CHAPTER V

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

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

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1. दाता: पु. (दत्त वा दत्तक)। वाचविश्व-भृत्य-नाटिकः। विरुक्त:।...।

दूंढ़ पु.  (दूंढ़ वा पु.।) वैशालिक गुणविश्व-नाटिकः। विरुक्त:।

दूंढ़ पु. दूंढ वा पु.। वैशालिक गुणविश्व-नाटिकः। विरुक्त:।

दूंढ़ पु.। वैशालिक गुणविश्व-नाटिकः। विरुक्त:।

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

1. Given, 2. Produced or effected by gifts
n. (- ) 1. A slave who is given by another.
2. Son given by his parents & to give.
3. Son, also simply given & sometimes

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

law: (also called वर्त्तमान;) भाग वाला वा काला

उप. II. 162

दलाकेड़ा: - In adopted son: ......... काला कि वा उष्ण पुत्र

दलाल का गर्भाशय

उप. II. 162.

दलालमय u.4. Received by gift. त. Belonging to a gift; निवास कि दलालमय कारण। उप. II. 162. -प:

one of the twelve kinds of son;

उप. VIII. 419; उप. 181.

- उप. v. 12:

कृति-

datta min. दिन given, granted, presented ....

(with पुत्रा) उत्रित, उत. स. II. 216.

स्वामी, तीन पुत्र: (स्वामी जानें) = स्वामि, सव. उप. VIII. 181; उप. IV. 181 Kull.

स्वामी min. received by gift (not slave), br.

- सुधिर का दिन, उप. v. 181.


to the sake of progeny. The definition of the dattaka, as given by Nana, would appear to be most comprehensive and has been accepted and adopted by both the old and modern jurists.

The son, whom the father and mother give, in distress, with libations of water, who is alike (i.e., worthy or of the same caste as the donee) and who is pleased, may be called the son-given.

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

2. [citations from various sources]

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


Kulla, L.I. : Fr AL, p. 354, Sec. 471. 76, pp. 582-83, Sec. 486, p. 88.

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

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

iii. he may be given away by the mother alone, in the absence of the father, or by the father alone, in the absence of the mother as is unambiguously indicated by the use of the word *anvatarena* in Bhs II. 3.3.20 as well as the verb *da* in the singular number.

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

8. *Bhs.* II. 3.3.20.
with the prior sanction of her husband. This is also borne out by several of the medieval Hindu legal writers who have glossed on the texts referred to in the fn. 2, and the like. The gift of a son, as a matter of fact may be made by her with her husband's sanction, if he be alive and judicially capable of giving his consent, but even without it, if he be dead or be judicially incapable of doing so, having completely and finally emigrated, or renounced the world by entering a religious order and the like. The assent of the husband is implied by his silence, too, and the independence of the woman is, indeed, suggested by Yajnavalkya. This independence is, however, exercisable only in case of the husband's incapacitation. On the other hand, it may be noted that as 'the child belongs to both the parent', he or she 'cannot be given away, if either of them is unwilling'. He can only be given away by the mother or the father with mutual consent. The best course, therefore, seems to have been set forth as,

9. तिलक का जल: पुनिऺाग्नाक गौतम भ्रान्ति तदनं देवदार्शि।

10. The gloss of Vsiavaru. Aparajitas, Vrsmitrodava Tika on Vai.,
Vrsmitrodava (pr. 609-10). Vrsaman, vide Jha, C.:
\[\text{III. Vol. II, p. 215-17.}\]

11. चरण न ज्ञात न शोचन कन्यानन्। श्री हरियाने मे तनसम् तिनापि।

12. न पनि तनाणि त्रिषु न धर्मिं तस्मात् परस्परस्माः

the son may be given away

i. by both the parents jointly, in general,

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

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

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

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

\[ \text{*Jātihin preceded by libations of water in the text of } \text{Nemi defining a 'son-given' stance for the entire sacramental procedure that has been prescribed in connection with the making of gifts and confirming such gifts with the purim of water.} \]

14. Kādhathithi on Ba IX. 166.
15. Kulluca on Ba IX. 166.
17. Apanaraka, p. 736.
The word *anadi* 'in distress' has been variously interpreted and made to give a meaning which does not seem to have been intended by Manu. It has been construed with the agent of the verb 'give' viz., 'the father and mother' and made to yield the meaning 'in distress in the shape of scarcity of food i.e. when the parents are themselves unable to support the child. Thus, it would appear that the parents can give away their son in adoption only when they are unable to feed him and that they incur sin if he is given under normal circumstances. Thus this prohibition is taken to regard the giver and not the recipient. It has also been interpreted by some as 'distress in the form of death, either of the father or of the mother, or in the shape of such disabilities of the mother as her insanity and the like.

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

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18. बापदश पुर्विक तारोः | नागस्वनायादं जनादि न हेऽः

19. विद्युतं सुमान्ते । अनिमाता तत्रा

18. p. 13; *Mit.* on *Yaj.* II. 120, p. 604; *Vait.* 609.
if he be content. 20 And, this, indeed, is the law. 21
The inclusion of the word pritisamvuktam in the sentence
clinches the issue beyond doubt in favour of this inter­
pretation. If pritisamvuktam is taken as an adjective
qualifying the noun putram, it would mean that the son is
happy over his transfer to the adoptive family. It
indicates that he agrees to be gifted away not forced by
any gloomy circumstances like the starvation obliging his
parents to part with their son. 22 Moreover, a gift (dana)
is essentially a spontaneous act willingly done which does
not presuppose the existence of unhappy circumstances as
the compulsive motive.

In case pritisamvuktam is used as an adverb qualify­
ing the verb idavatam indicating that the parents are
happily giving their son or in case the alternative reading
pritisamvuktam 23 is preferred qualifying the noun phrase
puta mita va to mean that 'happy parents give', the conclusion
as drawn above would not be changed, rather it would only be
confirmed. The pleasant feeling that pervades the whole act

20. Kull. on k. i. 16, Vr., p. 568; Vi., 2. 107;

21. नृत्यद्वारा विकृतम् कर्मादानम् पुत्रादनम् प्रितिम्—॥

22. The HAMa, 1956 provides for ascertaining the wishes of
the child, though, it is in the case of guardian making
the gift. Vi., 5, 9.5.

23. vide Jha, G.N.: H.I.I., p. 217. He also reads

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precludes the existence of any unhappy situation as the motivating force. Incidentally, by corollary, it also excludes a profit as a motive for the gift of a child in adoption.

There is no agreement also on the interpretation of the word *sagraka* in Manu's text under perusal here. The two differing interpretations put on this word are represented by Kedhatithi on the one hand and by Kultuka and other commentators of Manu on the other. Mehatithi holds that what is meant by *sagraka* is not similarity of caste but that the boy to be affiliated as a son should have qualities worthy of the donor's family, so that a boy of the *ksatriya* and other inferior class can also be the adopted son of Brahma. According to Kultuka and others the boy must be of the same caste as the adoptive father. But in practice and in law boys of different castes are also seen affiliated. This apparent contradiction is

24. For a detailed analysis, vide chapt. VI, under *Explanation of *Apadi*.

Also cf. Kedha, on He, Ia. 169; Apad., p. 736; Vi, p. 569.

25. गुरु म गुरुतिति; सत सते गुरुतितिष्ठ ! \( सतिविद्याधिष्ठ्य ज्ञानवस्तु सद्य ज्ञानवस्तु धर्मोऽधि \)

- Kedha on He, Ia. 169, c. 12, p. 6.

26. Kull on He, IX. 163; Sk, p. 150; Ve, p. 107-9.

13. III, Purvartha, p. 159; Kedha, p. 652; Apad., p. 162; Vi, p. 569; Vait., p. 609.

7. Bhavdeva, son of Shravapati, a brahma, was adopted by the *ksatriya* king Bhrata and he then became a *ksatriya*.

\( विषादः करणः महाधर्मः करणः सद्यः \)

Vi, 95. 157.
resolved by the *Dattakacandrika* which declares that in the absence of a real legitimate son, the filial relation of boys of the *kshatriya* and other inferior castes is held to be valid on account of their being beneficial in the celebration of his name and the like, although, since they are inferior in class, they are not entitled to offer oblations of *nimta* and water. Being its arguments on the texts of *kavyayana*, *Saunaka*, *Vajasa*, and *Vrddha*, *Vajnavalkya*, it further declares that on account of their benefiting the adoptive father in a small degree, such sons adopted from the different castes are not entitled to inheritance, but to food and reiment only. It then proceeds on to conclusively construe, *Sadrmas* as signifying of the same caste on account of the fact that the adopted sons of the same caste alone are entitled to inheritance and not the others.

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23. तथावतमिनतभाषाः ज्ञातः अर्थात् रत्नवधारकः तथावतमिनतभाषाः।

29. तथावतमिनतभाषाः। परायतः* कित्रकायुः* विद्याधिन्तेः विद्याधिन्तेः।
Baudhayana edus  svaptyartha pariṣphyre in the qualifications of the dattaka son meaning that he is affiliated by the adopter for the purpose which a son is supposed to achieve. After the execution of adoption is complete, the filial relation of the son with his natural father is snapped and he now (or all intents and purposes), belongs to his adoptive father with the only provision that he cannot have a matrimonial alliance in the natural family with a female whom he could not have married in the absence of such adoption.

Thus, it may be concluded that:

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

Son includes Daughter

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

30. Vism, loc.cit., fn. 2.
which is performed on a male only. 31 Courts have held to this principle and decided cases accordingly. 32
But taking their cue from such instances as the adoption of Senta, the daughter of Dasaartha, by King Lomapada and of Prtha, the daughter of Ura by King Kuntibhoja 33, the Vattakopanishta, the Samkarakustubha

31. राज्यमव गुणाधिपति, न कर्मा । गो स्वर्गभा दिनिया: धन: वल्ल कृष्णानुपाल्य: वालकाति गा न वल्ल कृष्णानुपाल्य: पाता। पिपलीकुंजुक्त्रीति जगुणाकारोलिमैयादान कृष्णानुपाल्य: भक्तिकारीकितं सर्वस्ववीर्यस्वभावति, कर्माग्रंजति: कति वल्ल कृष्णानुपाल्य: परिवार सुखस्वरूपं लोपकारादिति: कुलस्व परामर्शाः


32. Sengabei v. Lendant 13 Bom. 690.

33. In the adoption of Senta, vide Ramanuja, Balakanda, Ch. 9, and of Prtha, vide Nīhā (Adiparva), 111, 7-3 (cr. ed. Ch. 104).
and the Upanishadas hold that as in the case of a boy, so a girl may also be taken in adoption as a substitute for a legitimate natural daughter. With the passing of the Hindu Succession Act, 1956, which treats sons and daughters equally in the matter of succession, it became possible to simplify the law of adoption among Hindus which provides for the adoption of boys as well as girls.

34. उपनिषद्धात्ति सूर्यविनाश विभागनुपूर्तान् ज्ञान-संपन्नत: | तत् पञ्चाष्ट्र 
रामायणिन: विधानं द्वितीय प्रतिवृत्तम् सार्वभूतार्थान कर्म-विपयम् ।
कामसुक्तिः नन्दीन वृद्धवित्तमपि धृतदेवीभिः तदातः।

d, p. 226 ff.

35. इत्यादि नृपवर्ध, p. 162.
36. Scs., 1956 (No. 30 of 1956), s. 3, 10 and 15.
37. SCs., 1956, Prefatory Note, s. 10 and s. 11 (ii).
(b) Scope and Application

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

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

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

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

Each of these castes is further divided into a number of sub-castes. In fact the variety of castes and their subdivision in modern times and their religious and social customs and usages are bewildering. 38

The first three classes are called the dvija-s, i.e., 'the re-born or regenerate castes' and their members the dvija-s by virtue of their undergoing the various samskāra-s and the study of the Veda which are denied to the Sudra-s save the āmsakāra of marriage. According to some these sacramental rites are denied also to women who are classed with the Sudra-s. 39

The classification of castes and sub-castes is very important as far as the law of adoption and Hindu marriage are concerned. The adopted son must belong to the caste of the adopter and the parties to a marriage must also be of the same caste, though of different gotra-s. The Indian courts have on several occasions undertaken to determine the caste in their judicial decisions. 40

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

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42. *Radhanath* in this *rk* is the same as the *kṣatriya*; cf. RV X. 90.12.

43. *Kesari*, p. 15.


Radhakrishnan: *HVL*, p. 12.

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

gathering together of the mighty volumes of the Ganges, swollen by a continual influx of tributary rivers and rivulets, spreading itself over an ever-increasing area of country, and finally resolving itself into an intricate delta of tortuous streams and jungly marshes... the Hindus... are not one people, by many. Therefore, the application of the doctrine of adoption, which assumed its shape, form only in the period following the Dharmasutras and the Gartis and which forms part of a whole body of Hindu law, extended to the entire community of these people. Accordingly, the Walaa, 1956 applies 46

1) to any person, who is a Hindu by religion in any of its forms or developments, including a Vivasvaite, a Sivaite or a follower of the Brahma, Prarthana or Aryan Samaj,

2) to any person who is a Buddhist, Jain or Sikh by religion, and

3) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

47. Monier-Williams: BCL, p. 57.

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

(c) Importance

The Aurasa and the Leattaka Sons

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

hundred autumns. Indeed is born a son. In the utmost anxiety of establishing the identity of the father's self with his son he is described first to have entered his wife in the form of a child in her womb. Only to be reborn later as his own son. A son is treated with so high an affection that he is said to produce the greatest embalming effect on the soul of the father. A contact with the son's body is considered far more cooling than even the paste of sandal-wood. He warms the cockles of a man's heart even if he were an ugly impudent corrupt fool. The birth of a son has been welcome to the father, the grandfather and the great-grandfather as is the fruit of the banyan tree.

50. तत्र तद्व्युग्म तद्वन्नहिति दुष्कष्ठानिति ।
दात्सनस पुत्रामार्गिते व ते स पुत्रः सत्यः ॥

51. परिभाषा प्रकटिति गरि गुप्तेषु पापस्य
तवं पुत्रानि पुत्रा दृष्टेपागि सन्तानी॥
परिभाषा प्रकटिति अविकृति हि गुप्तेषु पापस्य।
स्मातः सत्वद्रव्यां च व वेदां प्रेतः इति ॥

52. दुर्गाति यं कृपयं वन्दनादत्तिर्ववः ॥

53. दुर्गाति यं कृपयं दुर्गाति दुर्गाति कृपयं दुर्गाति ॥

54. दुर्गाति यं कृपयं दुर्गाति दुर्गाति कृपयं दुर्गाति ॥
to the birds. A son is called Brahman, Yudha and the
heavenly world and it is through the son that he conquers
the world of men.

(ii) RELIGIOUS IMPORTANCE: This inordinate indulgence in
the son is perhaps the consequence of the instinctive
affection that a man has for his progeny as well as the
religious and civil importance which the Brahmanical religion
has invested the son with. Vedic, sutra and smrita texts are
all one in emphasizing the importance of a son for the
spiritual benefit of a man. A man is said to be born with
three debts which he owes to the rsi-s 'seers', the deva-s
'the gods' and the pitra-s 'the ancestors' and by brahmacharya
'studentship', by performing yajnas, and by procreating sons
he frees himself from these debts respectively. The duty

54. पिता पितार्कृतयं गोम प्रभुभाय: ।
उपास्यैः पुत्रं लालं नशुरं निर्माणं ॥

- Levalayama (c.14, p.63); Jhe, G.N. 1.

55. यथा पुत्रां सा देव अद्भुतं नौरं नित्य ।


56. वैष्णव कन्हारात: वृक्षात संवा साऽनाथ भ्रणः ।।


57. भगवान यशोरथ भगवान दुर्जयस्य यथा
श्रद्धा प्रक्षालयं तत्र तस्माद भानाय तथा पुरस्कृतः
निर्माणं, प्रत्येक पिताय संवा अद्भुतं ब्रह्मस्य व।

Tait VI.3.10.15;

वृक्षम न ह नारायण हो विष्णु/ व भगवान कर स्त्रेष्ठो विमुखायेत: स्वयं॥

Sm I.7.3.11.
to pay off these debts is obligatory and not left to his choice. According to Menu, a man becomes entitled to \( \text{Nokas} \) only after having paid off these debts, without doing which he is sure to be doomed. With the mere birth of the first son he frees himself from the debt he owes to his ancestors and having transferred his debt to him he attains immortality. It is prayed that the god Agni may bless him with immortality through progeny. Through the son one conquers the heavenly world, through the grandson he attains immortality or permanence there and through the son's grandson he obtains the region of the sun.

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58. न भृत्य्य कु मन्दिरतः कहुँ भुजः।
59. भुजाक्तिः चोद्याभावतः अन्तः कोऽधे निरंक्षेपः।
60. भुजाणां वर्ण अंकरणवेतस्य व शुक्लः।

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AGGR. XXXIII.i.

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61. भृत्य्य कु मन्दिरतः कहुँ भुजः।
62. भुजारित्रस्य चूषणस्वापः।
worlds are lost to the sonless.\textsuperscript{13} It was perhaps from this notion of the religious efficacy of a son that the word '\textit{Aurya}' has been derived from \textit{pit}, i.e., 'Hell of this name'. \textit{Aurya} is so called because he redeems his father from the Hell called \textit{pit}.\textsuperscript{14}

From the very old times to the present day, the son has been entrusted with the very important religious duty of offering oblations of water and funeral rice-ball to his father and other deceased ancestors for the peace of the departed souls. It is in this context that man has been advised to desire to have several sons so that one of them, at least, may repair to Gaye and offer oblations of water and rice-ball to the deceased ancestors.\textsuperscript{15} A son is also desired for the celebration of his name and the continuation of the family line.

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

\textit{\textsuperscript{63} नायुक्त नापीरुकके पति संगण पश्चिम विहुः।}

\textit{\textsuperscript{64} (i) युः युं युं निधरणाय पुरुषर्यैः सन्यते के प्रियत ति या।}

\textit{\textsuperscript{65} पुनः पुलात्मकसम्बन्धाय नायुक्त मुतः।}

\textit{\textsuperscript{66} स्यायतूदेह तति प्रति \textit{\textsuperscript{13} वर्मे हकीफ काल्पित।}}

\textit{\textsuperscript{67} यो सित निपु सुभ नीतिमित गद्य पाणिपाणी।}

\textit{\textsuperscript{68} राजध राजीत नीमां न दुश्मानस्वरूपः।}

\textit{\textsuperscript{69} स्य महामरीविन्दो मम दुर्योगकः।}}

\textit{\textsuperscript{\textit{\textsuperscript{13} Ht. 36.67; Ht. 28.8; Ht. 158.10; Ht. p.220; (with some variations, like Ht. 11.9, Ht. (Var.) p.4.7 of\textit{\textsuperscript{14} आर्या}}

\textit{\textsuperscript{14} आर्या}}

\textit{\textsuperscript{15} आर्या}}

\textit{\textsuperscript{16} आर्या}}
much sought after as an object of affection, a protection in old age and an heir to succeed. The father in later life subsisted on the son and the son in early life subsisted on the father. But these benefits were lost in the din of the extravagant eulogy of the spiritual benefits derived from the sons.

67. Bṛhat-Saṃhitā II. 4.3.4.
68. Kaye, p. 643.
69. Y. 1.6.1, 20; 1.9.17; III.1.23 etc.
70. Y. 1. 35. 49.
71. Y. 1. 35. 49.
The appearance of a sonless man was considered to be inauspicious and a sonless wife was thought to be possessed with *nigri 'ill-luck'. This superstition has not spared even guiltless innocent maides on whom it so ruthlessly cast its gloomy shadows. Brotherless women have been described as passing their prime in their father's house with their splendour gone. A man was forbidden from marrying a brotherless maiden for fear of her having been appointed a son, *viz.* *Putrika.* Manu declares 'women are created for procreation and men have to propagate the race.' This goal of a woman's life and the supreme importance attached to the son were instrumental in allowing a sonless man in the *dharma sutra* and *sapti* texts to marry again even when the first wife was living.

72. Sarker, *Cf.* Karmi, p. 27.
73. *Up V.* 3.2.2. (*Cf.* *Vol.* 41:165).
74. Av I 1.17.1 which speaks of spinsters growing old in their parental home.
75. *Nar. III.5*.
76. *Nar.* 1.11.11.
(v) Substitution for the real son and the Etritaka: On
account of the great affection a son was treated with and
the supreme significance attached to the religio-spiritual
benefits associated with him, it was thought better to
have a substitute in case a man failed to beget a real
legitimate son than to have none at all. So, an extensive
class of secondry sons had come up through a long course
of evolution. Sons were affiliated either by a form of
adoption or by raising issue on the women of the family with
or without stipulation with other men out of the lawful
wedlock like the Ksetra, the Mitraka and others. Although
there was a strong contention that a son belonged to the
begetter and not to the one who affiliated them and that
the description of sons sprung from the seed of strangers
was done only by the way, yet a substitute was treated
for all intents and purposes as equivalent to the real son
in his absence. According to Kapu, secondary sons like
the Ksetra and the rest were affiliated as substitutes
for the real son in order to prevent the cessation of
obsequies performed for the place of the departed ancestors.

78.2. वासिष्ठ (III 13)
Vasistha (VI), p. 577.

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

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

But, in fact, by the time of the smritis all except the aurasa and the puttaka sons had started disappearing or had already become obsolete. The son of a daughter, whether appointed or not, had already acquired the same status as did the son of a putrika. The texts emphasizing the equality of a son's son and a daughter's son practically nullified the provisions about the putrikasutra.

as does the real one; other sons have been called 'substitutes' (MS IX, 180, fn. 85 above) on the ground of the lessening degree of benefits conferred by them. cf. vedasuthi on this text as q. in LI p. 39.

sutra-vat prakāśa paksam vaktam tatha yasminmayo jyotir kāryakaraśaktiśāy ।
śrīśaṅkaraḥ puruṣottamaś ca bhūtākāmaś ca tāvākāmaś ca pārśvanarājyaś ca pratipakṣeśābhinām ।

83. श्री हशमदेह पृथ्वी नुल्ला श्री शुकुलः।
ङ्गादेशन्तोधारायत्स: पृथ्विया तथा॥
कारणानि क्रवत्ति केवल श्रांतिवेदीमुः ।
कैमकामयस्य पुरुषोपर्ययोगविना ॥

Dr. q. in Lelit sonen's Lattakabodhini, p. 735; VB, pl. 575; Vya.Mrit. p. 439.

84. श्री ताय श्री ताय परं नवं श्रीन्द्रकारस्य ।
पृथ्वी यालम्बरील द्वारा ध्वजस्य तर्कवादू ॥ MS, IX 136. ।
पृथ्वीन्द्रकारस्य श्रीन्द्रकारस्य नान्युक्त ।
दृष्टिर्वेदी हर्ष्वेन्स शताङ्क्यवत्ती पृथ्विः ॥ MS IX 139.

also MS IX, 130-134, 140.
institution ceased to be of any practical utility. The
pariksa did not even find a place in Manu's list. The
later smritis hardly went beyond mentioning her or her son's
name in the list of secondary sons. The sons like the
kastra and the rest were treated as condemned by the
gentlemen. It was further pointed out by Bhaskari that
various kinds of subsidiary sons, who were affiliated in
the past, had now become obsolete. According to F.V. Kane,
the institution of several kinds of subsidiary sons was not
very common or generally recognised ... and was dying out
even in the times of ancient smritis. The Kalikapurana
shuts the door upon all other secondary sons except the
dattaka in Kali age and recognised only the purana and the
dattaka. The dattaka, in later days, assumed very great

86. 

87. 

Saunaka, Nardiva Purana, Adityapurana,

Saunaka, Nardiva Purana, Adityapurana,

Saunaka, Nardiva Purana, Adityapurana,

Saunaka, Nardiva Purana, Adityapurana,
importance. He was found most acceptable and was treated in more details than any other secondary son in the smati-s and other treatises. Adoption has engaged the attention of the courts more than any other branch of Hindu Law in the modern times through the British Indian period down to date. The dattaka now reigns supreme and is regarded a complete and only substitute for the real son in his absence. He not only offers the pinda and oblations of water to the deceased adoptive father and his ancestors, but also perpetuates his name and propagates his family. The courts today recognise only two kinds of sons - viz. the purusa and the dattaka and detailed provisions have been laid down in the H.H. 1956 regulating the institution of adoption.

(d) Various kinds of the Adopted Son

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

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

- Str. 9 in IC, p.2; and
- Kama (IC, p.2 and IC, p.15).
that condition of the regulations of adoption. Such sons
were distinguished as *krisa, savyadhata, apaviddha* and
*artrina* on slight variations in the circumstance of affiliation
as already pointed out in the last chapter. From an
analysis of the various definitions of these sons, it may
be noted that a common characteristic that marked a son of
this class was that he was a son of one man and was taken
up or received by another in a different family with a view
to affiliating him as one's son.

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

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

90. i. *maha-prasangika-dharana* ka 'harpooch hindu' vrieti: | *Pandh. (V. p. 576.)*


iii. *krisa: vrieti: | *Yaj. II. 131. *

iv. *kriyana-pra: catvanartho bhavati* | *Prth. IV. 174.*
requested offers himself or is otherwise taken up by him to be his son.91 Like the Apevidda, the Krtrima i.e. the son made is also approached by the intending adopter himself with the offer to make him his son. 92 Several commentators hold that the boy must be an orphans and be approached by the man with the request that the be his son, if either of his parents is living, he is not free, while on the other hand the texts defining the Krtrima son are silent about the position of the natural parents vis-à-vis the act of giving. The only important feature that

91. A. The swayandatta is defined as under:

i. अपवृद्धि पंचः। मातापिताभाः अनु गुणितमप्रदत्तः। Anu Pratinidhi Vasistha (VI, p.571);

ii. रथव वह गृहस्थः रघुपितावृत्तः। Arth. II, p. 40;

iii. दक्षात्मा तु सन्नचनदी। Yajn. II, p. 131;


Kedanapari, p. 653, holds that he also must belong to the same caste as the man receiving him.

B. Hereunder follow the definitions of the Apevidda

i. अपवृद्धि चक्रवारी पंचः। मातापिताभाः अनु गुणितमप्रदत्तः। Anu Pratinidhi Vasistha (VI, p.571);

ii. विराज्ञि तामिर्कृतः। यथा विलासवाद अवस्था अवस्था। Yajn. II, p. 131;

iii. जीवनेषु हृदयं दक्षात्मा। अत्वा विराज्ञि विराज्ञि। Yajn. II, p. 131.

iv. अपवृद्धि चक्रवारी पंचः। मातापिताभाः अनु गुणितमप्रदत्तः। Anu Pratinidhi Vasistha (VI, p.571);

v. विराज्ञि तामिर्कृतः। यथा विराज्ञि। Yajn. II, p. 131.

According to Balbhatti, in all these cases, from Krtrima onwards (in the Yajnavalkya's text) the 'son' must be of the same caste as the person who has received him.
distinguishes the krtrimp from the apaviddha is that the former is capable of discerning right and wrong, is known to be endowed with filial virtues and is of the same caste as the one engaging to make him his son. Medhatithi on Manu IX. 16. says that the boy, in this case, must have attained majority; until then he is not in a position to distinguish right from wrong. Sekam, i.e. 'willing' in the definition as given by Baudhayana also leads to the conclusion that the boy must have attained the age of discretion when, aware of the effect of his affiliation, he must be willing to be received as son.

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

92. The krtrimp is defined as:

1. "सह सत्यं नं ज्ञातं एव ज्ञितम्: /" Baudh (Yq, p. 572);
3. "गुह् यं समयं कृत्यं कृत: /" Yaj. II. 131.
4. "श्रेष्ठस्य प्राप्तिः श्रेष्ठ: // Yaj. IX. 169.

93. Viswarupa, Kit., Viramitrodaya tika, Medanapaliita, Viramitrodaya on Yaj. II. 131.
were the adopted sons for all intents and purposes. Sarvajnanarayana maintains that the **krtrima** son is merely taken up, while the **avayavindita** is accepted as a perpetuator of the line of descent. But it is an arbitrary view based, probably, on orthodox beliefs which is not borne out from the definitions noted above. The definition of **krtrima** son given by Kautilya is peculiar and appears to have led to the rendering of the term as 'the Appointed son' by some and is suggestive of the purely legal position held by such a son supporting Savajnanarayana's view cited above. It would be fruitful to refer, in this connection, to the term of adoption of the modern law.

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

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94. On p. IX. 177.

95. One appointed to the position of a son is the **Adopted Son** for Sanskrit text see fn. 98 (ii), p.

A krtrlme son does not lose his rights of inheritance in his natural family. In his adoptive family, however, he can only inherit to the person actually adopting him and to no one else. The rights of the adopted son under the system of kartaputra depended on the contract between him and his adoptive father.

A close examination of the 9th, 10th and 17th sections of the Act of 1956 as amended by Act No. 45 of 1962 reveals that the statutes of adoption recognise the svayandita and anaviddha sons who are either orphans or abandoned by their parents; only some one has to act as a guardian to formally transfer the child to the adoptive parent. The krtra son is not recognised in so far as certain payments in consideration of the adoption have been prohibited except for those as the court may sanction. The krtrim son as understood by the system of kartaputra is not recognised by it, while the adoption of a grown up person who has completed the age of 15 years is accorded recognition only if it is authenticated by the custom or usage permitting it.

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

Furthermore, the latter is of two descriptions. If a son is adopted with the stipulation that he will be a son both of the father and the adopter, he is an absolute dvamasyavaha, while on the other hand, if he be initiated by his father in ceremonies ending with that of caala and by the adopter in those beginning with the upanayana, he would be called the anityavat-dyamasyavaha, i.e. incompletely so. Should a son be adopted directly on being born, since his initiation under the family names (śeṣra-ś) of both the fathers would be wanting, he would belong to the family of the adopter alone. The last one, namely the absolute adopted son is called as the ādha-dasīkha or the Kevala-dasīkha.

(c) The Content of Emotional Satisfactions of Adoption

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

Hence, the content of emotional satisfaction that one seeks by taking a son in adoption relies upon the degree of his religious efficacy recognised by the anatra-c, filial sentiments and the promise that he may hold to be a viaticum in old age. The adopted son like the rest of the secondary sons has been regarded as a pratiniichi, i.e., 'a substitute for the real son' to guard against the cessation of obsequies and has been equated with oil which is made a substitute for clarified butter by the gods in sacrifices. Obviously, the substituted oil cannot be as efficacious as the clarified butter. Likewise, an adopted son cannot be as effective as the natural born one; rather, he is only a working substitute for the latter. Sabara expresses similar views and holds that a pratiniichi does not yield the desired result of a religious act in full. Sabara on Jaimini VI, 3.35.
prescribed by the Vedic texts in a ritual. However, it came to be realised, as noted above, that the substitute of a son did provide some benefit though not in full. One has to be content with having something that to have none at all. It must, however, be pointed out here that the Arthashastra and other treatises on adoption purport to hold that the substitute for a son does have the capacity to produce the religious result for which he is adopted, namely the performance of the obsequies and the rest.

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

102. वाचनक्यो गांवायिता: जैन देस्त: हास्य शास्त्रिन्यि: वर्णि:।

The above (pp. 33-34) explains this sutra as not forbidding the substitute of a son everywhere, but in certain respects matters only, being opposed to Manu's rule (IX.130) referred to above.

103. इव, pp. 33-34.

104. पार्वश-प्रकाशितानवी नावैव नावमिति।

105. जैन वाङ्गाना वायु यान्वामीक्षेत वर्णवाष्प नाविकृ।

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

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

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