CHAPTER IV

Evolution of Adoption
(a) Sūrūti

The picture of the early Āryan society that the Rgveda and other Vedic and post-Vedic literature presents is strictly agnatic and exogamous. Daughters, on marriage, go out of kinship altogether and it is the son alone who propagates the race. In the later śrāddha ceremony, which was developed from the Vedic ritual of Pindapitryajña pindas were offered to three paternal ancestors only. Even the Gautama Dharmasūtra and the Apastamba Dharmasūtra which came into existence centuries later, do not seem to recognise a daughter or her son as a saṃśiṃda. Males had a dominant role to play in a Vedic family and there are several ṛks extolling the legitimate son begotten on one's own wife. According to Sen-Gupta, the RV does not accord recognition to any son other than the aurasa, i.e., 'procreated by self' or literally, 'born of the body' as is evidenced by the conspicuous absence of any ritual connected with the affiliation of a secondary son in the Grhya-sūtras, although they are complete codes of domestic rituals of the Vedic society covering the whole life of a man from conception to cremation. The rituals connected with the conception, birth and other sāṃskāras of sons in these works, in fact, apply only to the aurasa son. Had
there been a recognised institution of secondary sons, these codes must have given some ritual connected with it. It may be pointed out here that the Gr.sūtras contain rituals dealing with those events which invariably occur in everyman's life as do birth and death, and a sonless man affiliating a secondary son was an incident taking place only occasionally and not occurring in every man's life. Moreover, the practice was not readily acceptable, because, as it will be presently seen, it hardly proved fruitful. Therefore, the Grhyasūtras, specifically detailing a ritual for this purpose, would have served a very limited section of the society which did not think highly of the custom to which only 'the unenlightened' had recourse. Hence, though there is an evidence of the existence of a 'weak custom' of making subsidiary sons, and the datāka in the early, or the ksetraja in the later Vedic society did exist, it had to pass through a stage of evolution before it could first be recognized as a grown up institution in the Dharmasūtras.

2. It is here that the Baud.Gr.sesa, which is considered to be a comparatively late work, gives a ritual for the adoption of a son (putra pratigraha), which is partly a verbatim copy of Varistha's text followed by a brief improvised ritual and a couple of Vedic mantras appropriate to a samskara of an aurasa son.

The institution of the putriki 'daughter appointed a son', or 'her son' had already grown to its full stature before it was found recorded in these law codes and had started vanishing into obsolescence by the time of the Smritis and the commentaries, as will be seen later in the sequel.

In order to understand the extension of the concept of sonship to subsidiary sons, which was confined to the surasa alone in the original Aryan society, we must follow the course of development of Aryan law into definite rules which are found embodied in the manuals of the Dharasutras. The growth of these codes of law was the result of customs developing over a wide area as a consequence of intermixture of basic Aryan culture with that of other races and communities round about Aryan settlements. Evolution of various subsidiary sons as a 'regular institution' seems to be the product of this composite culture. Incidentally, it may be remarked here that the process was also responsible for the development of a common code of law governing the entire community. A text of Vasistha (XVII-12), viz.,

Vahvinam dvadasa hi putrah purana-drstah, assumes great

4. The text as given by P.V. Kane runs as: याबद्ध उत्तेज पुज्रा:

The word purana, here, does not refer either to the extent eighteen works of that name or to the ancient sages as understood by P.V. Kane (HL).
significance in this context. The use of the word *purāna* in this text, which deserves notice, implies that these secondary sons were the growth out of tradition and as contemplated by Sen-Gupta, could not be traced to the original Ārya law. It may, thus, be concluded that the concept of sonship as extended to subsidiary sons had entered into the scheme of kinship from tradition developed under the influence of the customs of the non-Ārya communities who, while being taken into the Ārya fold, were greatly influencing and modifying the customs and usages of the Āryan society. The growth of the institution in its fullfledged regular form had to pass through a course of evolution, though, the seedling had already seen the light of the day in the Vedic period itself.

Of these secondary sons, the dattaka has a chequered history of rise and fall and enjoys the glory of surviving the ravages of time till today. The origin of the institution of the dattaka, though thought to have been lost in hoary antiquity, may well be traced far deep into the very early Rgvedic age. Sage Vasistha, having lost his sons, prayed to the god Agni to bless him with a son, who, in response to his prayer, advised him to affiliate a son by adoption

5. Sen-Gupta, NC: EAL, p. 139.

and the like. But Vasistha insisted on having a son of his own, for, as the wealth belonging to others must be avoided, so a son born of a stranger must also not be accepted; no son is he who is born of a stranger; such a son is only acceptable to a fool and so, Agni must not corrupt the course of his conduct. The sage further adds that a son born of the womb of another's wife, though having filial devotion to the adopter, is not to be contemplated even in mind, as fit for acceptance, since, verily he returns to his own house. So let there come to him a son newly born and valourous who may vanquish the foes.

7. वसिष्ठ अपने मित्र विलोकितः - पुत्र न है देखिता। मैं निर्विवादः - श्रीमती मंकूस भाषी तथा कुरुप यात भाषी निर्दिष्ट। - Durga on Nirukta III. 1-3.

8. पारिष्ठ हिन्दू राजा निर्मितः जनितः पति हिन्दू। न श्रीमती विलोकितः कुरुप यात भाषी निर्दिष्ट। - RV VII 4.7

वर्णोपासना नावलित - Nir III 1-3 on this प्रक्रिया. Durga explains अण्डः as परस्पर-असात्य while Bhagirath Shastri explains अण्डः as क्षण-पुण्य, जिन पिता है क्षण का पाणी न है, i.e., one that does not own his father's debt, implying that the son of other than the self would not shoulder his adoptive father's debt.

9. न तिम पुण्यायणा: भृगुरास्यावृत्ति कथाः।

काव्य विद्याक: पुरस्त स्थला नै वाज्यायोऽस्मिन नाव: - RV II 4.8

न चिम पुण्योपासना: करणा: गुरुलग्निक्षमाय | ... ... 

काव्य विद्याक: पुरस्त स्थला नै वाज्यायोऽस्मिन नाव: - Nir III 1-3 on this प्रक्रिया।

इवेशः-सम्पूर्ण कथाः। - Durgacarya on Nir. here.
The word *grabhāya* has been rendered by Yāska as *grahītavah*, 'fit for acceptance' which is a doubtless pointer to the existence of the practice of taking in adoption the sons of others. The rendering of the compound word *anyodaryah* by Durgācārya as *anyā-jaiveda-sāmbhūtabh*, 'born of the womb of another's wife' and the apprehension that the son so adopted might return to his own house precludes the probability of these two *rk* verses as referring to the practice of *nivoga* and the like. ¹⁰ Nor should one conclude that these *rks* really mean to prohibit the adoption of sons, though it may be conceded that they are incidently intended also to extol the *aurasa*, i.e., 'self-procreated legitimate son.'¹¹ The

¹⁰. The loose and hence misleading rendering of *aṇvōdāra* as 'born of another's loins' by P.V. Kane (HD, vol. III, p. 657) and N.C. Sen-Gupta (EAI, p. 133) has led the latter into erroneously concluding that this text of *Ṛgveda* discloses an awareness of the existence of the practice of recognising ... the *kastrājā* son 'begotten on one's wife by somebody else.' *Udarvah* in this compound word, which may be split into *anvāya* (*javāyah*) *anvāyam va udarāt bhavah*, is only another form of *audarvah* which has much more to convey than its equivalent *aurasa*, rendered as *urasaḥ bhavah 'born of the breast'.* *Urāsaḥ* applies equally to both the male and the female, while *audarvah* 'born of the womb, being in the womb (literally, belly) cannot but apply to the female alone compelling one to faithfully translate the compound word under reference here as done above, viz., 'born of the womb of (the wife who belongs to) somebody else'. In reference to *udarvah* (derived from *udara*), compare *urāvyah*, i.e., 'being in the breast, born of the breast', which is another form of *aurasaḥ* (derived from *urāsa*, i.e., 'breast'). *Udarvah*, likewise, is another form of *audarvah*.

¹¹. यस्ते न कि पुराणम्: ... मन्यता दृढः (Rv VII.4.8) —
न्वस्ते खं द्वनिधिः, न्वस्ते खं द्वनिधिः, न्वस्ते खं द्वनिधिः।

NS III, Purvardha, p.22.
fact that Yāska adduced these two ṛk--verses in support of
the contention that the son belonged to the begetter\textsuperscript{12} and
the firmness of the refusal on the part of Vasistha to accept
a stranger as his own son bear forceful testimony to the
struggle on the part of the ṅaṭaka son to break into the
barriers of strictly purit Śāśāl kinship of Vedic Āryas.
The comparative obscurity of the language of these ṛkṣ also
indicates that the ṅaṭaka was the first among the subsidiary
sons in their onslaught on the Vedic culture. That these
ṛkṣ constitute a sure evidence of the existence of a custom
of adoption, though not much welcome, can also be inferred
from the following perusal of other Vedic texts.

Another Vedic sage Atri gave his only son to Aurava
who wanted to have a son. He (Atri), having become empty,
as it were, by giving away his only son, thought himself
to be destitute of strength, weak and worn out. Then, in
order to have a son of his own, as the story goes, he made
preparations and performed the caturātra sacrifice where
upon he had four valiant sons born to him.\textsuperscript{13} We come across

\begin{align*}
12. \quad & \text{तथाः जनकिः, फ्रण्का लक्ष्मीति दुःखाद्वासरिष्याम्: द्वीयादि } \text{। निर्यङ्ग } III.13. \text{।} \\
& \text{धृति: उत्पादिति: पुत्र हि ति ब्राह्मणसु } \text{।}
\end{align*}

\begin{align*}
\text{चपेडः II 6. 13.5.}
\end{align*}

\begin{align*}
13. \quad & \text{कवित्वत्वा दौशाय पुत्रा मुनिकापापहृ तिरिस्तहृ: मन्यत् नविनोः।} \\
& \text{शिष्योऽगताया धर्म रूपं च चालराधामस्यस्यं तमाण्स्य कर्त्तृत्वं, ततो च तस्य} \\
& \text{पत्नारू कीर्ता क्षत्त्वभक्तं-कृताय, कुञ्जाता, रवःस्यः। इस्य: } \text{।} \\
& \text{TS VII 1.8.1}
\end{align*}
another story in the *Ait. Br.*, where Sunahsepa was affiliated as his son by Visvāmitra and named Devarata with the express consent of his fifty ones with Madhucchandas at their head. But he met with stiff resistance from the rest fifty sons of his who strongly disapproved of their father's action and disobeyed him. N.C. Sen-Gupta contends that 'this is not a story which supports the institution of adoption amongst the Āryas or at any rate, in the form which we find

14. The story of Sunahsepa occurs in various texts like the *Sahih Sr.* (XV, 17), and the MBh., but is recounted in full only in *Ait. Br.*. Adigarta, Sunahsepa's father, sold him off to King Harisacandra to be sacrificed to Varuna in fulfilment of his vow as a substitute for his own son Rohita who was born to the king on his propitiation of the god. Sunahsepa saved himself by his invocations to the god (cf. also RVII. 24, 12 ff) and refused to return to his father whom he accused of crime more heinous than what a sudra was capable of. Upon this Visvāmitra offered to make him his son who asked the former how he, being of a different gotra, could become his son. Then Visvāmitra called upon his sons to accept him as their elder brother. Cf.

Madhucchandas reassures Sunahsepa on behalf of himself and others that they would hold to what their father recognised:

This verse is quoted in *EM* p. 17 (with the reading amah instead of amasi) in support of the contention of those who hold that a man, who already has a real son or sons living, may also take another son in adoption with the express consent of the former.

The words of Sunahsepa deserve notice in connection with the history of adoption, viz., yathālaya ... *upeyam tava putratam* implying 'how he could become his son.'
in the later sūtris. The story of Sunahasepa is certainly not an evidence of the existence of the institution of adoption as it evolved in its regular form in all its details in the sūtris and later legal literature of commentaries and digests, it doubtlessly contains indications of the practice of affiliating as one's own sons those who belonged to others. The story of Atri giving away his son to Aurava positively uncovers a stage already reached in the development of this institution, where a natural father is giving away his real son to the adoptive father, while Sunahasepa is nothing short of an instance of the svavamarjata or the apaviddha form of the adopted son, i.e., 'a son cast off by parents', here, disowned by the father himself by sale.

It must, however, be admitted here that the adoption of other's son essentially meant the admission of a stranger into the family, who offered himself or was available to be adopted purely on economic considerations and expediency which is fairly exhibited, even centuries later, in the endeavours on the part of those who, while interpreting the term apadi in Manu's rule,16 construed it with the mother or the father giving away their son, implying that the parents gave away their son in adoption only in their times of distress. No parent worth the name would give away

his son to a poor man solely with the purpose of providing a sonless man with religious sacrament, especially, when he or she were in a position to bring up their child themselves. Yaska’s derivation of arañah or abāñah. Bhagirath Shastri’s rendering it as apakata-rta and what is contained in the two R̥ṣvedic verses (VII 4.7-8), discussed above in all probability bear witness to the sense of expediency on the part of the adoptee and his parents. He would never own his adoptive parent’s debts and would return to his natural parents on seeing his adoptive parents fall on bad days, leaving them in the lurch inspite of the fact that he was ardently loved by them. It was, thus, found desirable, on experience, that the adopted and other secondary sons should never be thought of as one’s sons, since it was only on seeing a wealthy man that they desired to be adopted. Moreover, the religious efficacy of the son born from the virile seed of others was plunged in doubt, too, since he belonged to him who procreated him. It was why an āravasa son, i.e., ‘a son of the body, or one procreated by self

17. तुस्यः, तुस्यमातिपति \[Nit. III.3.\]

18. The echoes of this opinion against the custom of adoption, progressively reinforced in the course of time, were still found reverberating hundreds of years later in

19. Op. cit. fn. 12, p.57. Also,

ABC 11.2.34-36; Apis 11.13, 6; VDS XVII.9 for the last verse.
on one's lawfully married wife' was eagerly sought for and the adoption of a stranger's son was declared not worthy of being thought of. It was apparently on this count that the custom of adoption did not gain much ground and had to lie low for centuries to come giving way in the Śruti period itself to other kinds of subsidiary sons as the putrika, her son, the kṣetraṅa, the kānina, the sahochā and the like who were the product, among other factors, of the quest for an alternative to the dattaka son as a substitute for the real one.

The Rise and Obsolescence of the Putrika

As noted earlier the extension of the concept of sonship to secondary sons was the result of interaction between the customs of the patriarchal Āryas and those of the matriarchal non-Āryan races. Sonship in the original Āryan society was connected with procreation 'j anvītiḥ putrah' (Nir. III.1), which, on the other hand, created no relationship in a matrilineal society where the son of a damsel of family, no matter how procreated, belonged to the mother and her family. The sons, later distinguished as the Kānina and the putrika, were naturally the product of the adaptation of this custom by the Āryas. The first step in breaking down the strictly agnatic scheme of kinship was the institution of putrika which threw open the door for the admission

20. Supra, p. 54 of this chapter
of the cognates. There was a greater measure of satisfaction, reassurance and comfort in appointing one's own daughter as one's son and treating her son called the putrikā-putra, as one's own grandson. A daughter was as much body-born as a son and her son could as much be treated as an object of affection as was one's son's son. A son of a daughter could by no means be treated as a stranger in the house of his maternal grandfather though, originally, purely agnatic traditions did not entitle him to inheritance and to his admission in the ceremony of Śraddha.

A very obscure verse from Rājveda has been relied upon to trace the origin of this institution wherein the father of a brotherless daughter rests assured after having stipulated with her vahniḥ, i.e., bridegroom that she would be treated as her father's son and that her son would be his grandson. Yāsaka restates an express declaration made by her bridegroom, vṛdha, confirming the agreement. It appears, though the thesis merits a detailed treatment elsewhere, that at the very outset this custom, borrowed

23. [Quoted Text]

Yāsaka explains:

Durga explains the last part as:

455237
from the matrilinear neighbours, was adopted as such without modifications. It may be inferred from Yaska's explanation of the simile contained in AV I.17.1, viz, 'like brotherless sisters (maidens) let all of these red arteries stand still', that the daughter of a sonless man was not duly married off and that she stayed in her father's house to continue the family-line and offer pindas to the deceased ancestors of her father and if at all she was already married, she returned to her father's house to inherit his estate, apparently, if he died sonless. Yaska explains that she propagated her father's family and offered pindas to his deceased ancestors and not her husband's. This leads one to the conclusion that a daughter was a putrike by the mere fact of her being brotherless whether or not an agreement with her bridegroom to this effect had been executed.

24. क्षान्ति यज्ञानं गणयोऽस्मि नृत्यमात्रकृ कः।

अष्ट्रं महानारदाति बनकर्मी॥ AV I.17.7.

which is explained as: "APGMAHAMB HVAUAMAHCABATRAH SAT-YA-TAT-ychaeyo VYASADHANAYA HUKHUKSE.

i.e., prohibition on marrying of a brotherless maiden is implicit on account of the reason noted above, which is explained as:

25. महासै सुधूरित्वा स्त्रीलीगं गतिः प्रवृत्त च।

वायसु पति जस्त्रेव पुजारा रक्षा बीभिन्न विश्रांग्निः अम्स:॥ RV I.1.24.7.

ब्राह्मणाश्रस्य पूजा: पिशूर्यारस्य-पुजास्य सत्यां-काविं पिशुर्य-दानां न पतित्व।

Nir. III. 5. Later Vaa. 17.16 also referred to this practice in similar words: "अष्ट्रं महानारदाति बनकर्कांत्यभान: नृरस्य अस्मै गतिः प्रवृत्त-च।"

26. It would be fruitful to refer, in this connection, to a fragmentary Vedic text, which is attributed to Bhallavins by Visvarupa (Nir. I. 53), viz. 'नृत्यमात्रकृ कः।'
This rule as expressly laid down later by some of the older law-givers was referred to by Gautama and others. She was to be treated as a putrikā if her sonless father chose to do so even by a mere mental resolve. This attitude of the law upset the whole scheme and a powerful reaction was set off against the custom in the Vedic period itself before it found itself recorded centuries later in the dharmaśutras in a fully developed and well-

which expressly prohibits marrying a brotherless girl unambiguously assigning the reason to the practice of treating the son of such a woman as belonging to her father, obviously, irrespective of the fact that there was no stipulation providing so to do.

27. विनापूर्व-प्रथायु पुत्रिक-प्रवृत्तिः। अद्वितीय। घर के माता गर्भस्य संयुक्तः। ॥

Later law-givers like Visnu and others, either by themselves or on the authority of others, made a brotherless girl in fact a putrikā.

28. The apprehension that the daughter of a sonless man was likely to be treated as a putrikā made the lives of such girls gloomy. There are several instances in the Rāgveda showing that brotherless maidens, failing to find husbands, had to stay and grow old in their father's house with their splendours lost, अन्न-लक्ष-शोभ-बाल-माता ॥ R.V. II.17.7; also cf. R.V. IV 5.5. Yaska adduces AV I.17.1 (fn.24) and a fragmentary pk (fn.26,p.63) in support of his rule that brotherless maidens must not be chosen as brides. The fury of this reaction as expressed in various injunctions against marrying such damsels remained unabated from the time of Yāska and the dharmaśutras down to the Suptā: ॥

Gautama's halting recognition, which regained force later, of putrikā as a dāvadābandhaya, is attributed to this opinion held by some of his forerunners (Sen-Gupta: Ibid, p. 145).

Maṇu enjoins that one must not take a bride from a family which has no male issue even if the family were highly rich: ॥

कालापि सम्बन्धमिव गौरिणिकवर्गमात्रः। अस्मिन्न्य वनमानी वियोगिनी परिकृपियसः।

.... तिष्णुष्ण ो.... व ॥
regulated form of an institution which could not withstand the ruthless on-slaughters of this reaction, in spite of various remedies \(^{29}\) till, as a result of which, the daughter and the daughter's son entered into the legal scheme of kinship in the ārya law first by the adaptation of some non-āryan practice in the modified form of Putrikākarana and gradually by the elimination of the formalities until the daughter per se became entitled to inherit \(^{30}\), so that

29. In order to counter the evil effect of this reaction, a regularly married daughter could be made a putrikā only on express stipulation between the father and the prospective husband of a brotherless maiden so that on a clear understanding he would have options to marry such a girl of.

A text from Brahmapurana is highly revealing, if studied in this context, which makes a provision for witness of the king (illustrative of a court of law) and other relatives:

In addition to this, efforts were afoot to treat a daughter qua daughter - whether appointed or not appointed - as an heir since the ancient times, to which Nīr. III, 4-5 bears unambiguous witness, down to Manu (IX.130, 132) and later Sūtā-s. Again, the practice of treating a daughter as an appointed son by the mere fact of her being brotherless instead of being discontinued, proved conducive, in conjunction with the above two factors, to eliminate the distinction between a putrikā on the one hand and any
neither the putrikā nor the putrikāputra find any place in Manu's enumeration of twelve kinds of sons.

(b) The Dharmaśūtra-s

There is a great yawning gap between Vedic Samhitās and the Dharmaśūtra-s. Meanwhile, customs had been developing over a fairly large area widely separated in time and space before the extent dharmaśūtra-s came into existence. Law, as propounded in them must have passed through a pretty long course of evolution as is borne out by the fact that they themselves cite several authors who had gone before them. The Āryan concept of sonship, which was originally confined to the sūra or alone, was gradually modified by the inclusion of kṣetraśī, putrikāputra and kāmini under the impact of non-Āryan customs and it was further extended to other sons born of the women of the family, once it ceased to be essentially connected with procreation in lawful wedlock. Sen-Gupta asserts that the concept was also later on extended to sons of strangers born out of the family. Thus, as many as twelve kinds of sons had already come into existence before we embark upon the era of the Dharmaśūtra-s.

other regularly married daughter on the other and, hence, a daughter as such - appointed or not appointed - took the place of a son and her son became the heir and kinsman of the mother's father. (cf. Sen-Gupta, EAL, p.145).

30. Sen-Gupta, EAL, p. 149. Also see his article on Putrikāputra in JRASB Vol. IV 1938, No. 1.

It must be pointed out here that while the theory evolved by Sen-Gupta is certainly very plausible and it is very difficult to disagree with him, it is difficult to completely agree either. The growth of the putrikā, her son, the kāṁga and possibly of some others, must have been the result of the influence of the matrilinear culture, but the dattaka and other sons of his class as well as the kastraia and possibly the gudhada, on the other hand, do not owe their origin to this influence. The dattaka and the like were the result of merely the search for an alternative to the surasa where even the kastraia (in the family) failed, while the latter was a part of the Vedic culture itself. It has been asserted above that a Vedic family was male-dominated and it will be seen shortly that a woman given in marriage belonged to the family and not to the formal husband alone. Thus the formidable foe that the dattaka had to encounter was not only the putrikā, but the kastraia also who, even as the putrikā was fading into obsolescence, re-emerged with redoubled strength impeding the growth of the institution of the son-given, till with the addition of new dimensions to the concept of morality, the kastraia also became obsolete giving place to the dattaka as the only alternative to the surasa by the time of the later smṛti-Ś.

Before further tracing the history of development of the dattaka son, it will be useful to analyse the nature of various sons. A look at the classification of sons as
given by Vasistha shows that there has been a struggle for supremacy between one class of sons and the other. In the first class of preferred sons, who are heirs and kinmen, the following are included - 1. Aurasa,
4. Svayamputara, 5. Apavādha and 6. Südrāputra. Sen-Gupta points out that the set of preferred sons, who are illegitimate save the aurasa, are recognised as belonging to the family because they are born of the women of the family and on the principle of attributing paternity to a member of the family. Thus, the kṣetraja is looked upon as the son of the mother’s husband, the kāṇina and putrikā-putra as sons of the mother’s father, paunarbhava as the son of the person to whom the mother belonged and gudhotpanna, whose begetter was unknown, was the son of the mother’s husband.

32. शर्यु दूर्बा परिणां वर्णिनीं न कुष्ठैः दागायः स्वादैि (सलील-रचयीति-स्मार्यमण्डलावचिकुष्ठापुजा:) तथा नामं हरेऽः।

q. in VR, p. 549.

33. The son of the putrikā is not mentioned as one of them. The compound word putrikā-putra is resolved in two ways, the first, गुरुः (a कुष्ठिययः compound) ‘the daughter herself appointed as a son’ and the second, गुरुः (a दत्रयै य compound) ‘the son of the appointed daughter.’

This analysis will further make itself interesting if the definitions of various sons as given by Baudhāyana and, say, by Yajñavalkya are closely examined. Interpreting the definition of putrikāputra, as given by Baudhāyana in the light of his definition of kārttāna, Sen-Gupta very convincingly concludes that kārttāna is the son of the girl who must be both esamskrta and anatisrata.

35. कविरथयं नामानुसारितं, तत्सम: पुत्रिका कुत:।
निर्जनं हौस्लव दु: कार्त्तर्करणं वा।।

40. नूते प्रकरणं उपस्थलं पुज्यं तत: पुत्र:।
कार्त्तानं कन्या कार्त्ताक मातायम:।।

36. ब्रम्हुगण या वृत्तिरिति जातं पुत्रिकापूत्रं तद्या वृत्तिकृत ।

II. 3.15, i.e., 'a son begotten on the daughter by approaching her (with her father’s consent) is a putrikāputra, otherwise daughitra.'

ब्रम्हुगण या वृत्तिरिति जातं पुत्रिकापूत्रं तद्या वृत्तिकृत।।

i.e., 'a son born of a maiden, whom one approaches (or with whom one has intercourse) and who has not had the samskara of marriage and is not given, is a kārttāna.'

(Samjñachātra seems to be a better reading grammatically as well as exegetically).
i.e., unmarried and ungiven (not appointed). On the other hand, if she was unmarried (asāmskrta) but given (atitarstā) for the purpose of raising an offspring by her father, she would be a putrikā and a son born of her, a putrikāputra. Unless she was so approached the son born of her would be dauhitra (son of a duhita, i.e., daughter). If the son is begotten on a married woman, even though she may be given for the purpose, he would be ksetraīa or gudhotpanna according as she was approached with the consent of her husband or otherwise.

Sahoda immediately follows the preferred sons in Vasistyha's list, but is the first among the sons of the lower category. He is conceived in the house of his mother's father like the kaniṇa, but is born in the house of the man who marries her later, and belongs to him like the gudhotpanna both of whom are the product of the mother's illegal connection; she is not assigned to raise issue in either case. Saudra (also called niśāda) is as much a legal son of a man as is paunarbhava except that the

37. रमणीयां दान-प्रियाति समि विचन्ते न गुष्ण: | निःक्षेत्र III. 4.

-Nir. III. 4, where Yaska refers to the view that it is only in relation to the women that the usage of dana, yikrava and aśigarga, i.e. giving (in marriage) giving for a consideration and giving (perhaps with permission) is recognised. Atigarga, here, surely does not mean to desert a woman in wilderness. On the other hand, it points to the custom of leaving a girl free to be approached by a man for the purpose of raising an offspring for her father.

38. "साज्ञा सुताः सः कृतीताः यापि यापि ता यानां सम्पूर्ण चरोप: सः लाभः | पुत्र दुहिता-सिद्धां लोकां गुष्णः | II. II. 2. 22.

former is begotten by a man of a higher class, on a *sudra* woman. It is perhaps on account of the social opprobrium attached to the former that he is ranked very low, practically last of all. It may also be because of this reason alone that the *paunarbhava* son also has a troubled history down the ages till in the modern law the distinction between the *surasas* and these two kinds of sons disappear provided their mothers are lawfully married to their begetters. If this *Sudra* woman is not duly married, the son born through carnal lust is *parsásava*, i.e., 'like a corpse'.

The *dattaka, krīta, svavandatta, apavidha* and *krtrima* (the last one not mentioned by Vasistha) are sons of strangers born out of the family and affiliated as one's sons under various circumstances. A son given away by both or either of the parents is a *dattaka* or a *krīta* according as he is given as a gift or for a consideration. On the other hand, he is a *svavandatta* or an *apavidha* son according as he having been orphaned or abandoned by his parents, offers himself of his own accord or is picked up by the adoptive father himself for affiliation as his son. In both these cases the real parents are not directly associated as they are in the case of the *dattaka* and *krīta* sons. *Krtrima* is a son made by a man himself. He seems to have not been included by Vasistha in his list perhaps on grounds of very flimsy distinction of circumstances between him on the one hand and the last two of these four on the other.
According to Baudhāyana a **krtri**a son is the one who is of the same caste and willing to be affiliated.\(^{40}\) And it goes without saying that no one can be affiliated as a substitute son unless he is willing provided he is capable of such discretion. A child, who has neither of his parents (nor a guardian) to give him away in adoption, does not lose his right to be given, especially when he is willing and understands that his adoption will be conducive to his welfare and the adopter himself intends to take him in adoption.

**The Rise of the Patteka**

The first reaction, as a legal record, to the revolt against the institution of **putrikā,** and other sons of the women of the family witnessed in the period of the **śruti** literature, is found in the **Gṛṇa**\(^{41}\) which recognises the adopted son and two others of his class as **śriyakhaṅkhāḥ** in preference to those of the former class except the **kaśtriya.** It, apparently, implies that he has by this time, entered into the legal scheme as an

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40. एक्षंप्रभारम् तवं कुर्यै भ्रमितः।

41. गृणा वैराग्यः-प्रागुस्त्रयितास्मानम्-प्रक्षिप्ना विस्तः-नामः। शामी-नाम-विविधः-पुनरैवः -प्रक्षिप्ना-खयत्त:। गृणा वैराग्यः।

heir and kinsman while, the other hand, the son of the putrikā and others of her class are recognised as only kinsmen and not heirs who take only the fourth share, obviously, on default of the former, as maintenance.

42. The kāarinā and others have been described here as takers of gotra i.e., they are kinsmen of the affiliating father. The katra and the rest, who have been described as inheritors of property, must also be treated as kinsmen by virtue of their being classed with the real son. On the superficies, it may not be clear what exactly Gautama meant by riktha-bājah. But it will be proper to take it to correspond to bandhu-davyāda of Manu, Devala and others, and it may, therefore, have two imports: (i) 'they inherit the wealth of their father and his kinsmen' and (ii) 'they inherit the wealth of their father alone and no one else'. It may be inferred from Manu IX, 157-60 that bandhu-dāvāda implies that 'they are kinsmen as well as inheritors' and, adavādbandhava means that 'they (i.e. the other six) are non-inheriting kinsmen'. It may be inferred from Manu IX, 157-60 that bandhu-dāvāda implies that 'they are kinsmen as well as inheritors' and, adavādbandhava means that 'they (i.e. the other six) are non-inheriting kinsmen'.

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A text of Kautilya agrees with the second interpretation given above and is treated as most scientific, based as it is on the sound principle of blood relationship.

But the law in actual practice is different. Devala's text q. in the Dāyabhāga (X, 7), p. 147; the VR, p. 550 and the DC p. 40, clinches the issue that the term bandhu-dāvāda and hence, the riktha-bājah (k) has been used in the first sense. He says that six of them inherit to their father alone, while the other six also inherit to his kinsmen. The use of the terms bandhu-dāvāda, inheritors to the kinsmen (also) and garudi-dāvāda, not inheritors to the kinsmen' by Harita is confirmatory (q. in DC, p. 39). Hence, it may be concluded that in Gautama, the dattaka and other preferred sons of his class inherit not only to the adopter, but also to his kinsmen and are related as insmen, whereas the other
The Rise and Decline of the Kaetraia

There is no gainsaying the fact that the dattaka and others are sons entitled to heirship only on failure of the aurasa, i.e., the real son. Thus, the dattaka here is treated second to none but the kaetraia for factors to be looked for in the history and nature of the latter. As it has been noted earlier, the purely Aryan concept of sonship was related to procreation. It may be noted against this background that the kaetraia, originally, had a closer affinity to the aurasa than even the putrikā. The son begotten by one's own real brother on one's wife had a closer kinship than the one begotten by a stranger.

six of the inferior class do not inherit either to the adopter or to his kinsmen; though they are treated as belonging to the family of the adopter (his kinsmen), they are not inheritors; they only partake of a fourth share.

43. This attitude is fairly echoed in a modified form later in Manus's rule where the declares that among brothers born of the same father, if one has a son, all of them are regarded as putrikā, i.e., men having a son. Of course, the commentators have turned this and the following verse (IX. 183) to use to lay a prohibition on the practice of niyoga and to lay down that such a son would offer the śraddha to, and inherit the property of, all the brothers and that, so long as it is possible, he should be preferred in the matter of adoption. Vide Jha, G.N.: IILS, pp. 234-35.
on one's daughter. The grandson of a man begotten on his daughter-in-law by his one son (to whom she was lawfully married) was as good as the one begotten on her by his other son, who was treated as a second husband of his deceased brother's wife, perhaps even during his lifetime as will be presently seen, but the son of a putrikā, on the other hand, begotten by a stranger could stand no comparison. Males had a position superior to the females in the Ārya social scheme; the family belonged to the males and one is inclined to believe that a woman was given in marriage, not to an individual but to the family and all the brothers were equally regarded as her husbands. In the course of time, the relationship narrowed down and the concept of second husbandship got confined only to the brother-in-law (devāra) of a woman whose legal husband had

44. Apastamba refers to a school of law which held that

'पुत्रिकाः नि सति प्रतीकोऽऽ तुपदियन्ति

i.e., 'a woman is given to a family.' It may be assumed that in the most ancient times there existed a state of society when a bride was given not to the husband alone but to the family of the husband (cf. Kane, P.V.: Hist. of Dh., Vol. III, p. 644) and she belonged to all the brothers equally. Even in the case of a changed circumstance of distress such as the demise of the husband, it may be argued, the situation seems to have remained unchanged and she continued living with the rest. But with the gradual withdrawal from promiscuity in the family it was only on the death of a brother that the other took the family property and the widow of the deceased (cf. Kane, P.V.: HD, p. 606).
A woman, whose husband died issueless, could obtain a child by getting her brother-in-law to procreate on her if she so desired. Later, she could bear a child by her brother-in-law only if appointed to do so by the elders in the family. Under the changed circumstances, a widow turning to her brother-in-law on the death of her husband. This verse is evidence of the custom of espousal by a widow of her brother-in-law as her second husband. Devta in this verse has been explained by Yaska (Nir. III.15) as dvitiva varah, i.e., 'a second husband'. It does not point to a secret relationship between the two as a superficial reading of the other simile contained in the verse, viz., marum na yaga, i.e., 'as a damsel shares a bed with her lover (lit. 'man') might suggest. The latter simile, as a matter of fact, refers to the practice prevalent among the matrilineal societies where a young girl was free to invite a young man to procreate on her. The verse does not contain a reference to the institution of nityogta either, as understood by Visvarupa (on Yaj. I.69) and Medhatithi (on Manu IX.66), for, no such compulsion is implied here as, for instance, is indicated by the term anatvalipauh and the like in the rules about nityogta; cf. also Patañjali Yoga Rahatra 8.54. It appears that a widow could always turn to her brother-in-law for this purpose if she so chose and take him as her husband, but when she had a recourse to this practice only when urged by her elderly relatives and not of her own accord, she could have sexual intercourse with him only during the menstrual period. The denial of recognition to an offspring born of a woman who was not appointed, evidently, points to the fact that it was a much later development evolved only to curb the freedom of the widow in this regard:

Also cf. Manu. IX.59.
stances and under the influence of the customs of the matrilineal neighbours the concept was extended further and a widow could obtain a son, on appointment by the elders, obviously, on failure of a brother-in-law, from a sapinda or a sankara or even a man belonging to a different caste, though of a higher class. As a natural development a living man's wife could also obtain a son on the same lines if he himself could not procreate on account of his being impotent or suffering from an incurable disease.

47. There is evidence in Brahmanurana to show that there was a time when the kshatriya class was constantly perishing either because they were constantly engaged in wars or because they were cursed by the sages for their misdeeds:

48. There is evidence in Brahmanurana to show that there was a time when the kshatriya women had to step out of the confines of their families and class to approach brahmans to procreate sons on them, cf.

q. in Apar., p. 787, VR, pp. 575, 577. Under these distressing circumstances the kshatriya women had to approach brahmans to procreate sons on them, cf.

q. in VR, p. 555.

Also MS, IX, 59, 190.

48.
Notwithstanding the fact that the institution of niyoga, appointment of a widow or the wife of an important or permanently diseased person to obtain a son from a person other than the real husband was widely accepted, at the same time it did receive a left-handed compliment, too. The religious efficacy of a son obtained in this way was considered doubtful and he was ultimately classed with the garhita 'condemned' sons. Like all other secondary sons except the dattaka, the ksstraia was also prohibited in the Kali Age.

49. *śrīvāmā: punānuśāt dharma kasyadane!
   kṣaṇa bhāgya matraśaśānaśrīmānaśaṁ kaya!

   Ap DS (II.6.13.6) also quotes these views of Aupajanghani
   dharma nayet punānuśat kasyadane! Maia p. 41.13;
   kṣaṇa bhāgya matraśaśaṁ kaya!

50. *śrīvāmā: punānuśāt dharma kasyadane!


51. *śrīvāmā: punānuśāt dharma kasyadane!

   Saunaka, N, AP, KP, quoted by Aperärka, p. 739;
   Sm-c, p. 669, Prāṣaramadhavīva, p. 352.
As it has already been pointed out, there has been a great struggle for supremacy amongst various kinds of subsidiary sons which can be witnessed as we further trace down the history of the development of the adopted son. By the time the Baudhāyana Dharmasūtra was being written, the nutrikāputra once again pushed back not only the dattaka, but also the kṣetra. However, the dattaka managed to retain his position as a legal heir and kinsman which he lost too by the time Vasistha was writing his Dharmasūtra. He was pushed steeply down the scale to be listed at number eight in his list of twelve secondary sons. He could only retain his status as a kinsman now. He not only lost his position of legal heirship but also his social status in as much as he was preferred only to the sāudra son, if as explained above, the kṛita, avayavādatta and avavidha sons were regarded as only forms of the dattaka son affiliated under different circumstances. He could take the estate of his adoptive father and offer pānda and water to the latter and his deceased ancestors only if he had no heirs of the preceding kind.

52. श्रोतं प्रविष्कारणं दौल्यं दक्ष्ट्रतिनित्यं।
मुद्धं सेवपदिन्तं व विस्मयं नावते ॥
काशीं व सब्जोंं व स्वीरं पौनपावं ततात॥
संयंतं व गोपं व (लोकनाथस्य) 
गृहात्मानं प्रवत्तात ॥

Also cf. उत्तमादित्यम् ।
Visnu q. in VR, p. 567.

53. Supra fn. 32, p. 68.
Vasistha further lays down that if, subsequent to the adoption of a son, a legitimate son is born, the former would be entitled to the fourth of a share (viz. if the property is a large one); and only if the property has not been employed in auspicious acts.\textsuperscript{54} \textit{Visnu Dh.S.}, which has a mixed character of a \textit{dharmasutra} and a \textit{smrti}, coming as it does in the period of transition from the former to the latter, does, in no way, accord the \textit{dattaka} son a status better than was done by Vasistha except that he is now regarded as preferable to the \textit{saeduha} son instead of the \textit{sudrapputra} whom he deletes from his list of twelve sons and adds the \textit{krttrima} instead.\textsuperscript{55} He is entitled to maintenance alone and will inherit the estate only after each succeeding the preceding one is exhausted. The one who succeeds to the estate will be responsible to support the rest.\textsuperscript{56}

\textbf{Formation of the Institution of Adoption}

The institution of adoption was, no doubt, in a very early stage of its development in the \textit{sruti} period. But by

\textsuperscript{54} \textit{Jha, G.N.: HLIS, Vol. II, p. 275;Wiki, p. 152, 252-53, \& p. 41.}

\textsuperscript{55} \textit{Visnu q. by VCInt., p. 232; VSa, 14.1-7.}

\textsuperscript{56} \textit{Visnu q. by VCInt., p. 231; VSa, 14.1-4.}
the time of the Dharmasūtra-s, the son given had already assumed overwhelming importance so that only the kṣetraśa stood between the suresa son and the dattaka himself as in the Gautama Dharmasūtra and, later, was pushed back only one step by the addition of the purikā's son in Baudhāyana's list of sons entitled to inheritance and kinship. It is rather strange, however, that these available dharmasūtra texts hardly contain anything about the dattaka son, except his name or the definition, as in Baudh.Dh.S. II. 2.3.20 and Vis.Dh.S. XV. 18-19. Āpastamba does not even recognise any secondary son - not the dattaka even. The idea of sale or gift of a son as property was simply obnoxious to him.

Although the Vas.Dh.S., does not recognise the dattaka son as a dāvadānabharaya, its text on adoption perhaps enshrines a tradition of the first recognition of the dattaka son. It is looked upon as 'one of the

57. Supra fn. 41, p.72 and fn. 52, p.77.
earliest texts to dilate on the rules about adoption. In sharp contrast to what Āpastamba holds, Vasistha assigns a natural reason to invest the mother and father with the right to dispose of their son as a gift or for a consideration or to abandon him. He adds, however, that no woman, had the right to give or receive a gift of a son except with the permission of her husband. Then follow the sūtra-s laying down rules regulating the act of adoption. The Baud.Gr, a supplement appended to the Baudh.DhS, which is ascribed to Baudhāyana (iti ha smāha Bhagavān Baudhāyanah) but, which is said to be a late work, has the first five and the last of the sūtra-s (II.6) contained in Vasista's text under reference here. Laying down the rules about adoption (ātathā putrapratigrahakalpand vyākhyaśayamah), it also gives a brief improvised ritual and a couple of vedic mantra-s appropriate to a sāṃskāra of a legitimately begotten son including a vyāhṛti-homa already prescribed by Vasistha in his said text on adoption 'which is merely an auspicious ritual in almost every religious ceremony and has nothing specifically associated with the taking of a son in adoption.' A significant development in the Baudhāyana Gṛhyasūtrasūtra is that it attempts to make the act of adoption a legal record by making it obligatory to involve the king or a court of law and inviting other

relatives to witness the transaction. The Vasistha's text also makes a provision for this.

These dharmasūtra texts bear witness to the attempt on the part of Hindu jurists to adapt the law to the changing needs of the society as is the case with the law of any section of human civilization at any stage. The inclusion of the word sadṛṣam is the definition of the kṛrtirṣa son (BPS II, 2.3.21) and of adhurābhandhava and bandhusaṇikṛtṛtaevav in Vasistha's text on adoption is an index of the emphasis being laid on the consanguine propinquity of the adoptee to the adoptive parent to lessen the impact of admission of a stranger in the family. This rule was later made obligatory for compliance in the orthodox revival in the period of ṣaṁṛti-s and the digest failing which the adopted son was not entitled to full rights of a natural son. In order to authenticate the execution of adoption it was required to be brought to the notice of a legal authority.

It has been seen in the case of Sunahśepa that affiliation of a secondary son by a person already having a real son or sons, only served as a cause for recour and

63. का वनप्यां मध्ये राजकि जवाहर परिपतद गानारस्ये —— BPS III. 64.

64. विदम् राजकि लिकश VDS vide DC p. 15; DM 150 with slight variation; Also cf. 'क०भागायं सवारं गामनाः सर्वादत्त्वकायं दि' (काव्य) which is explained as 'क०भागायं गानन्तरं गान- भागायं' (DM p 143) and as 'क०भागायं गानन्तरं' DC, P. 13.

resentment in the latter, for it amounted to an interference in his or their right to heirship. The feeling of misery attendant on giving away of one's only son is illustrated by Atri's giving away of his only son to Aurava. Hence, the authors of dharmaśūtras like Vasistha and others in the times to come enjoined that no one, who had a real son living, had the right to affiliate a secondary son of any description nor could the gift of any only son be made or received. Again, if, after the execution of an adoption was complete, a real son was born, the adoptee or any subsidiary son, except the putrikāputra who was regarded religiously as efficacious as one's grandson, could not inherit equally with the auras. Thus, the text of

66. कपुरहिण ज्ञ: आगो: न: कान्तु याशुः ताहुः प्रत्यक्षः।
Vasistha quoted by VR, p. 583. The same verse occurs in MS (IX, ".), q. in DM, p. 15 DC, p. 2.

67. न तत्र दु:ः स्वाभ मेत्रित्वतपूर्वः।
Vasistha, 15.2, q. in DM, p. 111.

68. पात्रीध पुत्रिकापुत्र: तै: प्राप्तिकराहुर्मानोः
विश्वासविधा वृद्धजातो व तस्मात् समपरिवृद्धिः।
Vasistha q. in VR, p. 593.

69. तत:प्रत्यक्ते प्रतिपालितते जैस: उपपद: स कल्लग्नय: नागी नवाद्रि
(v.1., योः स्वाधिः) - Vasistha
q. in Aparārka, p. 739; Mit., p. 700; VR, p. 544; IC, 24.1-6, V.1nt., p. 234; VSt, 15.1.1.
Vasistha opened the door for a host of legal literature to grow around the institution of adoption which was still in its infancy in the era of the Dharmaśūtra-s.

(c) The Rāmāyaṇa and Mahābhārata

There is a whole history of growth of legal literature between the śūtra works and the extent metrical smṛti-s. There is an unmistakable evidence of numerous works written by other authors, which are either lost almost in full or are available only partly in the form of excerpts or as referred to in other works. In addition to these, there is also a good deal of literature like the Rāmāyaṇa and Mahābhārata, Arthaśāstra and Purāṇa-s which allows an insight into the stage reached by the society in the evolution of its various institutions. Although these can, by no stretch of imagination, be termed, properly speaking, as legal codes laying down rules of law, they have an important bearing on the social political and legal institutions, e.g. a substantial chapter in Śāntiparva deals with politics.70

It may, however, be asserted here that the Rāmāyaṇa and Mahābhārata do not have anything tangible to offer to regulate the law of adoption and whatever evidence is found in them can by no means be regarded as a systematic treatment of the doctrine. The sporadic references in them only

serve as an evidence of the prevalence of the custom of
adoption, which, later, had an indirect bearing on the
evolution of some of the regulations of the law of adoption.

Bharadvaça, son of Brhaspati is referred to as having been
adopted by Bharata, son of the celebrated king Dusyanta. 71

He was a brahmana who became a kṣatriya on his adoption
and was treated as a son of two fathers, the adoptive and
the natural. 72 It was perhaps with reference to this
instance that the term sadhisam in Manu IX.168 was inter-
preted by Medhatithi as meaning 'similar to the adopter in
qualities and not in caste' and so the adoption of a kṣatriya
by brahmana was allowed by him. 73 The Ramāvana has a
reference to the adoption of Sāntā, daughter of King
Dasaratha, by Lomapāda while the Mahābhārata refers to
Pritha, daughter Śūra, as having been adopted by Kuntibhoja. 74

Later, the Līlā (pp.230-34) the Saṃkṣet (p.168) and the Dharmasindhu relying upon such instances as these held that even
a daughter may be adopted.

72. तवाहु पिताह भरदवालो आलयावालान्त्रियों नावेः। दिविव्यासनामामाः
स पूनं विदितसक्तः वै। 


73. सत्तुं न जातिल; सि ताहित; बलाकुक्षुण्णः। नाथियां दिररिप ब्राह्मणवि
dविदै कुम्भः।

विष्णुदिनां कर्मान्त्म क्षमान्त्म ख। तवाहिनि देशेवसुंदरस्वरूपयु=उजवाहिनि
ना क्षमाजातीय स्व।

DS II Purvardha, p. 156.

74. Rāmāvana, Pālakanda, Adi, Bh., Pāli P. 111.2-3
(chap.104 of cr.ed.). For the extract from Rāmāvana vide Līlā, pp. 225-26. The Līlā (pp.230-34) also quotes
passages from the Śāndhā S. Linga P., Hariyānsa and
Adiparva.
The Adiparvya gives a list of twelve sons and the dattaka is placed seventh in the hierarchy. He is treated better here than he was in the VasisthaDharmaSutra in as much as he is preferred to the sahodha who is relegated to the eleventh place. He had yet to reckon with the formidable competitors, the putrikāputra, the kṣetraja and almost the whole of their clan. The Meha bhārata is replete with the cases of nivoga and the justification of the institution whereas the dattaka son hardly receives any attention.

P.V. Kane notices as many as twenty sons mentioned in the AruṣāsanaParva and a peculiar terminology employed in several cases. All of them have to be recognised as sons and the status of sonship cannot be denied to them. The sāmakārca have to be performed even for the kārīna and the adhyūdha.

75. स्वयंतुः प्रणितवर्ष पारितिश्वय यः स्रवः ।
पौन्नवस्यकानेन स्वरिणया यथा बाली ॥

76. Adhidarva 55-103,105,120-121, etc.
78. MBh. (AmuP) 49.11.

*P.V. Kane thinks that pranīta, parikrita and svairinīputra correspond to putrikāputra, kṣetraja, gūḍhaja respectively and takes īnatireṭah as an objective of sahodha and hinaṇavardhana as saudra. HL, Vol. III, p. 645.*
(i.e., sahogha) sons as if they were one's sons and if a boy is abandoned by his natural parents whose identity is not known and is brought up by another, he belongs to the caste of the man who brings him up.

(d) The Smṛti-s

While we embark for the era of smṛti-s such literature is noticeable as is known as the arthasastra which, though it treats of the political organisation of society and administration more than it does of the legal institutions in particular, has influenced the legal history as far as it goes. The oldest among these is the Arthasastra of Kautilya which is followed in its school by works like Kāmandaka's Nitiśāra and the Śūkra-nīti. Kautilya recognised the authority of the dharmaśāstra and law on some topics in his Arthasastra is more developed than in any of the dharmaśāstra-s. The school did exert powerful influence in some parts of India, but it decayed in later times leaving the field clear to the dharmaśāstra as is evidenced by the fact that the great commentaries and the nibandha-s of the middle ages, which laid down the practical law based on the dharmaśāstra, hardly refer to the Arthasastra of Kautilya.

80. Ṛṣh. (Arup), 49.20-21.
The law of inheritance amongst various sons seems to be arbitrary and often contradictory in the dharmasūtra texts down to the smriti-s where as it is based on the most scientific principle in the Arthasastra of Kautilya. According to him a legitimately self-begotten son alone is entitled to inherit to his father as well as to his kinsmen, while on the other hand, sons begotten by others inherit only to him who affilates them by performing their sacramental rites and not to his kinsmen. On the birth of a legitimate son, those only, amongst the secondary sons who belong to the same caste as the father, receive the third of a share while those not belonging to the caste of the father are only entitled to food and raiment. The son born to a Brahmāna of a kṣatriya wife, and that born to the kṣatriya of a Vaiśya wife, are 'of the same caste as the father', whereas, if the son is born to a Brahmāna of a Vaiśya wife, or to the kṣatriya of a Śūdra wife, such son is asavarna, i.e., 'not of the same caste as the father.' It may be inferred from his definition of a savarna son, i.e., 'one of the same caste,' that a son born of a Śūdra wife to a member of a regenerate class is not recognised by him even for the purpose of maintenance. He is also not included in his enumeration of secondary sons. In the list

82. वहयत: विकृतम्-हुयात्तं च दायाद्: | पराहत: संस्कृतम्
न वस्तुन्तम् |
- Arth. p. 41.

83. बोधो हृदयं लयाण्यमुक्तियाकारः अर्थवणां च शास्त्रां चातुर्ज्ञमिव: |
वाचन नातिकारसानां पुनः संकृतं: लयाण्याः असंकृतं: |
- Arth. II, p. 42.
of twelve sons as given by him, the son of an appointed
daughter is treated by him as equal to the real son,
perhaps because, by this time, the purpose served by him
was the same as done by the legitimate son. The son-given
is not accorded a respectable place in the hierarchy of
the secondary sons and is listed as ninth. He is treated
as equal in character with the son of a remarried woman
who is placed eighth in the list. It may be concluded
that if a real son is there and the division of estate is
made during the lifetime of the father, each of the
secondary sons belonging to the same caste as the father,
receives the third of a share and those not of the same
caste receive only maintenance. If the division is made
on the death of the father each succeeding son of the same
caste will inherit the estate on failure of the preceding
one and will be responsible to maintain the rest. It
may be noted that the definition of the dattaka is essentially
the same as given by Manusmrti.

84. 1. अयं जात: क्रान्तिकायम् तृतीयः। 2. तैन हुल्लो पुनः पुत्रिकापुजः।
3. लोको वा व्यायामवा वा विश्रामके वैज्ञान: प्रजा: पुनः।
4. तत्स्त्रामां वन-पृथ्वी युद्ध गुङ्गालुङ्गा युज्य। 5. वन-पृथ्वीस्य: कविविदः
संस्कृत: पुनः। 6. कश्चां रूपां: कानोः। 7. क्रान्तिकायम् सारोः।
8. पुनर्प्रतां: पाल्यवनः। 9. तत्स्त्रामां मातापितृक्षास्माथि वदः。
10. सर्वं क्रान्तिकायम् पुनःपार्ज्जत्: उपल:। 11. पुनः विद्यमणे: क्रान्तिकायम्

85. For partition amongst the sons of the same caste and
those of different caste, see Jha, G.N.: HLIS, Vol.II,
pp. 251 ff.
Like the dharmasūtras, the smṛtis hardly contain a detailed treatment of the dattaka and in some cases the definition alone is given and his name mentioned amongst the twelve kinds of sons. There is a lot of confusion and arbitrariness about the place and the rights of various sons. One may find oneself all at sea when one peruses these codes as a class to identify the stage of evolution of adoption in this period.

It may be pointed out here that these codes were not really all new embodying only those customs and laws which were in vogue at the time when they were being compiled or written. The leading and perhaps the oldest among these is the Manusāṁhitā which, as Sen-Gupta thinks, was the compilation of all known texts, which, from the most ancient times, had been current in the name of Manu whom tradition from the Vedic times regards the first law-giver of the human race. It was the result of an attempt to lay down a complete code of laws on the basis of such known and existing texts of Manu with additions from the Vedas, customs and other resources. During a rather long period such metrical smṛti-s sprang up in abundance which, like the MS were also the result of reconstruction of ancient law by adaptation to the existing conditions.

Most of such works as the dharmasūtra-s and the smṛti-s are said to be compilations made, at different

times and widely different places, often of laws and customs which had been in use long before they were reduced to their present form in these annuals. Moreover, the statements of law in them were not the whole actual law. Thus, the smṛti literature, in general, and ब्रह्मेन, in particular, often contain strange survivals of laws which had long become archaic before that time.

It may thus be seen that the law about the secondary sons like the putrika and the kṣetrajna is propounded in detail, although they had clearly fallen into abeyance. The putrika is not even mentioned in the list of twelve kinds of sons. The texts, nevertheless, survive.

Another difficulty that comes in the way of tracing the evolution of adoption is the fact that, of metrical smṛtis only a few are available now in full, while a large number of these, like those of katayāyana, yama, Bṛhaspati, Sāṅkha, Angrā and others are scattered about in the form of quotations in the literature of commentaries and nibandhas. Furthermore, these texts do not exhaust the sources of law or the influences which assisted in their development and, therefore, the history of adoption as traceable in these codes is different from the chronological order in which they are placed.

Therefore, notwithstanding the fact that the dattaka had already made an advance over other secondary sons in their struggle for superemacy as is inferrible from these codes, the tendency to cling to the past and its institutions
inspired their compilers to incorporate in them obsolete
rules either in full or in a slightly modified form
irrespective of their relevance to the times. Yajñāvalkya's
work, which is said to be of independent growth following
Vīṣṇu, lays down the law regarding the secondary sons almost
in similar words and import. The ādattaka is accorded the
seventh place followed by others of his class, whereas the
putrikā and the kṣetraścāla immediately follow the paurāṇa in
his list. He then lays down that each succeeding son
will offer the funeral cake and inherit the estate on
failure of each preceding one. He further says that this
rule has been laid down by him only with reference to those
sons who belong to the same caste as does their affiliating
father. It has been interpreted to mean that this rule
of Yajñāvalkya will hold good if the division of estate
takes place on the father's death, otherwise it would be
as the father desires. Nārada, Hārīta, Saṅkhya-ālikhita,
Yama and Devala, all follow suit and assign the ādattaka

87. Yaj. II.128-132.
88. Sūtra, 14.1-4, and 8. विष्णु वालके आरक्षणां पुत्रामाने पर: पार:।
         2. काव्यद्वायं प्रविष्टतन्त्रयोऽ का विषयः।

89. Jha, C.N.: Yajñ. HLLS, pp. 251-54.
90. 1. गोरेः: नृत्यास्वं पुस्तिल्पम् एव व।
        कान्तीनव संहितः ग्रप्पादृय विद्य लक्ष्यम|  
        पारम्परवेसांविशिष्टम् यतः द्रुतः: कुलपत्यः।
        वयवक्षणात्: पूर्व: द्राक्षेरति प्रकृतिं।  
        रघुं श्रीे कपिलद्वाराः: श्रद्धालुकविवाहः।
        परि: पूर्व: भृस्मी जैक्षु: जणत्वान् स्वयंतरः।  

(वंश: संहिता, ह्यो)
son seventh or ninth position. If *adāyāda-bandhava* or *abandhu-dāyāda* is interpreted to mean that they are only

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**1.** Narada, q. VR, p. 551; 

**2.** Harita, q. VR, p. 549.

**3.** Sriharita, q. Visvarupa, p. 249; 
*VR*, p. 547.
kinsmen and not heirs, they keep the dattaka out of legal heir-ship and treat him only as a kinsman entitled to


maintenance alone. If these terms are interpreted to signify, that they are heirs only to the father and not to his kinsmen, all, except Sankhalikhita who treats the dattaka non-inheritor, admit him to heirship. Only Devala unambiguously treats him as an heir to his adoptive father on failure of the eight sons preceding him. As noted earlier, the distinctive enumeration of the putrikā or her son as a secondary son in this period serves no useful purpose, because the distinction between him and the real son or grandson disappears and the daughter putrika by this time has entered into kinship and legal heirship of her father and her son inherits to his sonless maternal grandfather. It is, however, not clear as to how the principle of the sameness of caste will apply to such sons like the kāninā, the mūchotpanna, the pāheda and the kṣetraṇa.

Although Manuśāhita is considered to be the oldest of these works, the law about the dattaka son in it has reached a fairly advanced stage which attains consummation in Brahaspati. It may be concluded from the details Manu gives about the dattaka and other sons that he has after all succeeded in the centuries old struggles. By the time of Brahaspati, the dattaka was the only alternative left as the substitute for the real son. The details about the putrikā and putrikāputra in his code have already become redundant. The putrikā is not at all enumerated in the list
of secondary sons either by Mamu or by Brhaspati who treats the eleven kinds of sons other than the aurasa and the putrika as substitute sons. His elaborate details about the kaetraja notwithstanding, Mamu condemns the institution in no uncertain terms. It is not only condemned as carnal animality of violative of the marriage vow, it is the bane of the eternal dharma also.

91. ब्राह्मणोऽर्जु मात्रम् पुरुष न च।

92. वारण्यं विरोधं यथा सत्यं सहिष्णुः प्रतिनिधिभीतासं।

93. नानासिद्धान्तनानारीनिर्देशकामाः विज्ञातानि।
rūdhāla and the sahodha sons could be accorded no worse treatment. The kālīna and the paunarbhava along with these three kinds of sons have been declared by Brhaspati as condemned. Manu has likened these condemned sons to a worn out and inking boat and concludes that a man trying to realize the other world with the help of these condemned sons will achieve no better results than he does by trying to cross the waters with the help of such a boat. Such sons born from the seeds of strangers have been spoken of by him only by the way. He, however, does not mean either to propagate the institution of these bad sons or to state that such practice is well-received, for they belong to him whose seed they spring from. Thus, it does not seem unsafe to infer that in this period all other secondary sons, save the dattaka, were pushed down the scale. They fell into abeyance leaving the field clear to the dattaka son who ruled the roost now. He not only re-entered the legal scheme of heirship to his adoptive father but also to his other kins, obviously, in the latter case, on failure of any other consanguine successor to the latter. Of the secondary sons, he is listed second to none but the kṣetraja who is only a vestige of yore. So, as a matter of fact, he is next only to the aurasa son. Manu lays down that

94. यावं फलमापनििििि कुमारे: सतह-जनमुः ||
तोहुः फलमापनिििि कुमारे: सतस्थलम् || मृत्र इति Co.

95. ये (कै समपितिः पुत्रा: प्रसगोदन्योबोजया: ||
कथा है बोजहो जातातरथ है शारष्य इति || भक्षु इति IX. 37.
a man must make a substitute of whatever description on failure of a real son. 96 In view of the foregoing analysis he is left with no other choice but to take to adoption for making a substitute for a real son. The adopted son according to him does not take the gotra or property of his progenitor. He takes the gotra and inherits the estate of the adopter to whom he offers the funeral cake. The obsequies, therefore, to him who has given away his son, will cease. 97

Bṛhaspāti grades the real grandson and the putrika-putra as conducive to the attainment of heaven by the father and his spiritual welfare and equates them in the matter of inheritance and pīṇḍa and rates the dattaka, the apaviddha, the kṛita and the āśaudra as coming next only to the above two, actually pushing out the kṣetraṇa who intervened between the dattaka and the real son in Manu's text. The kṣetraṇa and the rest are now expressly condemned and implicitly treated as not worthy of being affiliated. Of the secondary sons only the dattaka, in apposition to the apaviddha, the kṛita and the āśaudra, if pure in birth and conduct, is now left entitled to inherit and is the first amongst the preferred ones. 98

96. तुषा िनः कागप वाटु वाटु प्रमतनः। विन
97. गैत्रिकादिव जनितयाम रोहु दाक्षिणः। क्विव
गैत्रिकादिवः पिण्डी अपैति सदा। द्वाग ग्रन्तिः। प्रत्येक ॥
98. पालीः पुरुवासः स्त्रियाकाराशः।
सिक्त-पिण्ड-दालान समय भवार्तिलिः।

Ex. vi. 32. The words mentioned to satisfy the various conditions are also found in note 32.
(e) The *Kurāna*-s

According to the *Bṛhadāraṇyaka* the *dattaka*, the *svavāmdatta*, the *krtritā* and *saaviddha* sons are entitled only to maintenance, belong to different *gotra* and *nīndā* and are regarded as perpetuators of different family line. They have to observe impurity resulting from birth and death for three days. Another text of this *purāṇa* allot a part of a share to each of the secondary sons, if a real son is born subsequent to the affiliation of a son. The affiliation of such sons as the *gudhotpāna*, the *kāṇīna*, the *sahodha*, the *kaśtraśya* and the *paunarbhava* seems to have been treated as a cognizable offence punishable under the law (*rāja-danda bhāvat*). Such sons were

99. 

100. 

101.
not permissible even among the kṣatrīvas, although their race was constantly drifting towards extinction either on account of their being cursed by the sages for their misdeeds or because they were constantly engaged in wars. However, if they had any of these or the other secondary sons, he belonged to a different gotra. He was entitled only to perpetuate the family line and to perform the śrāddha and other rites for them in the manner of slaves.\textsuperscript{102}

A text of Brhaspati discloses an awareness of the recognition of sons born out of lawful wedlock in the days gone by, but at the present time the practice was prohibited on account of men’s weakness for lasciviousness.\textsuperscript{103} The Nāradīva, Ādītya and Kēlīka purāṇas prohibit the procreation of a son by a brother-in-law and also taking of a son other than the self-baṣīka and the dattaka sons in the present age. These works expressly shut the door upon all other secondary

\textsuperscript{102} \textit{Brhaspati, q. by Aparāraka (on Yās. I, 68-69), p.97 and Kull (on Menu IX,68) and Dattakeabhini (on AC, p.2) and a reference made to it by the AC, p.4.}
sons except the one given away in adoption. Though the production of legal works laying down in full details the provisions of the law of adoption had yet to see the light of the day in the far off future, this period doubtlessly marks the rise of the son-given over the obsolescence of all the rest of the subsidiary sons.

104. The next most important step in the development of the law of Adoption in particular, and of Hindu Law in general, is seen in the literature of the comentaries and Babandhas, the earliest of which, according to Sen-Gupta did not go beyond the eighth century A.D. and from that time on the entire development of law has taken place from these works. By the time the composition of these works was set off, all the important smrtis had acquired equal authority and common acceptance. The principal works of this nature unmistakably appear to have been written by practical lawyers of the times who had made administration of law their vocation in life. These works contain an abundance of quotations from the metrical smrtis and the Dharma-sutras on which they are based and the task of these

104. दंगारंगाघरणां तु प्रचलित प्रतिष्ठ: ।
देशोपर चैत्यसिद्धान्तमृक्ष्यकस्मिन्।
कान्त्य युधि चित्तमात् चर्मादृश्यत्वेवार्थमिति:॥

q. by Parthakabochini (or the HC) p.2; Jha, G.N.: H.I.S., p.616.

judicial savants has been to reconcile the numerous of these contradictory texts, explain the cryptic of them and expound the law as much with reference to the sacred traditions and śāstras as to the practical needs of the society of the times. The commentaries and digests are full of scholastic disquisitions attempting to introduce order out of a chaotic mass of smṛti dicta. 106

Now, 'it is only in such late works, belonging to the 17th century and later times, like the V. Mayūkha, the Dattakamīmāṃsa and the Dattakacandrikā, that the dattaka receives an elaborate treatment'. They were followed by a large number of digests treating of the dattaka. 'In modern times the DM and the DC ... have been regarded by the Privy Council as of the highest authority in matters of adoption.' 107 The efforts of the writers of these works...

Also cf.

to introduce order out of chaos notwithstanding, the medieval
digests are full of varying interpretations of the same *smrti*
texts. Consequently, the law of adoption differed from
province to province according to the medieval works held in
authority there on the one hand and modern case law on the
other. In modern times, voluminous works like those of Sastri,
Golapchandra Sarkar and Kapur were written on the subject.

'No branch of Hindu law in modern times has been so fruitful
in litigation as adoption. There are instances, where, fifty
years after a point in the law of adoption was deemed to have
been settled by a Full Bench decision, the Privy Council
intervened and over-ruled the Full Bench decision inspite of
its usual practice of follow the rule of *stare decisis* ...'

There has been so much of case-law on several aspects of
adoption that it resulted in a great deal of confusion. 108

Only legislation was thought to be a solution and accordingly,
Hindu Adoption and Maintenance Act, 1956 (Act No. 78 of 1956
as amended by Act No. 45 of 1962) came into being. The story
does not end here. However much may we codify the law into a
series of seemingly self sufficient propositions, these
propositions will be but a phase in the continuous growth 109
and suggestions for reform in the present law of adoption will
continue to be made. 110

110. See for instance, Kashmir Singh: 'Who may Adopt Under
Hindu Law and Some Suggestions for Reform', *PULR*,
Vol. XXXI, No. 1, 1979, pp. 72-77.