impotence, infertility or other impediments in the way of procreation. The second state results from the man's remaining a bachelor. A married man, who is destitute of a son either because a son has not been born to him or because his son has died, is lawfully competent to make an adoption, whereas the power of a bachelor to do so has been a subject of controversy which has been pointed out by Marulakara.\textsuperscript{6} The substitution of the general term anutra by vandhva, i.e., 'one incapable of reproduction' is an evidence of the anxiousness on the part of a scribe of the text to exclude the right of a bachelor to adopt a son. The Nirnaya Sindhu, the Dharma Sindhu, the Saṃskāra Kaustubha, the Śrutiśāstra and other works on the subject of adoption have maintained silence, and the Dattakacandrika has followed

\textsuperscript{5} 'ज्येष्ठेन जगदीति ति मुनकावलि-कणपरिणारे तत्त्वपरिणामो फिकौद्कापाः पुलं पुष्करणपावस्यम्।' \textsuperscript{DC}, p.3.

\textsuperscript{6} Maṇi, on DM, \textit{pp.} 4-5.

\textsuperscript{7} 'तत्त्वाच भुजप्रदी वाच पीति पाठस्यस्य।' \textsuperscript{DM}, p.3.
suit. Their silence coupled with the use of the general term *aputra* with the comprehensive sense is a pointer to their recognition of a bachelor's competence. That Raghunani and Nandepandita both implicitly concede this right to a bachelor is signified by the fact that they approvingly quote a narrative, from the *Kalika-Purana*, of Vetalas, and Bhairava, the two sons of Sankara, (the former of whom, at least, was evidently a bachelor) in support of their contention that the same person may be affiliated by two men. Modern law also does not prevent a bachelor from taking a son in adoption.3

**Connotation of the Term 'Son'**

That the word *putra* in the expression *aputreneva* occurring in Atri's text noted above stands for 'a son in general' and not merely for 'a primary' or 'a secondary one' is indicated by the fact that it is on default of a son in general that exclusion from heaven is declared in a text of Ait Br., 'Heaven is lost to one destitute of a son' and that a son in general is again said to be the cause of redemption from debt to the ancestors.9 Thus, a man destitute of a son in general only is competent to adopt a son. By the cogency of the indeclinable particle *eva, i.e.*,

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9. 'नातुमात्र नौका झी लि (प्रान्त) पुरातनयायम् व्यावहारकाः पुत्राः।
'नातुमात्री...कलचारी लि इत्यादिपि पुरातनयायम् अयोक्ता-
'only' in the expression *aputreneva, i.e., by one destitute of a son only*, a man having a male issue — whether primary or secondary — is declared incompetent to take an other son in adoption.

The term 'son' here includes the grandson and the son of the grandson. Since both of these are equally competent with the son to present oblations of food and water and propagate the line of descent as well as to obviate the exclusion from heaven, the adoption of a son by a man whose son has died, notwithstanding the existence of either of the other two, will be without a cause and hence invalid. Therefore, it may be concluded that one only who has no son, grandson, or great-grandson, natural or adopted, living at the time of adoption, is lawfully competent to adopt a son. He has no right if any one of these is living and it always revives if none of these survives.

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10. शुपप्त पात्रप्रार्थित्युपलाशव। *Dś*, p. 2; *Drfl*, p. 18; तथौरूप रक्षणार्धे कलेक्टराल्छाढः बन्धु धन्य सन्तोष पूजी प्राप्यस्य नितीचिन्तयति नामाते। तत्काल पुजीप्राप्तविकास्येव पुजीक्षणस्याते। *Dś*, p. 2; नवादिना विशिष्टलिङ्ग प्राप्ति प्रतिपाद्यामः सामुहव्य वैकृत्यस्य। -सलिनक्ततरं वर्तमानम्। न च कथाहै वक्षणार्थे सत्करणार्थिविधश्च। "पुग: पात्र: प्रामाण्य प्राप्ततः कष्टा औपस्यस्ति।" हत्यन्ते तथौरूप तदर्थिरहराकाराव। *Drfl*, p. 18.

It must be remarked here that Nandapandita grudgingly accedes that a man, though possessed of a son, may take another in adoption, but with the sanction of such a son on account of the revealed law indicated in such passages where Visvamitra and others notwithstanding the existence of male issue, have been narrated to have affiliated another son.\textsuperscript{11} This concession is, however, denied in the modern law.

**Capacity of a Woman**

A good deal of controversy has been raging over the capacity of a woman to adopt a son on account of different constructions put on the expression *aputrena*, i.e., 'by one destitute of a male issue' occurring in the texts of Atri and Manu on the one hand and a text of Vasistha on the subject on the other, namely 'Let not a woman either give or receive a son in adoption, unless with the assent of her husband.'\textsuperscript{12}

Raghunati, the author of the DC avers that it must not be argued that since the qualities of being male and singular in the expression *aputrena* are mentioned as the attributes of the adopting party, the same person must not

\textsuperscript{11} *ॉैमाणिमाृतिकैः यैति द्वारा पुत्रादेशपुत्रकेनिष्ठः* ।

\textsuperscript{12} *न रजी पुत्रैश्वत्त्र प्रतिद्विः पिधुः तद्वेद्यतः* ।

\textsuperscript{11} *ॉैम, p.17.

\textsuperscript{12} *ॉैम, p.19.*

\textsuperscript{VPS, XV.5.}
be adopted by two individuals, nor a son by a woman. In fact, nothing definite is intended by the mention of the adopting party in the masculine gender and singular number. It may be deduced that every individual in general regardless of whether the adopter be a male or a female who is destitute of a son has the capacity to take one in adoption. In support of its argument, the DC adduces the text of Vasistha mentioned above which grants the right of adoption to a woman with the assent of her husband. In the context of determining the capacity of a woman to give a son in adoption, it says that she may do so with her husband's sanction, if he be alive, or even without it, if he be dead or have emigrated etc. and again adduces the selfsame text of Vasistha in support of its contention. Viewed in the light of this assertion of the Dattakachandrika, its intentiowould be most patently clear. Thus, it may be concluded that unlike the Patakasmiya, it construes Vasistha's text under reference here as a single sentence.

Incidently, it may be remarked here that the assertion of the DC that the same person is affiliated by two individuals is wrong. In fact, the dvvamasyavana is 'the son of two fathers' one of whom, as pointed out by the DM, is always the natural father. The adoption of the same person by two persons, neither of whom is his real father is not approved.

The text of Vasistha mentioned above which grants the right of adoption to a woman with the assent of her husband.
and an exception to the general rule that a woman by herself is competent to give or receive a gift of a son in adoption except when as a wife she cannot adopt to her husband during his lifetime without his express consent. This is the position that obtains in the modern law and the statutes of adoption. 15

The intent of the Dattakacandrika, it may be asserted, is that every individual destitute of a male issue, regardless of the distinction of sex or marital status, has the capacity to adopt. However, in the case of a woman, her dependence on or being under the control of her husband was the cause for restricting her capacity, and subjecting it to her husband's sanction.

The mention of the definite term bhrtr in Vasistha's text and not a general one for a husband assumes great significance in this context. Bhurtr is a husband upon whom a woman depends for her bhara-pogana, i.e., 'maintenance, protection etc.' Hence, this restriction on her competence may be related to her dependence upon her husband. In support of this contention, reference may be made to the case Shivprasad v. Natvarlal 16 in which

   Narayan v. Nana (1870) 7 BHC AC 153.
   Diwan, Paras: PHL, Codified and Uncodified, p. 195.
   HAMA, 1956, Chap. II, Sec. 8.

the meaning of Vasistha was related to the woman's dependence, and the non-dependence of a wife upon a lunatic husband was pointed out. The judgement in this case has gravely shaken the authority of the decision in the former case Ramkrishna v. Laxminaravana in which 'it was held in Bombay that where the husband was a lunatic his wife was incompetent to adopt, since she had no capacity where he could not consent'. Therefore, a woman was not married or if married, whose husband was dead, had the capacity to adopt a son as it is under the modern law provided that in the latter case, according to the law administered in Bombay, 'her husband had not forbidden her to do so, since her pious duty overcame other considerations.' The Maharashtra school does not prohibit a widow from taking a son in adoption for the spiritual benefit of her husband. The text of Vasistha was applicable only during

17. AIR 1920 Bom. 220,22 Bom. L.R. 1181.
19. Derrett, J. D. M.: IMHL, S. 147, p. 103
   Dewan, Paras: MHL, p. 196.
   HAMA 1956, Chap. II, Sec. 8.
20. Rakhmabai v. Radhabai (1868) 5 Bom. HCR ACJ. 181 etc.
the lifetime of her husband.\textsuperscript{21} The \textit{Vyasahāramavūkha}, the \textit{Nirnavasindhu}, the \textit{Sāṃskāra Kaustubha}, the \textit{Dharmasindhu} that are regarded as authoritative in Bombay and Western India, hold that the passage of Vasistha refers only to a wife whose husband is alive and that a widow may adopt without the husband's authority. According to this school the husband's authority to adopt is always to be presumed, unless he has prohibited his widow, expressly or by necessary implication, from adopting.\textsuperscript{22}

It may be opined that the \textit{Dattakacandrika}, in recognizing the independent competence of a woman to make an adoption, had in its mind also the secular purpose of adoption which, though not expressly stated by it, was to provide a Hindu female with a protector and a viaticum in the days of her old age infirmity. This may be one of several objectives of adoption which induced the jurists like the author of the \textit{Dattakacandrika} to authorize independent adoptions by Hindu females.

The \textit{Dattakambimāsā}, contrary to the view professed by the \textit{Dattakacandrika}, holds that since by the use of the term \textit{anutrera}, i.e., 'by a man destitute of a

\textsuperscript{22} Kane, \textit{P.V.: HD}, vol. III, p. 669.
son' the adopting party has been mentioned as being in the masculine gender, it follows that a woman has no competence to adopt a son. In support of its thesis it also advances the same text of Vasistha, which it splits into two parts, viz., first, 'Let not a woman give or receive a son in adoption' and second, 'unless with the sanction of her husband'. It affirms that the latter part is an exceptive exemption from the general prohibition contained in the part preceding and the cause in this exemption is the husband's sanction. In other words, a woman in general is prohibited from engaging in an act of adoption; she, however, is exempted from this prohibition if she have her husband's sanction which as implicitly held by Nandapandita in the DattakamImāma, must be given her at the time of such adoption.

Vācaspati holds that since women have no capacity to perform homa, i.e. 'sacrifice', they have no competence to take a son in adoption. As the agent of the dattakama with the recitation of the holy words, and the act of adoption is the same and, since a woman is disqualified to perform the homa, an adoption made by

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23. विवृत्तिः पूर्वतन्त्रकाणान्त्रियम बिच्चित्रार हति गम्ये। उत्त प्र \ वाक्यः - 'न त्रिव-महत्। हनि।

24. किं 'न रघुरसदश द्याः प्रतिकार तियाया हथायामिनिभिः प्रैणस नुङ्जानाध्य तित्तुः ' ह्याकाद णाशास्वर्त। निर्धारः।

प्रतिग्रहितां निश्चिता पुनः प्रतिपापः।

DM, p. 19.


Mani, p. 24.
her would be invalid. Even if the *homa* were performed through the intervention a priest as sanctioned by Saunaka, an adoption by her would still be invalid, for, she has no capacity to chant Vedic prayers accompanying this act. But, Nandapandita argues, in the case of a woman whose husband is living, the exemption contained in Vasistha's text and operative through the husband's sanction has an overriding effect. By the exemption, viz., 'unless with the assent of her husband, i.e., 'she may adopt with his sanction' her right to do what is principal, namely adoption of a son, is established from which her capacity to perform what is subordinate, namely the *homa* and the Vedic prayers follows. He, however, citing a passage, 'Of women and *Sudrae* without prayers' argues that in the case of an adoption made by a woman, the requisite of performing the *homa* and chanting *mantras* is dispensed with in the same manner as it is done with regard to the acceptance of any article of personal property by her.

25. विनंतान्तिमपु.. स्रीणां गौमातीकारिवा विन्निष्ण नंगिकार शति..
Capacity of a Widow

It has been established above that the Dattakacandrika lays no prohibition on the power of a widow to adopt. The only parts of India where a widow may adopt without an express authority from her husband are the Madras and Bombay states. But Nandapandit holds in the Dattakasināma that since a woman in general has been prohibited from adopting a son, a widow has no competence, because in her case, her husband being dead, his sanction, which is the cause of exemption from this prohibition, is not possible. The implication is that in order that the adoption made by her be valid, her husband's sanction must be given her at the time of adoption which, her husband being then dead, is not possible to have, nor does any other means granting her the authority exist. It may further be deduced that the widow cannot validly adopt even if she had the requisite sanction given her during her husband's life.

Cf. also V-Māvū where women, being considered of the same character as Śudrās, are declared competent to adopt a son as are the Śudrās in which case the dattahoma with Vedic prayers may be performed through the priest:

शुद्राद्विकै उदात्तै पैदोक्षण्यस्या य-हौस्यति पुज-यरिस्सु वौक्ष-प्राप्तिकार हस्ति लायकास्तु! शुद्राकृतिपुत्रू तैम विभाषा लावयः। शुद्रायाष्टिर्यति हस्ति लायकास्तु। वौक्षप्राप्तिकारः हस्ति लायकास्तु।

VM, p.112.

lifetime. This is the law applicable in Mithila. Nandapandita further asserts that it must not be argued that if a widow do not adopt a son her exclusion from heaven would not be obviated which would take place according to him, if she, after the death of her husband, lead a life of virtue and austerity even.

Nandapandita does not agree that the condition of her husband's sanction is requisite in the case of a woman only whose husband is living since such a woman only is subject to his control, and not in the case of a widow who is not so subjected. He argues that her dependence on control is not the cause of prohibition, rather a woman in general is incompetent to adopt a son, since her dependence on her kinsmen still exists on account of a text of Yājñavalkya, 'let the father protect her when a damsel, the husband when married and the sons

Sri Chandra v. Bibhuti AIR 1945 Pat. 211, 23 Pat. 763.

28. 'पूर्व मद्यार्जन साध्वी रूपौ ब्राह्मणिणिकाः।
स्याश्च गुरुस्युपायायः क्या ते ज्ञातः प्राचे।' शतिः (१७६१) मुनाः
क्रम स्थायिक तत्परिधान रामितानादिति।

IM, p. 24-25.
in her old age, on default of these, the kinsmen. A
female never attains freedom. Nevertheless, accord-
ing to him, she has no authority even if she had the
sanction of the kinsmen. In Bengal, Madras and
Benares it was held that a widow might adopt under
an authority, express or implied, from her husband given
her during his lifetime. Mere absence of prohibition
cannot be construed as implied sanction. 'In Madras
state a widow may adopt without her husband's authority,
if where the husband was separate at the time of his
death, she obtains the consent of his saninda; and
where he was joint, she obtains the consent of his
undivided coparceners.' In this view the term
bhartuh, i.e., of the husband was taken as only illustrative

114 I.C. 379; (29) A.B. 57.
31. Babu Motising v. Durzagbai (1929) 53 Bom. 242,
114 I.C. 379; (29) A.B. 57.
33. Balasubramanya Pandya Thalaiyar v. Subayya Thayar
(1938) I.A. 93; (1938) Mad. 551; 40 Bom. L.R. 704;
72 I.C. 724; (38) A.P.C. 34.
and not literally.\textsuperscript{35}

Nandapandita argues that it is wrong to take this word as illustrative, for in that case it would become indefinite and the purpose of adoption would also not be achieved which is the filiation of the adopted as as son of the husband even by the adoption made by the wife. The connection of the adoptee to the \textit{gotra} of the father can be established by his filiation only as the son of the latter which can be complete by means of the adoption made by the wife with the assent only of the husband. Unless the adoptee is so connected, his competence to perform the obsequial rites of her husband would not result and on account of the want of a father, the \textit{gotra} of the father would not be mentioned at his marriage and so forth.\textsuperscript{36}

\textsuperscript{35} Kane, P.V.: \textit{HD}, Vol. III, p. 669.

\textsuperscript{36} महाभाष्य यापूर्वायात: प्रवृत्तांशेष्कर। प्रवृत्तांशेष्कर नामवायात
तथा दिविश्चतिकम भारतेन्दुलिपि \textit{महाभाष्यं} लिखितं। -- \textit{किंतु} भाषा\textit{म} नामवायात\textit{म} नामवायात\textit{म} नामवायात। ---अन्योत्तर रूपमापुरुषोत्तरं तथायथं कथायथं सहमात्रोपयोगमात्र। तदनुत्तरं विश्वामानं सारं रापाताजिकादानं विचरणं जितुमात्रोपयोगमात्र।
law was derived that an adoption made by a widow was through her to her husband and not to herself. He affair that the connection of the adopted by means of the adoption made by the wife with the assent of her husband as son both of the husband and the wife is established by two compendious rules of the Satyasādhā-sūtra. 37

Nandapandita regards the general disqualification of women to perform sacrifices and repeat Vedic mantras as a valid cause to prevent a widow from adopting a son, whereas he waves the requisite of homa with Vedic prayers in the case of a woman whose husband is living. He conclusively establishes that since the only power of a widow is to enjoy property during her life, she has no right to adopt a son. 38

Consent of the Wife

The argument that since the assent of the husband is requisite for the filiation as his son of one adopted

37. 'धर्मः...पितृते' छलि सत्या जातिः त्रोदा (सर्प गाद्य गात्रान्तर) -प्रियोगिति: 'मातुरान्तर पितृ: प्रथमूः' छलि सत्यार्थ ।

38. बिपाणां स्त्रीपाणिः काव्यिन्यागमिताः समक्षि । द्रुतपदिकानां छलि सिद्धुः ।

IM, p.20.

IM, p.23.
by the wife, her sanction must also be sought where the adoption is made by the husband, the purpose being similar, does not hold water. He argues that on account of the superiority of the husband the filiation as son of the wife of one adopted by him would be complete in the same manner as her property in any other thing accepted by him.  

Under the Hindu 1956 the consent of the wife is required unless it can be legally dispensed with.  

From this requisite of the assent of the husband, it may be deduced that the only person who can be authorized to adopt on behalf of a man is his wife.  

Adoption by Śudras  

It must not be argued that in consequence of their incapacity to perform sacramental rites, as held by Vācaspati and others, the members of the śudra tribe are incompetent to adopt. By the indications of the law contained in the passage of Saunaka, 'of śudras from amongst those of the śudra tribe', extracted from his text dealing with the procedure of adoption, the capacity of the śudras to adopt a son is declared overruling Brhaspati and the

39. "सुधाः पन्यात्तत्त्वं क्रमवेद रिच्यं तथा तत्रस्मयुक्तसिद्धिः।
रुद्दिपिः सत्त्वस्यात्स्तवतान्तरस्तवत्॥"

40. HAMA, S. 7.
like. The performance of *homa* and prayers with Vedic *mantras* may be completed through a priest as in the instance of a woman. A text of *Nir.5* is confirmatory.

In some parts of India the adoption of a son connected as *sapinda* to, and belonging to the *gotra* of, the adopter amongst the twice-born tribes, is considered as validly complete without the Vedic rites even, merely through such temporal acts as the agreement between the adopter and the giver with the concurrence of the governmental authority.

**Adoption by two Individuals**

From the singular number being used in the term *aputrena*, i.e., 'by a man destitute of a son' it follows that the same person must not be affiliated by two or

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41. ‘सूक्तं गुणस्तितिः’ जस्म वाक्यायपकस्मिन्नेव तदद्विगुरस्वतनाथः।

42. िदिति सत्तायापितं सत्तायापितं सत्तायापितं सत्तायापितं सत्तायापितं

43. ‘निम्निन्दिको निम्निन्दिको निम्निन्दिको निम्निन्दिको निम्निन्दिको निम्निन्दिको निम्निन्दिको निम्निन्दिको निम्निन्दिको निम्निन्दिको’

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_DN_, p. 23.

_NMS III Pur. vi, p. 243._

_DS III Pur. vi, p. 156._
more individuals. The fallacy in regarding the case of a dvyaṃsuavāvana, i.e., 'son of two fathers' as an instance of the same person being adopted by more than one individuals is aptly pointed out by Nandapandita. The dvyaṃsuavāvana is, indeed, a son of two fathers, but one of them is always the real one, while the other only is the adopter. And the prohibition indicated by the use of the singular number in the term of aputrena regards the instance where there are more than one adoptive fathers of the same person. This also is allowed if the adoptive fathers are the real paternal uncles of the adopted son, being brothers of the whole blood.

(b) Persons who are entitled to give their Son in Adoption

A Hindu male's superiority has been the characteristic mark of Hindu jurisprudence. He was not merely a guardian, his power over his sons, daughters and wives extended as that of an absolute proprietor. They

44. Raghavachariar, N.R.: HLPP, p.137
were the property, as it were, solely of the man himself which he had the downright authority to dispose of as he wished. He could dispose them of as a gift or even sell them off in order to protect himself against adversity, prohibition, if any, was enjoined only in the case of an only son. It was certainly an indication of the powerful influence of base worldly prudence which inflicts sombreness certainly failed, it may be asserted, to permeate the general fabric of society. Nandapandita reduced all evidence supporting the equality of the mother with the father to prove the superiority of the husband to the wife. Raghumani, who in the heart of his hearts believed in the equality of sexes, could not rid himself of the shackles of this influence and subjected the competence

46. 'तिरुपरम: पुनुतरिव यत्र सांतारणं अनु.'
Narada, q. DM, p. 112.

47. 'ताप्पद्वारे दु: कौञ्ज्यं दानं विजय यस वा.'


49. DM, pp. 116-121.
of the wife, whose husband was living to dispense or accept the gift of a son to the assent of her husband who could act independent of her wife.

**Real Parents only Competent**

Manu, Yājñavalkya and others recognize the mother and father alone, severally or jointly, as competent to give their son in adoption. 50 Sankara Sastri Marulakara, applying the canons of construction, establishes that the mother and father here signify natural parents only and exclude foster parents, grandparents, foster or real, and so forth. A foster child cannot be given away by foster parents or grandparents. 51 This interpretation has been accepted by the modern Hindu law and incorporated in the HAMA to exclude an adoptive father and an adoptive mother. 52 'Father' under the modern law cannot include a putative father, but a mother may give her legitimate or illegitimate child, for motherhood does not rest upon the presumption &

50. माता पिता वा क्षतां वप्रहीर्म: पुत्रापिपिदि ।

ādityāsya prītīghnāṁ s ācayā daśgābra: ṗa: || MS IX, 168.

q. DC, p. 6, DM, pp. 10, 116, 118-19, 121.


52. Collector of Surat v. Dhirsinghi, 10 Bom. H.C.R.

235. HAMA, S. 9, expl. (1).
of paternity or the status of legitimacy\textsuperscript{53}, while 'mother' does not include a stepmother.\textsuperscript{54} Since 29 November, 1962, a guardian whether appointed or otherwise or 'a person having the care of the child's person' may also, under defined circumstances, with the previous permission of the court which will keep the welfare of the child in the fore, give the child in adoption.\textsuperscript{55}

**Competence of One Having Several Sons**

Both the Dattakāṇḍrika and the Dattakamīmāṃsā concur in their views that a parent who has an only son has no capacity to give him away in adoption, and, in support of their contention, draw on a text of Saunaka which declares: 'By no man having an only son, is the gift of a son to be ever made. By a man having several sons is such gift to be made as far as possible (or on account of difficulty, according to Nendapandita).\textsuperscript{56}

\begin{itemize}
\item \textsuperscript{53} Derrett, J.D.M.: IMHL, pp. 97-98.
\item \textsuperscript{54} Derrett, J.D.M.: Ibid, S. 131, p. 98.
\item Papenma v. Appa Rao 16 M. 384; M.L.J. 80.
\item Raghavachariar, N.R.: HIPP, p. 137.
\item \textsuperscript{56} Saunaka, q. DC, p. 12, DM, p. 111.
\end{itemize}
Nandapandita holds that this prohibition regards both the giver and the adopter on account of a text of Vasistha (XV. 13) which enjoins, 'Let no man either give or receive a gift of an only son, for he indeed is intended to propagate the line of ancestors'. Since an only son has been declared as being intended to continue the line of ancestors, by the contravention of this rule, i.e., in the gift of such son the offence of extinction of lineage is incurred both by the giver and the adopter on account of the prohibition being enjoined on both.\(^{57}\) The passages of Yajnavalkya, Nārada and other jurists bringing the disposal of sons and wives as gift or as an article of sale have been construed by him to regard the case of an only son and not where there are several, since they are confirmatory of the import of the rules of Vasistha and Saunaka.\(^{58}\)

Both the Dattakacandrika and the Dattakanīmaṁśa bar the gift of a son by one also having two sons under the

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\(^{57}\) न तवेश्वे पुत्रं धर्मात्मात्रं गृहे गृहे वति | तथा कृताद त्वं सन्तानाय पुरोपनेति |  
\(\text{LM, p. 111; also q. DC, p. 11.}\)

\(^{58}\) इति प्रत्येक संयुक्तत्वं येष वातिष्ठ नागराजाः सत्यवादः |  
\(\text{LM, p. 111-12.}\)
apprehension that the family line might get extinct on the death of the other. A man having two sons is as good as the one having an only son who, in turn, is considered no better than the one having none. This apprehension is expressed in Sāntamā's lamenting speech to Bhīṣma who was his only son, where the former likens such son to an only eye on the loss of which a man is rendered blind. Hence, it is concluded both by the 
Daitakacandrika and the Daitakajjaimāna that the gift of a son in adoption must be made by a man only having several sons, i.e., at least having more than two. 59

Nandapandita holds that the gift of an only son must not be made even if the giver be oppressed by grievous calamities and construes kadacana, i.e., 'ever' in Saunaka's passage above accordingly, i.e., as āpadi, i.e., 'during a time of distress.' 60

59. दिपुर गारिस गुदाङ्गे तपराजानोक्ताय सन्तिन्तहेपथ्यांसुभ्यो प्रेषितसः ||

60. कदाचन-नापदि || DN, p. 112.
There has been a good deal of conflict regarding the real nature of this prohibition in the modern Indian courts since the times of the British rule in India. But, as alleged by Ganganath Jha, 'the authoritative character of this prohibition has not been questioned, or sought to be qualified - by any Nibandha-writer...'.

Rao Sahab Visvanath Narain Mandlik has been reported by him to question the authority of this prohibition and to hold, on the authority of Sabara Svēmi (Mīm.Śū I.2. 26-30) that these texts were only 'recommendatory' and not 'mandatory'. Jha concedes that what he says may be very good 'law, equity, and commonsense', but he disputes the soundness of his logic in clinching the issue on the basis of the Adhikarana of Pūrvamāṁśa which Mandlik has failed to understand. Since the appearance of his book, very important cases have been decided on the basis of this interpretation and the Privy Council also sealed the doom of this prohibition. The Privy Council held the adoption of an only son as valid and decided that the prohibition enjoined by these texts was merely recommendatory and not mandatory.

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The HAMA 1956 as amended by Act 45 of 1962 does not take note of it and treats the adoption of an only son as valid subject, obviously, to the compliance of other conditions laid down in the Act for any other valid adoption.

Capacity of the Father

There is no conflict regarding the independent competence of the father to give away his son in adoption. It is taken for granted in the Dattakacandrika which deals with the independence of the mother only in this regard. But Nandapandita argues that the father has an independent capacity to give away his son in adoption, since the party making over the gift of a son is mentioned in the masculine gender by the term bahuputrena, i.e., 'by a man having several sons' and also on account of the fact that the independence of the husband is inferrible from the passage of Vasiṣṭha which bears the gift of a son by a woman only. He further contends that the husband may, singly even and independent of his wife, give his son on account of the reasons given as under:

64. See infra, fn. 70, p.
65. खोजनाथस्वा त्योरुपूर्वे नास्कृतामिति कथा: पुज्यानाऽधिकारां: I

1. The father, singly and independent of the mother, is mentioned competent to give his son in adoption in the passages of Yājñavalkya (II. 152) and Manu (X. 168) namely 'whom the mother or the father may give' and 'whom the mother and the father may give' respectively.

2. For the superiority of the father, the predominance of the virile seed of the man is assigned a reason by Baudhāyana for, as he asserts, the sons are seen even not produced of the womb.

3. In the Mahābhārata it is declared that the mother is fosterer while the son is of the father; he is that very person by whom he has been begotten.

4. The revealed law also declares, 'His self indeed is born a son'.

Under the modern law, the father could exercise this power like an absolute proprietor. On his capacity, no restriction was imposed and no condition enjoined and during the Anglo-Indian period her objections even, if any, were treated as irrelevant.

66. महाभारतम् महाभारतम् यज्ञवल्क्यम् खण्डम् अध्यायम् पारस्परिक्रमेयम्।

According to the HAMA, subject to certain conditions laid down therein, the father if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother, unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Capacity of the Mother

According to both the Dattakacandrika and the Dattakinimasa, the mother has no independent right to give her son in adoption if the father be living. The competence of a woman, whose husband is living, is subject to assent and the text of Vasistha prohibiting a woman to give or accept a son in adoption is adduced by them in support of their contention. Nandapandita asserts that the denial of this right to a woman also results from the use of the masculine gender.

*Alank v. Fakir* (1834) 5 SDA, 418, 419.

69. Chapter II. S.9 (2).
in the term *bahuputrena*, i.e., 'by a man having several sons'. He further holds that the equality of the mother with the father which is inferrible from the texts of Yajnavalkya and Manu, namely 'whom the mother or father may give', and 'whom the mother and father may give', respectively, is also with reference to her husband's sanction. Contrary to the view held by Nandapandita, the said text of Yajnavalkya and another of Manu, viz., 'deserted by the mother and father or by either of them' are construed by Raghumani to declare the competence of a woman to give independent of her husband. Accordingly absence of prohibition, i.e., silence on the part of the husband is construed by him as his consent on account of the maxim: Silence gives consent; literally that which is not prohibited is supremely consented. She is competent to give without his consent even, if he has emigrated, and inferrably, if he be incapable of giving his consent on account of the unsoundness of his mind.

70. दिक्षिणां अंकिति तात्त्विक स्थलम् प्रौढः प्रत्येकस्य पुण्यम् न लक्ष विनाश्चिन्तिति धृति।

71. दिक्षिणां अंकिति तात्त्विक स्थलम् प्रौढः प्रत्येकस्य पुण्यम् न लक्ष विनाश्चिन्तिति धृति।

(Yaj. 11.150)
In Bombay she could give with the consent of her husband, but not without it. According to Paras Diwan, 'the mother of a legitimate child has, during the lifetime of the father, no power to give the child even with the consent of the father', though under the old law she could do so.

Capacity of a Widow

According to the Duttakacandrika, a widow is independently competent to give her son without the consent even of her husband. The authentication of a widow's act in giving her son in adoption by

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71. कृपात्वस वृद्धि बैठनूँगा न बहु, कृपात्वस, परस्परत्नौऽनुभूति


74. रघुवर्त्यं वा नातिरेः यत्र वा तदनं विनापूः
her husband's consent is waived by Nandapandita, but only in cases of distress. 75 There are others who regarded the gift of a son of a deceased man as an act of dharma, and 'thus conducive to his spiritual welfare'. 76 And hence, a widow could not be held from giving away her son in adoption.

Three Positions Propounded

All said and done, Nandapandita concludes that principal position would be one where the mother and the father act in unison in the matter of giving their son in adoption, since by the verb dadvata, i.e., 'give, in the dual number' in Manu's text (IX. 168), both of them acting together are intended to be the agents of the act giving. 77 This conclusion has been

75. न पैं बियः प्रतविवाह सिंधिय जन्मावतं न स्मार्य।


76. Mit. I. xi. 9.


77. पानशे फालावित्युपपुरुषकिता कव्या जोधयापिकारी पुत्रः---

DM, pp. 118-19.
reached by him from the equality of connection of the son to both the parents, which follows from the texts of Vasistha and Baudhayana, viz., (i) 'being produced from the virile seed and the uterine blood, since a son proceeds from the mother and the father as does an effect from its cause, both the parents have competence to dispose of their son as a gift or as an article for sale or to abandon him; (ii) 'because the relation of the son to the mother and the father is equal', respectively. On the basis of the construction he puts on Manu's text (IX. 168), supported by the text of Yās1, (II. 152), he further propounds three positions as under:

(a) Where the mother alone gives her son, it would be an inferior case on account of her competence being subject to the sanction of the father.

(b) In the middling instance, the father alone gives his son, unassociated with the mother, because he has independent power to do so.

(c) The pre-eminent position is where the mother and the father act together in unison.78

78. अतः यद याति विना ता पर्यायार्थि मनि यात्रात्तज्ञोत्तपन घर्षयं ब्रव, स्वाक्षरातिभाष्यन्ययमात्र व, जनकाः पञाढा पञाढा -

dvātātātātāत पञाढा पञाढा वरणन्नरा इत्यर्थपिनातिंतु ।

IM, p. 121.
This interpretation of Manu (IX. 168) by Nandapandita and the provisions laid down by Raghumani are found incorporated in the HAMA in the manner that follows:

i. The father, if alive, alone has the right to give in adoption, but with the consent of the mother unless it can be judicially dispensed with;

ii. The mother may give the child, if the father be dead, or has completely and finally renounced the world or has ceased to be a Hindu or is of unsound mind;

iii. If both the parents be dead, the guardian may give the child subject to the conditions laid down under law. 79

79. HAMA 1956, Ch. II, S. 9.
Explanations of Āpādi: The Circumstances Occasioning the Gift or Acceptance of a son

The reason occasioning the gift or acceptance of a son in adoption has been given as āpādi, i.e., 'during distress or difficult times' occurring in Manu IX. 168. There is a wide difference on the interpretation of this word between different expounders of the law of adoption. In his anxiousness to lend support to the thesis that 'during distress' here regards the giver, Nandapandita goes too far to show that pravatnatah in Saunaka's text above, signifies 'on account of a season of distress' on the basis of the manner in which he splits the word, viz., 'that time, in which there is prakṛṣṭah 'great' vatnāh 'exertion', is pravatnāh āpaktakālaḥ, i.e., a time of difficulty or exertion.' One has to exert hard to maintain one's family during a season of famine and the like. And hence, the gift of a son is to be made only if the giver be oppressed with distress or calamity, as a famine and the like.

80. Supra, fn. 50, p. 169.
81. Supra, fn. 56, p. 169.
82. P. 121.
83. Mañj., p. 121.
Vijñānesvara construes āpadi to mean 'during a season of famine and the like' and holds that no distress existing, a son must not be given; this prohibition regards the giver. In other words, he affirms that no man may give his son unless he be oppressed with such calamities as famine and the like. In support of this interpretation a text of Kātyāyana is adduced by Nandapandita, which enjoins, 'However, the gift or sale even (of a son or wife, as understood from the context) may be made during times of distress; otherwise he must not proceed to do the same. This is the injunction of holy law.'

Pravatnāh is understood here by Nandapandita as an adjective qualifying āpatkālaḥ, i.e., 'time of distress', but he fails to explain why Śaunska should use an adjective only instead of the substantive noun it qualifies or both together, viz., pravatnē āpadi or

84. Mit. on Yād. II. 130.

85. Kāstya:-

DM, pp. 13, 121.
pravatne āpatkāle or pravatne durbhiṣaḍāu unless he intended to bring into bass-relief an aspect in point. The bare use of āpadi or durbhiṣaḍāu could very well intimate the import in which Nandapandita thinks pravatnatah has been used, viz., 'on account of a season of difficulty or exertion'. One has to strain one's faculties too hard to understand this connotation of the term without his help. Again, it may be argued, Saunaka was not writing riddles where one exhibits one's skill in the use of double-entendres or words with ambiguous implications or of difficult constructions and the like. He was, on the other hand, codifying legal rules where simplicity and unambiguity of language are the hall-marks. It is, therefore, beyond doubt that he used the word pravatna in its regular and ordinary sense of 'effort, an act showing anxiousness, endeavour'. It is in this sense only that the word pravatnatah has been used in Manu's text (IX 386, where as its use in the sense as understood by Nandapandita above would expose Manu's scholarship to ridicule. Nor has it been used in the sense of 'distress of the adopter having no son', which is duly conveyed.

86. अक्षेत्र युतः कार्यम् यानि लावनं तालं प्रयत्नतः:।
प्रवत्नादात् कैलानामिक्यं कतः ॥

DM, p. 15.
by the inclusion of the word anutrena, i.e., 'by a man destitute of male issue' in the passage.

The general precept contained in the texts of Nārada and others is that sons, wives, a deposite kept in one's custody and the like are inalienable even under oppression with distress. This general principle notwithstanding, if one be obliged under the stress of circumstances, to have a recourse to the contrary, an only son, as declared by Saunaka above, must never be given. If, however, one intends to give one's son in adoption, Saunaka concedes, as far as possible, a man only, having several sons may try to do so.

The import of Katyāyana's text quoted above also does not seem to have been rightly understood by him. As noted above, the writers of the dharmasastra and smṛti texts have declared that a man has no power

87. (a) विद्रष्टेऽदव दानेऽव वस्मिति Dv., p. 142.
(b) & देवं दार्शनात् Yās. II. 175.
(c) नितोप: पुत्रार्थं व सर्वसं चानन्यायं शतं -- ब्रह्मायानानुराख्यं कच साक्षारणं देन। Nārada (Dv., p. 112).

88. Supra, fn. 85, p. 132.
to alienate his sons, wives, his estate while his issue lives, and the like, although the property be solely of the man himself. It is in this context that Kātyāyana's rule has a meaning. He declares, 'However, (in order to maintain himself and his family) a man may give or sell even his sons and wives in times of distress. Otherwise (i.e., distress not existing) he must not have recourse to such means...' This text therefore, is not at all intended to regularise the gift of a son in adoption or to govern the law of adoption in general. On the other hand, it refers to particular circumstances, viz., of oppressing calamities, a code of conduct and to one of a hundred ways to seek relief in times distress.

The conflict over the interpretation of āpadi is the result of its inclusion in Manu IX. 168 under reference here and consequently, its having been construed with the agent of the verb dadvatam, i.e., 'may give' instead of its object which is only implicit and not expressly mentioned here. This, in turn, has brought in quite an alien element in the concept of adoption, giving a gloomy tinge to the act of giving.

89. For this meaning of tu, vide SED, Motilal Banarsidas, and V.S. Apte.

90. Supra, fn. 50, p. 168.
If ṛṇaṇḍi is construed with the agent of the verb 'give', it will be the unhappy mother or father only who have to give away their son forced by their ill luck and, no child can conceivably feel but grieved over such a parting with his parents. But this fact is at variance with the essential characteristic of the son being given in adoption, who must be pritivasāntaṁ, i.e., happy over his transfer to the adoptive family. Moreover, the gift of a son is considered to be a meritorious act and an act to be meritorious must be done spontaneously and not under force. Thus, it is only proper to relate ṛṇaṇḍi with the adopter, the object of the verb 'give' and must be understood in the sense of 'in the distress of the adopter being destitute of a son' as done by Aparārka, the Candrika and the Dattakacandrika.92

91. MS IX. 168.
92. अपरार्क: चेमपरालिब्धत्रिवधोऽवधम् - वापाणि प्रतिसाम्यूत्तरावते! हि - WM, pp. 13 (The Candrika not mentioned here), 122; Apar. p. 736; Kull. on Manu. IX. 168; VR, p. 568. VM, p. 107; Raghavananda and Nandana.

DC, p. 6.
rightly understanding the intent of Manu's passage. Nandapandita felt content only to justify both the interpretations and did not attempt to give his own opinion in the matter; had he done that he also was sure to relate अपादि with the adopter and not the giver. The HAMA 1956 would not take into account such circumstances of the giver. It has implicitly taken it to mean 'the distress of the adopter being destitute of a male issue'.

(c) Who may be adopted

Rules regarding the selection of a boy for affiliation laid down in the Dattakacandrika⁹³ are almost a summary of the deliberations of the Dattakamimamsa⁹⁴ on the subject being considered here under. While dwelling on the selection of an adopted son by a member of a regenerate tribe, both of these works draw on the texts of Saunaka and Sākala⁹⁵ to lay down the following order of preference -

93. DC, pp. 5-11.
95. ब्राह्मणानां अपिण्धेषु काोऽऽ: पुकंग्नम्।
   तदनां च सपिण्धे वा जन्मसम्म जन भारसेवू Saunaka (DC, p.5; DM, pp. 41-42).
   सपिण्धापत्यः का साहौआपयायिः वा।
   जनकौद्धिकः समावः पुल्लेष परिक्रमायिः। Sākala (DC, p.5; DM, p.43).
   स्मायाज्ञातामाः पालनगैतिकांस्मु ।
   कति ब्राह्मणानानित्येऽसाहित्याधीनामापि संग्रहः। Dat 8, p. 5.
One related

(a) as a sapinda, i.e., 'kinsman connected through the oblation of funeral cake,' and belonging to the gotra, i.e., 'general family,' of the adopter;

(b) as a sapinda, though not of the same gotra, i.e., a descendant of the maternal grandfather or a paternal aunt;

(c) not as a sapinda, but of the same gotra;

(d) neither as a sapinda, nor belonging to the gotra of the adopter.

Nandapandita recommends that before having recourse to the fourth choice at (d) above a kinsman not related as sapinda, but allied by a libation of water to the fourteenth degree and being of the same gotra, must be preferred, because he is the nearest and on default of such, one, not allied by the libation of water, but of the same gotra to the twenty first degree.96

96. Dat. B., DC, p.5.

DM, p. 48.
Both lay down that each succeeding on default only of each preceding is to be accepted and, according to the Dattakaśaṁmāsā, in no case must one belonging to a different caste be adopted on account of the fact that one belonging to a different tribe is not entitled to offer funeral oblations and inherit to the adopter, though, according to the Dattakaśaṁdrikā, his filial relation is conceded to have been legally established for the sake of perpetuation of lineage. Hence where one of the same class is available, such not of the same class is barred, and both in support of their contention adduce the text of Saunaka who lays down that a man of the Kṣatriya class must adopt

97. दोनोऽति वाणियादे सामाजःसार्वतीयतया फिँदराकृतिप्रकृतिपिन्य नाम संतोषमि
-पिय प्राचीनवलय पुरात्तं पुत्रं परस्त्रीयप्रकृतियो ग्राहाणांदेखितार्रतिः हति। -- वाणियकृति पिन्य तथा फिँदराकृति वाणियकृति पिन्य न तु विजायवेत् पुत्रस्य निर्धारितः।
वैपरिचत्स्मृत्याः सत्यः।
कालीय: पुत्र: ग्राहः: फिँदराकृति व रिकवाहः।
वाणिय: पिन्य: पिन्य: वर्णमात्र: सूक्तः।
ग्राहः चड़कः तु तथा ए तुक्षिन:। तत्रति। DC, pp. 6-7.

Bhānt eva dukh gātāṁ:--

यदि स्वाधिकालितया गुण्यात वा गुण: तथा बिद्यािम्।
कालानां न सं सुखायामाणकृत्य बन्धि तथा।
हत्त्व स्वाधिकालितया शस्त्रात्स्य निपीडिताः। तस्मादस्वाधिकालितया
न पुत्राधिकृति हति सिद्धः।

DPI, p. 52.
And, then MB IX.168 and Yaj 11.13 are quoted in support.
from amongst those of his own class belonging to the same gotra following the same primitive spiritual guide also called the purushita, of the vaisyas from amongst the vaisyas and of the sudras from amongst the sudras, in short, of all the classes in their own tribes only and not otherwise. Nandapanda argues that although none, other than the one connected as a sapinda and not so, is capable of being adopted yet, if one must go beyond, in all cases of adoption, the adopter and the adopted must be of the same class and the one of a different class is forbidden.

98. तथा व श्रीकान्तः

99. वनेच्छ तु न कार्ये तदिति। तथापि सफल्पादिवेंति। त्योर्न

DM, pp. 50-52.
Medhātithi interprets *sādramaṇ* occurring in MS IX. 168 as the adopted son possessed of virtues befitting the family of the adopter and not as one belonging to the tribe of the latter and concludes that a *kṣatriya* even may be the adopted son of a *brāhmaṇa*. The *Kalpataru* also has explained this to mean that a *śūdra* even may be the adopted son of one of a higher class. Both of the *Dattakacandrika* and the *Dattakamāmāsa* do not agree with this interpretation which, being untenable, must be rejected on account of the fact that he only, who is similar in class, is declared entitled to inherit and not one, who is not so, on the authority of *Yāj. II. 133, Vṛddhayājñavalkya* and others. It must be remarked here that while the *Dattakacandrika* holds to this

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100. *तत्सनुवात भधतके सूक्ष्मसंवर्ग ज्ञातिकेयारै सृजना, परंतु
तत्सामग्रिक विभागवतार्ण असर्ग्य व गच्छत्सर्वस्वयाय।*

*DC*, pp. 6-7,

यद्य श्रवणं— ‘वेदाचारिन्यां आङ्ग्यमय, कथा युद्धार्थं तिन न वनो
मकरस्यप्रायं हसि कपिलस्याय, तद्यथ वक्तं— ‘खसोस्यभयं
प्रोक्तस्तन्नैणु ध्वजा विषयः,' 'संयुद्धायोगेहर्वकर्मणिकितः
वा तिथिः न च वायुः,' कति शानकंवन्तर् चाहेश्वरेऽपि।*

*LM*, p. 53
doctrine, it treats as stated above, the filial
relation of such adopted son as legally established,
although he is denied the capacity to participate in
the estate and perform the obsequies of the adopter;
he is entitled to receive maintenance only from the
person who inherits to him. Bharata, son of Dusyanta
is narrated to have adopted Bharadvaja, a brahmana
son of Brhaspati who became Ksatriya on his
adoption. 101

Aparârka is reported to have explained sadrasm
as meaning the equality of class of the giver and
the adopter. 102 Kullûka and other commentators of
Manu on the one hand and the V-Mû and other works
on the other hold that the adopted son must be of the
same caste. The Sam-Kau and the Dhasindhu further
hold that of the brahmâna and other tribes, the adopted
son must be not only of the same class but also of
the same country. 103 A stress is also laid on the

102. तस्मात् सहुवं दातूः प्रतिदीप्तिकं दक्षिणाभिक्षुपरार्केश्यत्रसामान्यम् साधीपति।
103. तत्रापि दक्षिणाभिक्षुपरार्केश्यत्रसामान्यम् शत्रुवानां समानवर्गम् ।

DB Purvârtha, p. 158.
proximity of connection between the adopter and the adopted by Vasiṣṭha who prescribes that an unremote kinsman or a near relation only of a kinsman must be adopted. The courts, according to P.V. Kane, accept the view of Kullūka and the rest, while Paras Diwan reports that this rule was considered merely recommendatory and that under the Act the only requirement is that the child must be a Hindu.

Filiation of a Brother's Son

Of the several brothers of the whole blood, if one even be possessed of a male issue, all of them have been declared by Menu and Bhāspatī to be the fathers of the same by means of that son. Both the

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104. भ्रात्व भ्रात्राथ्यं प्रथमस्मितत्त्वाय निदेशकतः | तदेवात् विशिष्टोऽयि- बुद्धा-वयं क-पूर्ववन्यवेः प्रतिशृण्यायां जनि।

105. एड, वि. ती. प. 675.


107. श्रेणी सैमे क्षत्रियानामेकलक्ष्मान-भ्रात्रः।

सप्ति तै तै नैन पुरुषं पुत्रिणोऽयि मुख्येऽऽऽ। प्रेम IX, 192.

108. एच, प. 8 (reading मर्गार्त in place of मर्गशीर्ष) डी.एम, प. 55.

श्रेणी सैमे क्षत्रियानामेकलक्ष्मान-भ्रात्रः।

सप्ति तै तै नैन पुरुषं पुत्रिणोऽयि मुख्येऽऽऽ। प्रेम IX, 192.

109. एड, प. 81 एड, प. 78.

Similar verses with some variations are attributed to Vasiṣṭha (XVII.10) and Hārīta, the last q. एड, प. 443.
Dattakacandrika and the Dattakamīmāṃsa conclude from this declaration that where a real brother's son be capable of being adopted, in some manner or another, the same must be preferred for selection from several eligible near kinsmen connected through oblation of food. In such a case the selection of another is barred. The propounding of the representation of filial relation in the son of a brother in both these texts is intended not to bar the adoption of him (or another, where the former is not available), but to ordain that the nephew must be first selected in preference to other kinsmen. This has been clearly stated by Devasvāmin, the Candrika and the last but not the least, Viññānesvara. Although the filial relation in the son of a brother is intended to bar the adoption of him (or another, where the former is not available), but to ordain that the nephew must be first selected in preference to other kinsmen. This has been clearly stated by Devasvāmin, the Candrika and the last but not the least, Viññānesvara. 108 Although the filial

108. अनुश्रविताके शति प्राप्तपुत्रे स नम पुनःकर्भिः -- वा वर्तमाने ग्
प्राप्तपुत्रे न पुनः प्रतिनिधित्वा क्षणि उपममत्वान्वये न प्रतिनिधिः: कारे अवलोकये। --- किंव कदं न वर्तमाने शति प्राप्तपुत्रे न वहान्याप
पादानिधित्वे प्रस्तुतानि एवं --- अन्यत्र यथार्थप्राप्तपुत्रे तौहौ अन्तःपदानिधिः
-विशीर्धये।।

तत्स अनुश्रविताके अप्वायिते प्राप्तपुत्रे एव पुनःकर्भिः हति रस्साये।

दृष्ट्र तस्पद्धिकं तैस्य कांविनिया-धर्मवादिः प्रतिनिधिः वर्तमाने।।

सिद्धां भैरवानिधितया प्राप्तपुत्रे प्रतिनिधित्वान्वये अन्तःपदानिधिः न कारे अवलोकये।।

दिनां विशीर्धये अप्नायिते प्राप्तपुत्रे पुनःकर्भिः हति रस्साये।।

सिद्धां भैरवानिधितया प्राप्तपुत्रे प्रतिनिधित्वान्वये अन्तःपदानिधिः न कारे अवलोकये।।

दिनां विशीर्धये अप्नायिते प्राप्तपुत्रे पुनःकर्भिः हति रस्साये।।

सिद्धां भैरवानिधितया प्राप्तपुत्रे प्रतिनिधित्वान्वये अन्तःपदानिधिः न कारे अवलोकये।।

सिद्धां भैरवानिधितया प्राप्तपुत्रे प्रतिनिधित्वान्वये अन्तःपदानिधिः न कारे अवलोकये।।
relation of a nephew, even if unadopted, to his paternal uncle is recognised yet his connection as lineage, i.e., for perpetuation of family, is not established without an act of formal adoption, which is inferrible from the texts of Atri, Vasishtha and Saunaka in respect of a man, destitute of a son, proceeding in the act of adoption. Moreover, Atri's text has an imperative mode of expression enjoining upon a man destitute of male issue, to constitute one on this account. Therefore a nephew even must be formally adopted, since otherwise he will not be first in participating in the estate and presentation of funeral oblations, but will hold his respective place in the order of heirs.

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Since the precept of Vasiṣṭha ordaining that an only son must neither be given nor be adopted is applicable to a case other than that of a dvvāmasa-vāvana, the adoption of an only son of a brother is not barred and is treated as legally valid on the precedence mentioned in the Kālikāpurāṇa, of Vetaḷa affiliating the only son of his brother, Bhairava. Suveśa, begotten by Bhairava, was treated as son of these two brothers. Nandapandita also sanctions the affiliation of a single son of a brother by several and holds that the prohibition enjoined by Vas. XV. 3 barring the gift and adoption of an only son regards an adopter other than the brother, if since the perpetuation of his ancestor's line is completed by the son common to both the brothers. 111

111. एवं हमारुपाद्यं गौरविवेकेन्द्रवं सत्कारणम्। ४८ ६४।
पृष्ठां भूमिका निवाचितानि देशांत्रिकमक्ष्यां परम । न वेद प्रतिरूप्तियां
भूमिका। लॉ, p. 63.

\* इति न्तः नाय भूमिकां परिवर्तित विवेकचन्द्री—निवेष्टित ग्रावितिश्चिति वा
सिद्धे।

LM, p. 60.
Filiation of a Co-wife's Son

In respect to the several wives of the same husband, Manu declares that if one even of them bears a son, all of them are regarded as possessed of a male issue by means of the same. According to Brhaspati he is an offerer of the funeral cake to all of them, who further ordains that the rule, as applicable to several brothers of the whole blood of whom one even has a son, is also applicable to the case where of the several rival wives of the same husband one only brings forth a son. Thus, it may be argued that as in the case of several brothers of whom one be possessed of a son, similarly the filial relation of a son of a rival wife, if unadopted, will not be established to his stepmothers. This contention is rejected by Nandapandita who holds that since such son proceeds from the portions of the husband's body, his filial relation to his stepmother is legally complete even without formal adoption.

112. नस्सामानं चोनामेत्व पूजः प्रदृश्यो मृतेऽव | 
वर्तारः समुज्ञ गुहा गुरुश्च | वृहुऽव | (DC, p.10; DM, p.75)
वत्तासपिनारितवात सर्वत्र तत्द शिष्य | (GS, IX, 183)
ब्रह्मा प्रतस्त्वार्तवेष | (Pr. (DC, p.10; DM, p.78)
and adduces in support of his conclusion the same texts of Devasvāmin, the Candrika and the Mit. as recorded above. But the Dvatika-candrika assigns a different reason to overrule this objection, viz., the affiliation of a son by a woman proceeding legally with the instrument of her husband’s authority to constitute a son for him is valid only where the husband has no male issue and where he has a son, although she may be destitute of the same, her act in this regard would be void of legality. And, since she can have no offspring except the issue of her husband, the act of her constituting an adopted son, if the son of a rival wife exist, will be void. Hence, she obtains the whole spiritual benefit through such son and there is no occasion for her to formally adopt him or anyone else.

113. माणे वियारङङ्काल साप्ति युवाल सिद्धावि....

DM, p. 79

114. सत्तराग्राण्योयस्तेऽपि ज्ञानवासी बहुः तु तस्मात् ममत्स्यपिधवरंपि राष्ट्रियारें तथादानम। ... पालुक्मन्तरेण वास्त्र वांगतर-समयेते तस्मात् रक्षकं चं बंतत: शम्भस्यापिधवरयोजयस्य सम्प्यावेत सति हृदोत्पुष्टे न कपः भुपादानमू।

DC, p. 10.
On the basis of the construction he puts on Manu IX. 183, i.e. 'of several brothers of the whole blood ... etc.' Nandapandita draws the following conclusions 115 -

1. A brother cannot be the adopted son of the other.

ii. A brother of the half blood cannot be the adoptive father of the other's son.

iii. A brother cannot adopt his sister's son and a sister cannot adopt her brother's son.

iv. A brother can adopt the son of his brother only while a sister can adopt the son of her sister only; she is excluded from the reciprocal adoptive parenthood with a brother.

v. The adoption of an only son of a single brother is not barred, and it is implied that the adoption is more easy where two or more brothers be possessed of sons, while the filial relation of several of them to one is also valid.

vi. 'Son' here signifies the real primary son. Hence the adopted son of a brother cannot be the adopted son of other.

115. DM, pp. 55 ff.
vii. The adoption of a son other than the nephew is not barred in case of the death or in the hope of the birth of a brother's son.

viii. The filial relation of the son giver with his father in this case is not snapped.

Sākala while prescribing that in case a son is not available for adoption from the family of a sāvitra, i.e., one connected through the same general family, the intending adopter may adopt from the family of one not so related, but ordains that a daughter's son, a sister's son and one of a mother's sister are excluded. Saunaka also declares that a daughter's son and a sister's son are affiliated by the Śūdras only, while the son of a sister is nowhere mentioned as the (adopted) son in the three regenerate tribes, viz., the brāhmaṇa and the rest. The Dattacakandrikā holds that the prohibition on the adoption of a son of a daughter and that of a sister

116. ज्ञानोबन्धनं जनाय पागव्यद्वाराः जये
   दौतिकेः दीर्घोऽपि व पात्रयोगधु पूवं विना॥
Sākala q. Dr, p. 101; DC, p. 5.
   दौतिकेः दीर्घो विना जये पात्रयोगधु पूवं विना॥
   ज्ञाणसादिको नायि नारिस्तं दीर्घो दौतिकेः पूवं विना॥ श्री
Saunaka q. Dr, p. 80; LC, p. 7.
regards the tribes other than Sūdras, while according to the Dattakamīmāṃsā they are affiliated only by the Sūdras, since they are not mentioned by any authority to be the adopted sons of the three superior classes. Nandapandita further propounds that the son of either a sister, or a daughter or a mother's sister must not be affiliated on account of the fact that the prohibited connection is common to all the three even.

While describing the procedure for adoption Saunaka lays down that the son proposed to be adopted must 'bear the reflection of a son' which has been explained both by the Dattacandrika and the Dattakamīmāṃsā as 'resemblance of a son' consisting in the capacity of the son proposed to be adopted to have been procreated by the adopting party himself by such means as the niyoga and the like on the mother of the adopted, as, for instance, the son of a brother,

117. दौजिकवा प्रतीतिओऽयत्र: ज्ञातिरिविविशयम्। DC, p.7; दौजिकवा प्रतीतिओऽयत्र: ज्ञातिरिविविशयम् शास्यान्ते स्वदेश्यकृत्ववल्लङ्गानां। \[DM, p.93-94.\]

118. सैन प्रतीतिओऽयत्र: दौजिकवा प्रतीतिओऽयत्र: रस्माद्यावल्लङ्गजयिति।

--- विनाशस्त्रुत्त्वं निषेधार्थ स्मान्तः ---

\[DM, p.101.\]
that of a near kinsman related through common connection of funeral cake and that of a distant relation belonging to the same general family and the rest. Hence, according to Nandapandita, a brother, paternal and maternal uncles, the son of a daughter and of a sister are excluded from the capacity of being adopted since they do not bear the reflection of a son. It is further propounded by him that a sister's son including all those who do not bear the reflection of a son are incapable of adoption on account of the fact that the prohibited connection in respect of marriage is common to them all. After explaining the prohibited connection as mentioned in the Grhyasayisista, it is concluded by him that a son, who, if begotten by the adopter, would have been the result of a prohibited connection in marriage, must not be adopted and such only may be affiliated, as with whose mother the connection of connubial intercourse could be possible.

119. ‘.... पुत्रात्मानं पुत्रं (मैौं) पुत्रोऽपि पुत्राहारं।
तत्र निकोणिना स्त्रधुपायान्यायं।

120. तथा पुत्रशाही चर्चा-वाह्यो वानीय श्रेष्ठं,
यथा रातियोगः सम्पन्नवति लादृशः कागः।
Analysis

Various contradictory constructions have been put on this expression occurring in Saunaka's text leading to conflicting decisions by High Courts in India. The interpretation rendered by the Dattakancandrika and the Dattakamimamsa and a further explanation added to it by the latter have made the confusion verse confounded. This interpretation, in apposition to his rule of propinquity regarding the selection of a son for adoption, has given rise to absurd and embarrassing situations. According to the Dattakamimamsa, a widow could not adopt her brother's son, although the adoption was to her husband who himself could have adopted that son, since he could not be one of a prohibited connection. He could adopt his maternal uncle or the son of his father's sister on account of propinquity and at the same time, could not do so, since he could not be begotten by the adopter on his maternal grandmother or paternal aunt by means of nivoga. According to P.V. Kane, the Dattakamimamsa was rejected by the Bombay High Court and the Privy Council for this.

121. तेन वास्मानोपाधि राधितक अ प्रामाणे मातापकुलोऽनि।

absurd position. The Vayavahāra Māyūkha and the Dvaitanirnaya argue on the basis of several Mīmāṃsā sūtra-s that a daughter's son and a sister's son may be adopted by the brāhmaṇa and other regenerate classes, while these only, if available, must be adopted by a Sudra. It has been pointed out by P.V. Kane that the Bombay High Court was wrong in holding that Nilakantha also interdicted the adoption of the daughter's son and the other two by the regenerate classes.

It may be asserted that P.V. Kane was wrong in holding that Sutherland had no warrant for introducing the word 'marriage' after niyoga in the explanatory note on p iyogadina in his translation of the Dvaitakamīmāṃsā since it was suggested by Nanda-

123. ने अराजाति विविधाः पार्शवार्थणेऽन्तः पूर्वकः श्रवणकालिति सिद्धः। तदा उद्देश्यः प्रति अर्थसंस्कारानिहितः विवाहः। द-निर, p. 105.

Nilakantha states that it has been explained by his father Sankarabhadra in his D-nir, which is corroborated by the general practice even at present. (edn. P.V. Kane. Also his notes, pp. 177-79).


pandita himself in barring the adoption of one, who if begotten by the adopter himself, would have been the son of a marriage between prohibited degrees, while permitting the adoption of one, with the mother of whom, carnal intercourse could be possible. Evidently, Nandapandita had the rules of marriage in his mind, since his explanation of the prohibited connections in marriage immediately preceded this conclusion.

Accordingly, the courts seized upon the explanation offered by Sutherland and evolved the rule that no one could be adopted whose mother the adopter could not have married in her maiden state. This law was applied in all the Presidencies except Bombay where the courts held that any one could be adopted except the son of a sister, a daughter and a mother's sister.

It appears rather strange that the old, the medieval and the modern jurists alike have been one in barring the adoption of a daughter's son and a...

126. Supra fn. 120, p.
127. Ramchandra v. Gopal 32 Bom. 619; Walbai v. Heerbai 34 Bom. 491 (mother's sister's son cannot be adopted); Ramkrishna v. Chimnai 15 Bom. L.R. 824 (adoption of the son of the father's sister held valid).
sister's son, although, of all those capable of being adopted, they are the nearest and dearest. The Śūdras have been the wisest and the most fortunate in managing to get this allowance for their class. It was only proper to lay down the rule of propinquity so that the nearest and the dearest could be selected for adoption for the physical, mental and spiritual identification and it only exposes the preposterousness of the law to slavishly and thoughtlessly subject the selection of an adopted son to be put through the sieve of pīvōga and the like and to bar in general the adoption of the son of a daughter or a sister. And hence, the HAMA has done well to dispense with this restriction and permit the adoption of any one subject to other conditions laid down under the law.

(d) Of Age and Marriage of the Person proposed to be adopted

There is not an aspect or a detail of Hindu law which is free from a divergence of views perforce influencing modern law since the time of the British in India. As regards the age and marriage also of the person being considered for adoption there has been no agreement amongst various schools. A few of the verses of the Kālikāpurāṇa have been relied upon by the authorities in their arguments. The authenticity
of these verses has been questioned by some as the V-Mavī and the Dattakacandrika, whereas they have been held to be genuine by the Dattakāmāmsā, the Nīr-Sindhu and the like. These texts propound that one initiated up to the ceremony of tonsure, viz., cūdā inclusive under the gotra of his progenitor does not become the adopted son of another while, if the initiatory rites beginning with the ceremony of tonsure and the rest are performed under the gotra of the adopter, the son given and the rest may become his son, otherwise they are termed as 'slaves'. If taken after their fifth year they are not considered as sons and on having taken a boy who is five years old, the adopter should first perform the sacrifice for the male issue, viz., the putreṣṭi.\[^{128}\]

\[^{128}\] DM, p. 122; DC, p. 21; Nā III pūrvārcha, p. 250; VK, p. 114; SK, p. 169 (This last reads adāna in place of dāna).
It is held by the DattakamImāma that the primary time for adoption is the first three years and beyond this till the fifth year is the secondary time. After that even the secondary season for adoption does not exist, although the boy to be adopted may be still uninitiated. The principal position is that one wholly uninitiated should be adopted and where one initiated as far as the ceremony of tonsure exclusive is the secondary. But no one after the ceremony of cūḍā can be adopted, otherwise a state of servility would result which will also do if it is not performed by the adopter. The valid adoption of one on whom the cūḍā ceremony has been performed is the result of an extra ordinary case of a son of two fathers called the dvamaṇavāṇa.129

The Sāṁskāra Kaustubha holds that what is stated in these verses is opposed to the precedence of the adoption of Sūνāhsepa initiated as far as the

129. कतिपव श्रद्धा वाङ्कितरसुनां स्वरूप पितरेः हुस्मध्यकालात् पावति।---
तथा वाङ्कितरसुनां मृत्यु कालसंमुखः। --- अनात्मा कुषानभो
शुद्धुकृप्रितिरूपे वा दातात्यापति।--- अस्मात्मां दपमयेदि यवात्त्वमेव न ग्राह
. . कुषानां समस्तान्तराः प्रगुणवतः। इत्यादिवतु गौणोपिनी शैति नियतम्।

LM, pp. 125-129.
upanayana, i.e., 'the investiture ceremony of the sacred thread', by Visvamitra in the Ait.Br.  

The Dattakacandrika puts a different construction on the verse, marked as (a) of the KP. reported above (fn. 128(a), p.227) and asserts that the ancient practice of adoption was not restricted to any period. It, however, holds that among the three twice-born classes a boy who is initiated up to the ceremony of upanayana can be adopted while a sudra can be adopted before his marriage ceremony. In all cases of adoption, however, the sacrifice for the male issue must be first performed to complete the affiliation of the boy with the adopter, which is produced merely by the ceremony of marriage in the case of a sudra.  

Both the V.Kavya and Sankarabatta,  

130. SK, pp. 169-172.  
131. एवं सवेशायेव श्रावां जनविशेषमनवतायेकुपपश्चम-  
   विजाननुपपथेन।  
DC, p. 24.  
132. विजातिनमुपपन्ननानां: अङ्गौ विजातिननाद: तेन  
   पुष्पेन्द्रे संधाविशेषेष्ठं पुष्पेन सम्पांगम्।  
   शुभ्रां तत्तविकृतं स्त्रियं रमात्ररेष्णल।  
DC, p. 22-23.
the father of its author as well as the Sam-kau
hold that a boy of the same gotra may be adopted
after upanayana even. They go even far beyond in
asserting that one who is married and has had a
son even born to him may be adopted in all classes
since there is no impediment. 133

In Bengal, Benares, Bihar and Orissa it has
been held that the adoption must be before the
ceremony of upanayana has been performed. 134 The
same rule was applied in Madras with the exemption
that if the adopted and the adopter were of the
same gotra, the adoption after upanayana even was
held valid, provided it was made before marriage. 135

133. दुनि ये बांकबांक न गोऱा संस्कृति तत्त्वारणा:।
VM, p. 114.

134. Genga Sahai v. Lekhrat (1887) 9 All. 253
(authenticity of the verses of the KP held
doubtful); Sri Raja Makund Deb v. Sri Jagannath
(1923) 2 P. t. 469; 72 I.C. 230 (123) A.P. 423;
(held the adoption may be made before
upanayana irrespective of whether the cūḍā
is performed in the natural family or whether
the putresti is omitted); Chandreshwar v.
Bisheshwar (1926) 5 Pst. 777 (Condition of
five years held not binding, p. 844); 101 I.C.
289 (127) A.P. 61; Sura Bala Devi v. Sudhir
Kumar Mukherji (1944) 1 Cal. 566.

135. Viranagava v. Ramalinga (1836) 9 Mad. 143 (F.B.)
(rodoption of a sagotra after upanayana held
valid); Pichuvavun v. Subbavun (1890) 13 Mad.
128 (adoption after marriage held invalid).
The adoption of a married person was held invalid throughout India except in Bombay Presidency where it became common and the adoption of a person of any age, after his marriage even and even if he were older than the adopter himself and has had children was held valid. A *sudra* could be adopted at any age, but before his marriage in the whole of India. In Bombay, however, amongst *sudras* also a married person and even one having a child could be adopted. But even in Bombay the Lingayats of North Kanara were not allowed to adopt a married person, for it was held that the law of


137. Balabhai v. Mahadu 48 Bom. 387, 80 IC. 529; (24) A.B. 349; (The adoptee was older than the adopter); Dharma v. Ramkrishna (1886) 10 Bom. 80, 84 (for adoption of a married *asacotra brāhmaṇa*); Gopal v. Vishnu (1899) 23. Bom. 250; Kalgavada v. Somappa 33 Bom. 669 (adoption of a married man having a son. It was held that the son born before marriage remained in the natural family for the purpose of inheritance). Children born after adoption belonged to the family of the adopter.

138. Lingavva v. Chengalammal 48 Mad. 407 (Following the Dattakacandrika, it was held that a *sudra* even could not be adopted after marriage).
Madras state applied to them. In a later case the same court held that the adoption of a married man among the Gaud Saraswat Brahmanas and Daivajna Brahmanas of North Kanara was valid, since to them the law of Bombay only applied. In other parts of India also a customary adoption of a married person was allowed in certain castes.

Under the HAMA 1956, a person who has completed the age of 15 years and who has been married cannot be taken in adoption unless a custom or usage to the contrary as applicable to the parties is proved.

(e) Adoption of Daughters

The Dattakacandrika is silent on this subject. Several substitutes for a real daughter have been discussed by the Dattakamīmāṃsā on the authority of

139. Dattatraja Maruti v. Laxman Jutippa (1942) Bom. 584; 203 I.C. 159; (42), A.B. 260.
141. Nathu v. Hirajj AIR 1955 NJC 5944 (M.Bh.)
142. Ch. II, Sec. 10 (iii) and (iv).
various texts, like the *Rāmāvata*, the *Mahābhārata*,
the *Nir.* of Yāska, the *Skandapurāṇa*, the *Līngapurāṇa*,
the *Harivamśa* and the rest.  
Basing his arguments
on the maxim, 'on default of a principal, a substitute'
it is asserted by Nandapandita that as an defect of
a legitimate son a substitute is affiliated, similarly
on default of a real daughter a substitute like the
soil-born (i.e., wife's) daughter and the rest may be con­
stituted.  
He recognizes the identity of a
daughter with a son and aduces in support of his
contention the rules of grammar, the *Pāṇi* and the
texts of *smṛtis*.  
It is propounded by him that
an adopted daughter, resembling the legitimate one,
is a substitute for issue (i.e., a real daughter).

Reinforcing their arguments with such instances as the adoption of Saítá, the daughter of King Dasáratáha, by King Lomaípáda, and of Prtha, the daughter of Súra, by King Kuntibhoja, the Saúkau as well as the Dhosínáh hold that a daughter may also be adopted in the similar fashion. In the case of a daughter, being adopted from a family having a different family name, her marriage with a man coming of a family connected with the gotra either of her natural or adoptive family is barred. An adopted daughter is held entitled to inherit to the adopter on default of a son and the wife. According to the Dattakamimámsá, the order for succession is the same as in the case of sons.

The adoption of a daughter is not recognized by the Vyavahára-mávyukha. Taking his cue from the prescription regarding the ceremony of investiture of the sacred thread and from the expression 'he is known as the son given' inMenu IX.163, it is held by Milakantha that the adopted son must be a male only.

147. DK, p. 183.

DS III Puürvárdha, p. 162.
and not a girl. This rule has been adhered to by the Indian courts. The dictum of the Dattaka-mimamsa and the Sam-Kau was rejected in Bombay and elsewhere and the V.Mavu followed. Formerly a daughter could be adopted by custom as, for instance, in the matrilinear families of Kerala or amongst the devadasis in South India. But later, the Anglo-Indian law sealed the door on this custom, treating it as obsolete. Under the HAMA, there is no such bar, but only one son and one daughter may be adopted.

148. एकेखर पुरानेको प्रवति न कर्ता। 'स बेगो दानिमा: हुल: ' (मुः IX.16) 

149. Gangabai v. Anant 13 Bom. 690 (V-Mavu quoted preferred to the DM and the Sam-Kau). Adoption of a daughter by a naikin or dancing girl held invalid, in spite of a custom to the contrary, being regarded as immoral - Mathura v. Esh (1880) 4 Bom. 545; Hira v. Racha (1913) 37 Bom. 116; 17 I.C. 834; Ghasiti v. Umrao Jan (1893) 20 I.A. 193, 201-202. For, where the adoption was by a prostitute, who was not a naikin attached to any temple - Manjamma v. Sheshagirirao (1920) 26 Bom. 491, 495. The adoption was valid if it was not for the purpose of disposing of the girl for prostitution - Gangamma v. Kunnammal (1933) Mad. 789. Pannalal:Kumaun Local Customs, for the adoption of girls by custom in Kumaun.