CHAPTER VI

Execution of Adoption
CHAPTER VI

ADDITION OR ADOPTION

Who may adopt

A man destitute of a son: his obligation

A member of the three regenerate classes is said to be produced, a debtor in three obligations directly on being born: to the raja-s for the study of the Vedas as a student, to the gods for the performance of sacrifice and to the ancestors for producing offspring and he, indeed, is absolved of the debt who has a son, has performed sacrifices and has studied the Vedas. He becomes entitled to enjoy heavenly bliss through the birth of a son only. Through a son he achieves two-fold objective of securing funeral offerings of cake and water and the performance of other obsequies on the one hand and of celebration of his name through the propagation of his family line and an heir on the other. Nandapandita holds that as the precept enjoining the production of a son is possible, its contravention is a cause of religious offence. The fact of being sonless is a cause obliging a man destitute of such issue to constitute a son,

1. अकामान्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्यु�्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्युच्छासोऽकामाम्यु

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

Quoting Atri and Manu, both Nandapandita and Bapunmani argue, that 'a man destitute of a son only' (anutrennya) must constitute a substitute for the same. Taking their cue from a text of Saunaka on the subject, they have explained the state of being so destitute as of two kinds. He is a sonless man to whom a son has not been born at all or whose son has died. A man becomes the father of a male issue immediately on the birth of a son and is absolved of his debt to the ancestors. However, on the death of such son, he is
again called upon to adopt another son for the sake of obsequies and the rest.\(^5\)

**The Competence of a Bachelor**

The state of being destitute of a male issue is the result of two different circumstances. The first case is where a man has taken a wife but has remained issueless on account of his impotence, infertility or other impediments in the way of procreation. The second state results from the man's remaining a bachelor. A married man, who is destitute of a son either because a son has not been born to him or because his son has died, is lawfully competent to make an adoption, whereas the power of a bachelor to do so has been a subject of controversy which has been pointed out by Narulakara.\(^6\) The substitution of the general term *yandhya*, i.e. 'one incapable of reproduction' is an evidence of the anxiousness on the part of a scribe of the text to exclude the right of a bachelor to adopt a son.

The Hirnava-Jinchu, the Bhave-Singhau, the Sansakara Koustubha, the *Dattakacardrika* and other works on the subject of adoption have maintained silence, and the *Dattakacardrika* has followed

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\(^5\) *वेदते* न विनिष्ठो निष्माकाशनां-पुरुषार्थी सौतद्युपितांशु ।

\(^6\) _Mani_ on 13, p. 4-5.

\(^7\) वेश्यकार्यां विशेषां वती वाचनां वायु ।
suit. Their silence coupled with the use of the general term *putra* with the comprehensive sense is a pointer to their recognition of a bachelor's competence. That *rāghumani* and *nandepandita* both implicitly concede this right to a bachelor is signified by the fact that they approvingly quote a narrative, from the Kalika Purana, of Votala, and Bhairava, the two sons of Sankara, (the former of whom, at least, was evidently a bachelor) in support of their contention that the same person may be affiliated by two men. Modern law also does not prevent a bachelor from taking a son in adoption.

**Connotation of the Term 'Son'**

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


9. ‘नायकानन्दनी नौसे नाहि' कि (रे. प्र. ) एणामा—न्यायम् त्यानेनकायातादृः।

उक्तानि ... कार्यो नै उत्त्वंपि पुण्यमा—न्यायसः दु:कुमारायथांतः

—कालस्वपनः
'only' in the expression *apunaleva* i.e. 'by one destitute of a son only', a man having a male issue - whether primary or secondary - is declared incompetent to take an other son in adoption.

The term 'son' here includes the grandson and the son of the grandson. Since both of these are equally competent with the son to present oblations of food and water and propagate the line of descent as well as to obviate the exclusion from heaven, the adoption of a son by a man whose son has died, notwithstanding the existence of either of the other two, will be without a cause and hence invalid. therefore, it may be concluded that one only who has no son, grandson, or great-grandson, natural or adopted, living at the time of adoption, is lawfully competent to adopt a son.

He has no right if any one of these is living and it always revives if none of these survives.

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

**Capacity of a woman**

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

Raghunâman, the author of the 15 avers that it must not be argued that since the qualities of being male and singular in the expression *amûrâna* are mentioned as the attributes of the adopting party, the same person must not...
be adopted by two individuals, nor a son by a woman. In
fact, nothing definite is intended by the mention of the
adoptive party in the masculine gender and singular
number. It may be deduced that every individual in general
regardless of whether the adopter be a male or a female
who is destitute of a son has the capacity to take one in
adoption. In support of its argument, the LC adduces the
text of Vasistha mentioned above which grants the right of
adoption to a woman with the assent of her husband. In the
context of determining the capacity of a woman to give a
son in adoption, it says that she may do so with her
husband's sanction, if he be alive, or even without it, if
he be dead or have emigrated etc. and again adduces the
self-same text of Vasistha in support of its contention. Viewed in the light of this assertion of the Dattakachandrika,
its intention would be most potently clear. Thus, it may be
concluded that unlike the Atakamalak, it construes
Vasistha's text under reference here as a single sentence

13. अत्तकामलाक गति कक्काललकेविष्णुकारणतः विकसितलिने देव दायें

14. अत्तकामलाक गति कक्काललकेविष्णुकारणतः विकसितलिने देव दायें

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

14. अत्तकामलाक गति कक्काललकेविष्णुकारणतः विकसितलिने देव दायें

The reference here as a single sentence.
and an exception to the general rule that a woman by herself is competent to give or receive a gift of a son in adoption except when as a wife she cannot adopt to her husband during his lifetime without his express consent. This is the position that obtains in the modern law and the statutes of adoption. 15

The intent of the Dattakaandrika, it may be asserted, is that every individual destitute of a male issue, regardless of the distinction of sex or marital status, has the capacity to adopt. However, in the case of a woman, her dependence on or being under the control of her husband was the cause for restricting her capacity, and subjecting it to her husband's sanction. The mention of the definite term bhartr in Vasistha's text and not a general one for a husband assumes great significance in this context. Bhartr is a husband upon whom a woman depends for her bharana-posana, i.e. ‘maintenance, protection etc.’ Hence, this restriction on her competence may be related to her dependence upon her husband. In support of this contention, reference may be made to the case Shivrao v. Natwarlal 16 in which

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

20. Rakhmabai v. Radhabai (1868) 5 *Bom. HCR ACJ* 181 etc.

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20. Rakhmabai v. Radhabai (1868) 5 *Bom. HCR ACJ* 181 etc.
the lifetime of her husband. The *Vyavaharamavukha*, the *Nirnayasindhu*. The *Samakasa Kautukha*, the *Dharma sindhu* that are regarded as authoritative in Bombay and Western India, hold that the passage of Vasistha refers only to a wife whose husband is alive and that a widow may adopt without the husband's authority. According to this school the husband's authority to adopt is always to be presumed, unless he has prohibited his widow, expressly or by necessary implication, from adopting.22

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

The *Dattahamimamsa*, contrary to the view professed by the *Dattakacandrika*, holds that since by the use of the term *auputra*, i.e. 'by a man destitute of a

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

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

23. श्रवणिति पुरुषवक्षणाय श्रवण विवाह तति न्यायः। तता व विभेदः। न विकृतम्। निर्वाचिकः। IM, p. 19.
24. विशेषतः न व धृत्य दृष्टिः श्रवणहृदयायाः। वायुविद्विदार्शनं नं वन्यः।
महालुभायुः। अब्रहमदेवः प्रियणकः। IM, p. 24.
her would be invalid. Even if the homa were performed through the intervention a priest as sanctioned by Saunaka, an adoption by her would still be invalid, for, she has no capacity to chant Vedic prayers accompanying this act. But, Nandapandita argues, in the case of a woman whose husband is living, the exemption contained in Vasiṣṭha's text and operative through the husband's sanction has an overriding effect. By the exemption, viz., unless with the assent of her husband i.e. 'she may adopt with his sanction' her right to do what is principal, namely adoption of a son, is established from which her capacity to perform what is subordinate, namely the homa and the Vedic prayers follows. He, however, citing a passage, 'Of women and smṛta without prayers argues that in the case of an adoption made by a woman, the requisite of performing the homa and chanting mantras is dispensed with in the same manner as it is done with regard to the acceptance of any article of personal property by her.'

25. किंचनामुल्यं भूतं । चण्यति भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो भूम्यो ।

Capacity of a Widow

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

cf. also Yajnav where women, being considered of the same character as Sudras, are declared competent to adopt a son as are the Sudras in which case the dattahopa with Vedic prayers may be performed through the priest:

कु मु दि कि द वर वेदित्य स्वस्त स्वरूप अलं परिषदेदास पां जीनाते कर "साहित्य आले: " दिय दान करि यह पाने तकर: किन्तु न लगे जा करणातिष्ठ कर: वि p,112.

lifetime. This is the law applicable in Mithila. 27
Nandapandita further asserts that it must not be
argued that if a widow does not adopt a son her exclusion
from heaven would not be obviated which would take
place according to him, if she, after the death of her
husband, lead a life of virtue and austerity even. 29

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

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

28. 'पुत्राः वत्तीष्य पति न हि अपराधी: पुत्राः' ये वाक्यः: 11° १६(१६६) पवना
पुत्राः वत्तीष्य पति न हि अपराधी: पुत्राः ॥

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

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


36. तत्त्वद नावंकर्त्तातांगा: ग्नानमाविस्मृति:। ग्नानमां ज्ञायत्वम् नाविकोः।

35. From the rule of the modern...

36.
law was derived that an adoption made by a widow was through her to her husband and not to herself. He affirms that the connection of the adopted by means of the adoption made by the wife with the assent of her husband as son both of the husband and the wife is established by two compendious rules of the sitvasadha-sutra. 37

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

Consent of the wife

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

37. 'सस्सा... विखयोः दृति वर्य वाप्य गो नापन्नामि द्रुके | निवित्ताति: ' साप्तकार निपु: प्रक्षु: यसि निषेधाति।

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38. विखयोः सन्यास; श्रावणां । यस्याः सः दृतिः प्रक्षु: यस्याः सः दृतिः भिक्षु: ।

by the wife, her sanction must also be sought where the adoption is made by the husband, the purpose being similar, does not hold water. He argues that on account of the superiority of the husband the filiation as son of the wife of one adopted by him would be complete in the same manner as her property in any other thing accepted by him. 30
Under the law of 1956 the consent of the wife is required unless it can be legally dispensed with. 40

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

Adoption by Sudras

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

30. —पूजाप्रायस्यायास्यप्रस्ताव नियमाय च तत्तत्त्तयुपस्यम्:।

40. इद्यम्, २. ७.
like. 41 The performance of home and prayers with Vedic mantras may be completed through a priest as in the instance of a woman. A text of Hirâ is confirmatory. 42

In some parts of India the adoption of a son connected as santana to and belonging to the gotra of the adopter amongst the twice-born tribes, is considered as validly complete without the Vedic rites even, merely through such temporal acts as the agreement between the adopter and the giver with the concurrence of the governmental authority. 43

Adoption by two Individuals

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

41. "Puṣtâ-Gāṇāṁ Puṣṭa-Vajraṁ Šuṣṭi' Kṛṣṇa: "VāFTWAREM SADHIN SĀVAKAM JNA" I..."

42. "KṚṢṆA-V śrīmāN A-KAM PRAKĪRTYU-ŚRI SARVASEVAM YĀTÁD HAYĀM SYAVĀM KĀM KṚṢṆA-V śrīmāN A-KAM PRAKĪRTYU-ŚRI SARVASEVAM YĀTÁD HAYĀM SYAVĀM KṚṢṆA" I..."

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

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

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

were the property, as it were, solely of the man himself\textsuperscript{46} which he had the downri ht authority to dispose of as he wished. He could dispose them of as a gift or even sell them off in order to protect himself against adversity\textsuperscript{47}, prohibition, if any, was enjoined only in the case of an only son.\textsuperscript{48} It was certainly an indication of the powerful influence of base worldly prudence which inita sombreness certainly failed, it may be asserted, to permeate the general fabric of society. Nandapandita reduced all evidence supporting the equality of the mother with the father to prove the superiority of the husband to the wife.\textsuperscript{49} Naghumani, who in the heart of his hearts believed in the equality of sexes, could not rid himself of the shackles of this influence and subjected the competence

\begin{itemize}
\item \textsuperscript{46} Narada, \textit{q. JH, p.112.}
\item \textsuperscript{47} Kst. \textit{q. JH, p.13.}
\item \textsuperscript{48} \textit{IH}, pp. 111-112.
\item \textsuperscript{49} \textit{IH}, pp. 116-121.
\end{itemize}
of the wife, whose husband was living to dispense or accept the gift of a son to the assent of her husband who could act independent of her wife.

**Real Parents only Competent**

Manu, Yajnavalkya and others recognize the mother and father alone, severally or jointly, as competent to give their son in adoption. Sankara Sastri Marulkara, applying the canons of construction, establishes that the mother and father here signify natural parents only and exclude foster parents, grandparents, foster or real, and so forth. A foster child cannot be given away by foster parents or grandparents.

This interpretation has been accepted by the modern Hindu law and incorporated in the HMA to exclude an adoptive father and an adoptive mother. 'Father' under the modern law cannot include a putative father, but a mother may give her legitimate or illegitimate child, for motherhood does not rest upon the presumption &

50. वातां खिल ता कातां खिलू यम्भूर्याचे पुण्याचे।
    ध्रुवं प्रागिकं पुण्यं स हैव ध्रुवादीर्याः कुः। इए।
    MS, IX, 168.
    qo. EC, p. 6, EM, pp. 10, 116, 118-19, 121.

51. Yāj 11, 152.

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

Competence of One Having Several Sons

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

\textsuperscript{54} Derrett, J. J. M.: \textit{Ibid.}, S. 131, p. 98.
\textsuperscript{56} शिष्याकुरू नानां पृथ्वी निदानः ।

\textit{Saunaka}, q. q\textsuperscript{2}, p. 13, IB, p. 111.
Hendepandita holds that this prohibition regards both the giver and the adopter on account of a text of Vasistha (XV. 13) which enjoins, 'Let no man either give or receive a gift of an only son, for he indeed is intended to propagate the line of ancestors'. Since an only son has been declared as being intended to continue the line of ancestors, by the contravention of this rule, i.e. in the gift of such son the offence of extinction of lineage is incurred both by the giver and the adopter on account of the prohibition being enjoined on both.\textsuperscript{57} The passages of Yajnavalkya, Narada and other jurists bringing the disposal of sons and wives as gift or as an article of sale have been construed by him to regard the case of an only son and not where there are several, since they are confirmatory of the import of the rules of Vasistha and Saunaka.\textsuperscript{58}

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

\textsuperscript{57} व तत्वेऽवः पुत्रं पुजयते विवहितोऽयोगकृतं | का नेतृयतः तद विश्वामिति ।
\textit{DK}, p. 111; also o. \textit{DC}, p. 11.

\textsuperscript{58} उपयोगः क्रयविययं गताः | पराशुरामण्डकां हरिवधुरः ।
\textit{DK}, p. 112.
apprehension that the family line might get extinct on the death of the other. A man having two sons is a good as the one having an only son who, in turn, is considered no better than the one having none. This apprehension is expressed in Santanu lamenting speech to Bhima who was his only son, where the former likens such son to an only eye on the loss of which a man is rendered blind. Hence, it is concluded both by the Dattakacandrika and the Dattakaminglema that the gift of a son in adoption must be made by a man only having several sons, i.e. at least having more than two. 59

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

59. धिन्न पराक्ष्य हेमां नापरम्परा विशेषतः सूक्ष्मप्रकृतिः॥

60. कादशकान तात्पर्यम् इति।
There has been a good deal of conflict regarding the real nature of this prohibition in the modern Indian courts since the times of the British rule in India. But, as alleged by Ganganath Jha, 'the authoritative character of this prohibition has not been questioned, or sought to be qualified - by any Nibandha-writer'. Rao Sahab Visvanath Narain Mandlik has been reported by him to question the authority of this prohibition and to hold, on the authority of Sabara Svami (Mfa-Su I.2, 26-30) that these texts were only 'recommendatory' and not 'mandatory'. Jha concedes that what he says may be very good 'law, equality and commonsense', but he disputes the soundness of his logic in clinching the issue on the basis of the Adhikarana of Purvaminman which Mandlik has failed to understand. Since the appearance of his book, very important cases have been decided on the basis of this interpretation and the Privy Council also sealed the doom of this prohibition. The Privy Council held the adoption of an only son as valid and decided that the prohibition enjoined by these texts was merely recommendatory and not mandatory.

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

**Capacity of the Father**

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

64. See infra, fn. 70, p.
65. सन्तोषमय तिथियान ाँ: पुकाराजानार:।
   *In*, p. 117-18.
1. The father, singly and independent of the mother, is mentioned competent to give his son in adoption in the passages of Yajnavalkya (II. 152) and Manu (X. 168) namely 'whom the mother or the father may give' and 'whom the mother and the father may give' respectively.

2. For the superiority of the father, the predominance of the virile seed of the man is assigned a reason by Baudhayana for, as he asserts, the sons are seen even not produced of the womb. 66

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

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

Under the modern law, the father could exercise this power like an absolute proprietor. 67 On his capacity, no restriction was imposed and no condition enjoined and during the Anglo-Indian period her objections even, if any, were treated as irrelevant. 68

66. भजनकस्य यादो भक्तिः प्रभुमेव पुरूषार्थ प्रियं।


According to the HAMA, subject to certain conditions laid down therein, the father if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother, unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind. 69

Capacity of the Mother

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

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

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70. तिनो श्रीमति अथवा मभुस्वासी श्रीमति स्वास्ति श्रीमति प्रवृतम् कविता अधि प्रसंगः।

71. सुमावे न निर्पीठ तस्मान, सुमावे न निर्पीठ तस्मान, तस्मान, तस्मान निर्पीठाः।

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

**Capacity of a Widow**

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

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71. जय भक्ति व्यक्ति वचनो तापि नवकि व्रतसंग्रहः प्रकरणात् प्रस्तुतात् प्रतीतिः ।


73. **Diwan, Parasi: HLL, p. 200.**

74. तत्रत्यायां तन्नित्ति नदिक्षाः शुल्की वा तद्भवां तिनाशिः ।

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

Three Positions Propounded

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

75. न वै चि ति कामाय साप्ततिर्पुथात्रां न स्वायत ।

Remy, p. 117.

76. IMI, S. 132, p. 99.


77. AI 1914 Bom. 408 at 414.
reached by him from the equality of connection of the son to both the parents, which follows from the texts of Vasistha and Baudhayana, viz., (i) 'being produced from the virile seed and the uterine blood, since a son proceeds from the mother and the father as does an effect from its cause, both the parents have competence to dispose of their son as a gift or as an article for sale or to abandon him; (ii) 'because the relation of the son to the mother and the father is equal', respectively. On the basis of the construction he puts on Manu's text (IX, 163), supported by the text of Yaj. (II, 152), he further propounds three positions as under:

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

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

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

78. \textit{कारणां त्वम् सर्वम् व वद्यतानविशालो सत्कृतः कमुना प्राप्तेः}
\textit{याः सन्ताने-सारिकायः स्त्री, अनन्तरं मातृकायः भुजंमधुरं-}
\textit{नर्करणिन्यं प्रभृतिः सुस्निधिः सर्वाः पुनः सत्त्विनित्।}

\textit{Tt., p. 121.}
This interpretation of Manu (IX. 168) by Nandapandita and the provisions laid down by Raghunani are found incorporated in the HAMA in the manner that follows:

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

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

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

79. HAMA 1956, Ch. II, 3. 9.
The reason occasioning the gift or acceptance of a son in adoption has been given as \textit{anadi} i.e. during distress or difficult times occurring in Manu IX. 163. There is a wide difference on the interpretation of this word between different expounders of the law of adoption. In his anxiousness to lend support to the thesis that 'during distress' here regards the giver, Nandisandita goes too far to show that \textit{pravatnatah} in Saunaka's text above, signifies 'on account of a season of distress' on the basis of the manner in which he splits the word, viz., 'that time, in which there is \textit{prakratah} 'great' \textit{vatnah} 'exertion', is \textit{pravatnah} \textit{aprtkalah}, i.e., a time of difficulty or exertion.' One has to exert hard to maintain one's family during a season of famine and the like. And hence, the gift of a son is to be made only if the giver be oppressed with distress or calamity, as a famine and the like.

82. \textit{\textit{कुर्चि} य्रि वृद्ध \\ जामध स्वर्ग अपूर्वन आकाशमः}} \\
\hspace{1cm} - BM, p. 121.
83. \textit{\textit{Mani}}, p. 121.
Vijnanesvara construes *anadi* to mean 'during a season of famine and the like' and holds that no distress existing, a son must not be given; this prohibition regards the giver. In other words, he affirms that no man may give his son unless he be oppressed with such calamities as famine and the like. In support of this interpretation a text of katyayana is adduced by Nandapandita, which enjoins, 'However, the gift or sale even (of a son or wife, as understood from the context) may be made during times of distress; otherwise he must not proceed to do the same. This is the injunction of holy law.'

Pravatnaha is understood here by Nandapandita as an adjective qualifying *anatkalah*, i.e. 'time of distress', but he fails to explain why Srunaka should use an adjective only instead of the substantive noun it qualifies or both together, viz. pravatne *anadi* or *anatkalah*.

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84. *Nik.* on *Yaj.* II. 130. 

85. यदाय यथा शून्यतां तदात् साक्षात्काराद्वारा न देव। साधूर्य प्रभावण
जाति निर्तिकरता।

*DK*, pp. 13, 121.

85. यदाय यथा शून्यतां तदात् साक्षात्काराद्वारा न देव। साधूर्य प्रभावण
जाति निर्तिकरता।

*DK*, pp. 13, 121.
preyatna anatkala or prayatna durbiikasadau unless he intended to bring into bass-relief an aspect in point. The bare use of apadi or durbiikasadau could very well intimate the import in which Nandapendita thinks prayatnatah has been used, viz., 'on account of a season of difficulty or exertion'. One has to strain one's faculties too hard to understand this connotation of the term without his help. Again, it may be argued, Saunaka was not writing riddles where one exhibits one's skill in the use of double-extendors or words with ambiguous implications or of difficult constructions and the like. He was, on the other hand, codifying legal rules where simplicity and unambiguity of language are the hall-marks. It is, therefore, beyond doubt that he used the word prayatna in its regular and ordinary sense of 'effort, an act showing anxiousness, endeavour'. It is in this sense only that the word prayatnatah has been used in Manu's text (IX 66), where as its use in the sense as understood by Nandapandita above would expose Manu's scholarship to ridicule. Nor has it been used in the sense of 'distress of the adopter having no son', which is duly conveyed.

86. प्रयत्त एवंत्तर नातु हितानि प्रयत्नत:।
प्रकरणमाणात्तमनिऊतिप्रसंगशा य।

IM, p. 15.
by the inclusion of the word *seutrenas*, i.e., 'by a man destitute of male issue' in the passage.

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

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

37. (a) येषु पुत्रो जनः दत्ताये च वजितां यद. p. 15.  
(b) तथा यदाति सदारुपाः नि. II. 175.  
(c) त्वायुः पुक्षारं च सहर्षं बालकेच्छ शिष्यः वर्धयावाह भवायो जातारणं रत्नं। Narada (IM, p.112).  
to alienate his sons, wives, his estate while his issue lives, and the like, although the property be solely of the man himself. It is in this context that Katyayana's rule has a meaning. He declares, 'However,\(^9\) (in order to maintain himself and his family) a man may give or sell even his sons and wives in times of distress. Otherwise (i.e. distress not existing) he must not have recourse to such means...' This text therefore, is not at all intended to regularise the gift of a son in adoption or to govern the law of adoption in general. On the other hand, it refers to particular circumstances, viz., of oppressing calamities, a code of conduct and to one of a hundred ways to seek relief in times distress.

The conflict over the interpretation of _amadi_ is the result of its inclusion in Menu IX. 166\(^9\) under reference here and consequently, its having been construed with the agent of the verb _dadvaten_ i.e. 'may give' instead of its object which is only implicit and not expressly mentioned here. This, in turn, has brought in quite an alien element in the concept of adoption, giving a gloomy tinge to the act of giving.

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89. For this meaning of _amad_, Vice _ad_., Notilal Banarasidas, and V.S. Apte.

90. _Dupa_, fn. 50, p. 19.
If *ānādi* is construed with the agent of the verb 'give', it will be the unhappy mother or father only who have to give away their son forced by their ill luck and, no child can conceivably feel but grieved over such a parting with his parents. But this fact is at variance with the essential characteristic of the son being given in adoption, who must be *pratihāraṇavatam*, i.e., happy over his transfer to the adoptive family. Moreover, the gift of a son is considered to be a meritorious act and an act to be meritorious must be done spontaneously and not under force. Thus, it is only proper to relate *ānādi* with the adopter, the object of the verb 'give' and must be understood in the sense of 'in the distress of the adopter being destitute of a son' as done by Aparāraka, the Candraśīka and the *Antakaśāntiśīka*.

91. *Ma*., IX, 16B.

92. अपराराकीते श्रेयस्याश्रयितं विमुक्तिं करते ।


प्रशान्तम् पुनः सिद्धोऽवरुपत्ति ॥

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

(c) Who may be adopted

Rules regarding the selection of a boy for affiliation laid down in the Dattakacandrika⁹³ are almost a summary of the deliberations of the Dattakamisra⁹⁴ on the subject being considered here under. While dwelling on the selection of an adopted son by a member of a regenerate tribe, both of these works draw on the texts of Saunaka and Sakala⁹⁵ to lay down the following order of preference -

⁹³. LC, pp. 5-11.
⁹⁴. ā, pp. 41-101.
⁹⁵. \text{Saunaka, } (LC, p. 5; ā, p. 41-42); \text{Sakala, } (LC, p. 5; ā, p. 46)

\text{Saunaka and Sakala discuss the selection of an adopted son by a member of a regenerate tribe,}
One related

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

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

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

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

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

96. नान्देन पांडित्याः पाणिनवतः स-प्राचीन व्यासनीकरण तत्त्वात्।
विद्याधरः एत यद्यपि: तत्त्वाकारणादशः सर्नेप स्वरुपाः शरणां।
साधृष्टि विजीतस्य कृताय निग्रेप्सन्ते। नान्देन शास्त्र: इत्यत्तेन यथो--
शरणां।

Cat. B., p. 43.
Both lay down that each succeeding on default only of each preceding is to be accepted and, according to the Bhattakasimardika, in no case must one belonging to a different caste be adopted on account of the fact that one belonging to a different tribe is not entitled to offer funeral oblations and inherit to the adopter, though, according to the Bhattakacandrika, his filial relation is conceded to have been legally established for the sake of perpetuation of lineage.  

Hence where one of the same class is available, such not of the same class is barred, and both in support of their contention adduce the text of Saunaka who lays down that a man of the Kshatriya class must adopt.

97. वैरवातः विवाहदेव सामाजिकतावचनम् क्षत्रीयकण्याकै नाम केशविनायाम् ।
   दिक्यवाक्याय मुद्दते पुरुषारुढः एव शास्त्रीयवादः सदस्यप्रकारकाय ।
   प्रकिर्णकार्याय सन्निधिते न इत्य विवाहस्थिं शास्त्रात्माविनायाम् ।
   का संगमशुध्वारंगणः

आलोक्य दूसरे ग्रामः प्रकारस्य विवाहस्थिं

लोकाते विवाहस्थिं विवाहकारः खुशी

द्धारा वांसवानं तु नासैं य कुस्मिःः ततिः

DC. pp. 677

का क्या कृद्गार्त्मः

यद्य व्याधिकालिनी गुणेऽति का: पुरुषः वर्णः

कंद्यां न त स्तुतिनि अन्य फार्ति नाते

वत्सलानात्यायां शुद्धं च विवाहस्थिः

तत्कष्ट्यानात्यायां

भुजाकोणं विति विकृयः

DM. pp. 56.

And, then MS IX. 168 and CA. II. 12 are quoted in support.
from amongst those of his own class belonging to the same \textit{cobra} following the same primitive spiritual guide also called the \textit{purohita}, of the \textit{vaishyas}
from amongst the \textit{vaishyas} and of the \textit{sudras} from amongst the \textit{sudras}, in short, of all the classes in
their own tribes only and not otherwise. Nanda-
pandita argues that although none, other than the one connected as a samajika and not so, is capable of
being adopted yet, if one must go beyond, in all
cases of adoption, the adopter and the adopted must be of the same class and the one of a different class
is forbidden.  

93. \textit{तथा च तथा:—}

\begin{quote}
\textit{सात्विकानां कलावाच गुरुगार्ज्जपि पि।}
\textit{सात्विकानां केशवशेषु स्मार्थवृक्षाविषयः।}
\textit{कृषि तत्तथान्तर कार्यस्य न कर्मस्त।}
\textit{धर्मपु. 7, नौर नौ।}
\textit{कार्यस्य न कर्मस्य एत्तिकम् क्षात्रं व धर्मविकारिणिवर्गे।}
\textit{धर्मपु. 7।}
\textit{कार्यस्य न कर्मस्य एत्तिकम् क्षात्रं व धर्मविकारिणिवर्गे।}
\textit{धर्मपु. 5।}
\end{quote}

99. \textit{विशेष न न कर्मनिष्ठ:। कार्यस्य सर्पिका शिक्षणोऽयोऽधिकृत्त्वा व
प्रशस्तिः कर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मकर्मk}}
Medhatithi interprets *sudra* as the adopted son possessed of virtues befitting the family of the adopter and not as one belonging to the tribe of the latter and concludes that a *kshatriya* even may be the adopted son of a *brahmana*. The *Kalpataru* also has explained this to mean that a *sudra* even may be the adopted son of one of a higher class. Both of the *Dattakacandrika* and the *Dattakampana*, do not agree with this interpretation which, being untenable, must be rejected on account of the fact that he only, who is similar in class, is declared entitled to inherit and not one, who is not so, on the authority of *Yaj. II. 133*, *Vrdhdayajnavalkya* and others.\(^\text{100}\) It must be remarked here that while the *Dattakacandrika* holds to this

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\(^\text{100.}\) "स्तुत्वका चेत्तरमनि सूद्रकाचरणं स्वागतिके नागदीर्शकः परस् प्रादुर्बलिका कालसादिनां अवस्था तथा द्वियाधिकाराय एण्ड क, pp. 6-7.

येन सुस्तनव देशवतितिन्सा अनुसहायना, कर्तः सुरासिद्धति देव पुरो ग्राम्यसाधारणं सेविणे ज्ञेयसहितः ज्ञातां अर्थं क्षणं प्रकटसङ्कल्पं पालित: सु-द्वारायु संसकारं विविधाय श्रुति: श्रातिकुम न व्यवहारं. वातिकायः न वातिकायः. पालितसाधनं विविधायशायः."

\(^\text{86}.\) p. 53
doctrine, it treats as stated above, the filial relation of such adopted son as legally established, although he is denied the capacity to participate in the estate and perform the obsequies of the adopter; he is entitled to receive maintenance only from the person who inherits to him. Bharata, son of Dusyanta is narrated to have adopted Bharadwaja, a brahmana son of Brhaspati who became Ksatriya on his adoption. 101

Aparanaka is reported to have explained *ādṛṣṭam as meaning the equality of class of the giver and the adopter. 102 Kultuka and other commentators of Manu on the one hand and the *Yājñavalkya and other works on the other hold that the adopted son must be of the same caste. The *Samāna and the *Bhāgavata further hold that of the brahmana and other tribes, the adopted son must be not only of the same class but also of the same country. 103 A stress is also laid on the

101. *Yājñavalkya*, 99, 137-139.

102. तत्त्वात् पुनः श्रावः: प्रकृतिश्रोधाय वनन्तरित्स्थिताय साधनं यत्संपत्तिकृतः

103. *कृति* देशसु तत्त्व-नागरिक-नागरिकत्वात् चालकातो यत्यन्त्रायोऽस्मिच श्रावः

*Bhāgavata*, p. 158.
proximity of connection between the adopter and the adopted by Vasistha who prescribes that an unremote kinsman or a nearer relation only of a kinsman must be adopted.\textsuperscript{105} The courts, according to P.V. Kane, accept the view of Kuláuka and the rest\textsuperscript{105}, while Páras Piwan reports that this rule was considered merely recommendatory and that under the Act the only requirement is that the child must be a Hindu.\textsuperscript{106}

**Filiation of a Brother's Son**

Of the several brothers of the whole blood, if one even be possessed of a male issue, all of them have been declared by Hanu and Bhrásapati to be the father of the same by means of that son.\textsuperscript{107} Both the

\textsuperscript{104} श्रवण गीतातानां लघुहायिनीम् प्रविधा त्वदेशेऽति | निषेधतात्त्वत्वाविशेषः

\textsuperscript{105} भार, Vol. III, p. 675.

\textsuperscript{106} भार, p. 202.

\textsuperscript{107} चतुर्व्युतः विकसीतानां खलसप्ताहं निषेधीति !

\textsuperscript{108} तृतीय पुत्रानां पुत्रादेभिः पुत्रीकाः।

\textsuperscript{109} भार, IX, p. 53.

\textsuperscript{110} भार, p. 8 (reading सर्वदेव in place of जगदेव) RM, p. 55.

\textsuperscript{111} निषेधाता वस्मा दुग्देवाति (सुर) ज्ञातः।

\textsuperscript{112} भार, p. 8; Ex. p. 78.

Similar verses with some variations are attributed to Vasistha (XVII. 10) and Harita, the last c. \textit{Lil}, p. 44C.
Dattakeśacakrīka and the Dattakeśacakrīkaṃśa conclude from this declaration that where a real brother's son be capable of being adopted, in some manner or another, the same must be preferred for selection from several eligible near kinsmen connected through oblation of food. In such a case the selection of another is barred. The propounding of the representation of filial relation in the son of a brother in both these texts is intended not to bar the adoption of him (or another, where the former is not available), but to ordain that the nephew must be first selected in preference to other kinsmen. This has been clearly stated by Devasvāmin, the Candrikā and the last but not the least, Viśnapāvara. 108 Although the filial
relation of a nephew, even if unadopted, to his paternal uncle is recognised yet his connection as lineage i.e. for perpetuation of family, is not established without an act of formal adoption which is inferrible from texts of Atri, Vasistha and Saunaka in respect of a man, destitute of a son, proceeding in the act of adoption. Moreover, Atri's text has an imperative mode of expression enjoining upon a man destitute of male issue, to constitute one on this account. Hence a nephew even must be formally adopted, since otherwise he will not be first in participating in the estate and presentation of funeral oblations, but will hold his respective place in the order of heirs.

109. 

110.
Since the precept of Vasistha ordaining that an only son must neither be given nor be adopted is applicable to a case other than that of a dvvamuvaya, the adoption of an only son of a brother is not barred and is treated as legally valid on the precedence mentioned in the Kelikamurana, of Vetala affixing the only son of his brother, Bhairava. Suvesa, begotten by Bhairava, was treated as son of these two brothers. Nandapandita also sanctions the affiliation of a single son of a brother by several and holds that the prohibition enjoined by Vag. XV. 3 barring the gift and adoption of an only son regards an adopter other than the brother, if since the perpetuation of his ancestor’s line is completed by the son common to both the brothers. 111

111. त्वा वा वार्ता मेधावीके महीनः कालम्। व. व. प्रण. १५' पुण्येऽधिकारधिकारस्येव वाव्य िापितिः ' न ' वाव् श्रापविति पुल्लियां। अतलोऽर्जुश्रमस्यायां सुप्रीतेऽभुवे। प. ६३।

' भृगु स नानाः पुरुषार्थिः परमतेकः निःकूलकान्तौ भद्रानिवित्वाच न निवित्वात।' प. ६०।
Filiation of a Co-wife's Son

In respect to the several wives of the same husband, Manu declares that if one even of them bears a son, all of them are regarded as possessed of a male issue by means of the same. According to Brhaspati he is an offerer of the funeral cake to all of them, who further ordains that the rule, as applicable to several brothers of the whole blood of whom one even has a son, is also applicable to the case where of the several rival wives of the same husband one only brings forth a son. Thus, it may be argued that as in the case of several brothers of whom one be possessed of a son, similarly the filial relation of a son of a rival wife, if unadopted, will not be established to his stepmothers.

This contention is rejected by Nandapandita who holds that since such son proceeds from the portions of the husband's body, his filial relation to his stepmother is legally complete even without formal adoption.

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112. "सत्यार्थकरणक कोरकाय अर्थात् पालेव! लकिन नाते निरंतर शिशुका संबंध है।"

(Br. p. 10; LK, p. 75)

"यह वह उस्मानीय राजस्व रिपोर्ट नया।"

(Br. p. 10; LK, p. 75)
and adduces in support of his conclusion the same texts of Devanavamin, the Candrika and the Pit, as recorded above. But the Dat-skacandrika assigns a different reason to overrule this objection, viz., the affiliation of a son by a woman proceeding legally with the instrument of her husband's authority to constitute a son for him is valid only where the husband has no male issue and where he has a son, although she may be destitute of the same, her act in this regard would be void of legality. And, since she can have no offspring except the issue of her husband, the act of her constituting an adopted son, if the son of a rival wife exist, will be void. Hence, she obtains the whole spiritual benefit through such son and there is no occasion for her to formally adopt him or anyone else.

113. मन्नात्मिकार्यः रत्नेऽत्र द्वितीयं विद्यमानं...

114. व्यवस्था एवं राजाणामात्रं द्वितीयमात्रं

\[\text{\textit{Translation}}\]

And, since she can have no offspring except the issue of her husband, the act of her constituting an adopted son, if the son of a rival wife exist, will be void. Hence, she obtains the whole spiritual benefit through such son and there is no occasion for her to formally adopt him or anyone else.

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113. mjf t* -r&n

114. p. 10.
On the basis of the construction he puts on Manu IX. 133, i.e. 'of several brothers of the whole blood ... etc.' Nandandita draws the following conclusions:

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

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

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

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

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

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

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

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

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

116. एवऽकृिपुिगति पालिकेदंगािमिदु िः ।
दारिया गदानवे व भरािलक्षुं त्वम्।

Sakala q. 12, i. 161; 12, p. 5.
दोषिन्दा पाकिन्यक्न कृपतु निद्रास्ते शुद्धः।

प्राग्यादि िै दारिया गदानवे: िूः। किलु 11 श।

Saunaka । 12, p. 80; 12, p. 7.
regards the tribes other than Sutras, while according to the Lattakamāmra they are affiliated only by the Sutras, since they are not mentioned by any authority to be the adopted sons of the three superior classes. 117 Kendapandita further propounds that the son of either a sister, or a daughter or a mother's sister must not be affiliated on account of the fact that the prohibited connection is common to all the three even. 118

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

117. दोभिकप्रयोगे यथा येन: त्वात्सिद्धस्तत:।
     दोभिकप्रयोगे यथास्थिति अर्थातः केतेनिष्काषणात् कल्याणः।
     यम, p.93-94.

118. सौनक पञ्चविनोक्तः दोभिकप्रयोगे यथास्थिति।
     एन्र विवेकमायाय विषयमायाय अनुवते।
     यम, p.145.
that of a near kinsman related through common
connection of funeral cake and that of a distant
relation belonging to the same general family and the
rest. Hence, according to Nanapandita, a
brother, paternal and maternal uncles, the son of a
daughter and of a sister are excluded from the
capacity of being adopted since they do not bear the
reflection of a son. It is further propounded by
him that a sister's son including all those who do
not bear the reflection of a son are incapable of
adoption on account of the fact that the prohibited
connection in respect of marriage is common to them
all. After explaining the prohibited connection as
mentioned in the Grhyasutistha, it is concluded by
him that a son, who, if begotten by the adopter,
would have been the result of a prohibited connection
in marriage, must not be adopted and such only may be
affiliated, as with whose mother the connection of
connubial intercourse could be possible.120

119. ... पुत्रं लोकं पुत्रसु (मै) पुत्रसु पुत्रादिकः।
तथा निगण्यिना जन्यम्यादिनयायः।

120. तथा पुत्रं निगण्यिनाय जन्यम्यादिनायः।
तथा निगण्यिना जन्यम्यादिनायः।
Various contradictory constructions have been put on this expression occurring in Saunaka's text leading to conflicting decisions by High Courts in India. The interpretation rendered by the Dettaaka-candrika and the Dettaka-mimamsa and a further explanation added to it by the latter have made the confusion verse confounded. This interpretation, in apposition to his rule of propinquity regarding the selection of a son for adoption, has given rise to absurd and embarrassing situations. According to the Dettaka-mimamsa, a widow could not adopt her brother's son, although the adoption was to her husband who himself could have adopted that son, since he could not be one of a prohibited connection. He could adopt his maternal uncle or the son of his father's sister on account of propinquity and at the same time, could not do so, since he could not be begotten by the adopter on his maternal grandmother or paternal aunt by means of nivasa. According to K. V. Rane, the Dettaka-mimamsa was rejected by the Bombay High Court and the Privy Council for this
absurd position. The Vajjayahare Havukha and the Leelapanirnaya argue on the basis of several Mimamsa sutras that a daughter's son and a sister's son may be adopted by the brahmana and other regenerate classes, while these only, if available, must be adopted by a Sudra. It has been pointed out by R.V. Kane that the Bombay High Court was wrong in holding that Milakantha also interdicted the adoption of the daughter's son and the other two by the regenerate classes.

It may be asserted that R.V. Kane was wrong in holding that Suthernland had no warrant for introducing the word 'marriage' after nivora in the explanatory note on nivogadina in his translation of the \textit{Lettakamiasa}, since it was suggested by Kane.


123. \textit{ibid.}, Vol. III, p. 695. Milakantha states that it has been explained in his father Sankarabhatta in his \textit{صير}, which is corroborated by the general practice even in \textit{Vedanta-Brahman}. \textit{ibid.}, p. 683. (edn. R.V. Kane. Also his notes, pp. 177-79).


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

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

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


sister's son, although, of all those capable of being adopted, they are the nearest and dearest. The Sudras have been the wisest and the most fortunate in managing to get this allowance for their class. It was only proper to lay down the rule of propinquity so that the nearest and the dearest could be selected for adoption for the physical, mental and spiritual identification and it only exposes the preposterousness of the law to slavishly and thoughtlessly subject the selection of an adopted son to be put through the sieve of nityaga and the like and to bar in general the adoption of the son of a daughter or a sister.

And hence, the HAMA has done well to dispense with this restriction and permit the adoption of any one subject to other conditions laid down under the law.

Of Age and Marriage of the Person proposed to be adopted

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

\(^{128}\) शिष्यांते न शुद्धं एवं युवात बाल्यस्य हि विज्ञानि
बालादार्यस्य जन्ममाध्यमवस्तिः

\(^{129}\) कृपया वदे मे किर्त्ते किर्त्तिकालय व व्रजति

\(^{130}\) दशरथकाविषयं पूर्वक देवस्थानम्

\(^{131}\) श्रावणे दु पंचमादो देवपति देवानां देवानां

\(^{132}\) हु भक्तं विषयं पूर्णं विषयं पूर्णं पायम् चरु

\(^{133}\) वि. p. 122, क. p. 21, क. III purvadha. p.56;

\(^{134}\) वि. p.114; क. p. 169 (This last reads adīna in place of adina).
It is held by the *Lettakamimamsa* that the primary time for adoption is the first three years and beyond this till the fifth year is the secondary time. After that even the secondary season for adoption does not exist, although the boy to be adopted may be still uninitiated. The principal position is that one wholly uninitiated should be adopted and where one initiated as far as the ceremony of tonsure exclusive is the secondary. But no one after the ceremony of *cuda* can be adopted, otherwise a state of servility would result which will also do if it is not performed by the adopter. The valid adoption of one on whom the *cuda* ceremony has been performed is the result of an extraordinary case of a son of two fathers called the *dvavasuvavanas*.

The *samskara Kumustubha* holds that what is stated in these verses is opposed to the precedence of the adoption of Saunahsepsa initiated as far as the

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129. तनावस बुधान सेंकर संभास परिपेक्ष इनामुच्यायकाता रावति।
तह बुधानसधारात्तंत्रिस्वार्यसहु शुद्धतो शुद्धता।
--- कलस्थते सुभाषकोऽ
कृपाधिपियस्य यस्य यत्ति रावति.
--- अद्यतनं सिंह परपापो न प्रविष्टचिन्हः
.. एवं यस्य यत्ति रावति नर्तिकांशुः

**Note:** pp. 125-129.
upanayana, i.e., 'the investiture ceremony of the sacred thread', by Visvantra in the Ait. Br. 130

The Dattakacandrika puts a different construction on the verse, marked as (a) of the K., reported above (fn. 128(a), p. 247) and asserts that the ancient practice of adoption was not restricted to any period. 131 It, however, holds that among the three twice-born classes a boy who is initiated up to the ceremony of upanayana can be adopted while a sudra can be adopted before his marriage ceremony. In all cases of adoption, however, the sacrifice for the male issue must be first performed to complete the affiliation of the boy with the adopter, which is produced merely by the ceremony of marriage in the case of a sudra. 132 Both the V. Br. and Sankarabatta,

130. K., pp. 169-172.
131. ततो वै विनयमण्यां नाहोऽज्ञविषयंनमां स श्रवणं श्यो नात्मानं नात्मानं नात्मानं नात्मानं।

132. विनायकसमवेताः स्वयम: श्रवण: तु स्विचलित: तथा अवर्धेषत्रसाध्याः पुराणोऽपि पापं। अभ्यस्त: न विद्वाच संतोषे मायादेवत्वाः।

LC, p. 24.

LC, p. 22-23.
the father of its author as well as the San-kay
hold that a boy of the same gotra may be adopted
after upanayana even. They go even far beyond in
asserting that one who is married and has had a
son even born to him may be adopted in all classes
since there is no impediment.133

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

133. धार्मिक परिणामात उ पत्र प्रस्तुति ह निकोटि सत्ततारणम्।
तु न रक्षा वांछर्नाम्। वी, प. 114.
134. Ganga Sahai v. Lekhraj (1887) 9 All. 253
(authenticity of the verses of the RV held
doubtful), Sri Bala Mukund Lab v. Sri Jagannath
(1923) 2 P. L. 469; 72 I.C. 736 (1923) F.P. 423,
(held the adoption may be made before
upanayana irrespective of whether the cuda
is performed in the natural family or whether
the nutresi is omitted); Ch. Nireshwar v.
Bisheshwar (1926) 5 P. L. 777 (Condition of
five years held not binding, p. 844); 101 I.C.
289 (1927) L. 61; Jura Bala Levi v. Sudhir
Kumar Mukherji (1924) 7 Cal. 566.
135. Viramayya v. Ramalipya (1896) 9 Mad. 148 (F.B.)
(adoption of a samotra after upanayana held
valid); Eichwayor v. Suggavoor (1892) 13 Mad.
128 (adoption after marriage held invalid).
The adoption of a married person was held invalid throughout India except in Bombay Presidency where it became common and the adoption of a person of any age, after his marriage even and even if he were older than the adopter himself and has had children was held valid. A *sudra* could be adopted at any age, but before his marriage in the whole of India. In Bombay, however, amongst *sudras* also a married person and even one having a child could be adopted. But even in Bombay the *Lingayats* of North Kanara were not allowed to adopt a married person, for it was held that the law of

    Liwan, Paras: M.t., p. 204.

137. Kalabhai v. Maheshu 49 Bom. 387, 90 I.C. 529 (1930) A.I.R. 349; (The adoptee was older than the adopter); Dharan v. Ramlahna (1986) 10 Bom. 80, 84 (for adoption of a married *naratra* brahman); Gopal v. Vishnu (1899) 23. Bom. 250; Kalgayda v. Somappa 33 Bom. 669 (adoption of a married man having a son. It was held that the son born before marriage remained in the natural family for the purpose of inheritance). Children born after adoption belonged to the family of the adopter.

138. Lingayya v. Chengalas (1899) 48 Mad. 407 (Following the *Battakacandrika*, it was held that a *sudra* even could not be adopted after marriage).
Madras state applied to them. In a later case the same court held that the adoption of a married man among the Gaud Sareswat Brahmanas and Saivaine Brahmanas of North Kanara was valid, since to them the law of Bombay only applied. In other parts of India also a customary adoption of a married person was allowed in certain castes.

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

Adoption of Daughters

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

141. Nathu v. Hiraii (I) 1955 M.C. 5944 (M.Bh.).
142. Ch. II, sec. 10 (iii) and (iv).
various texts, like the *Kāṣṇaṇa*, the *Kahabhārata*,
the *Mṛ* of Yaska, the *Skandapurana*, the *Līnṣapurana*,
the *Harivṃsa* and the rest.\textsuperscript{143} Basing his arguments
on the maxim, 'on default of a principal, a substitute
it is asserted by Nāṇapandita that as an defect of
a legitimate son a substitute is affiliated, similarly
on default of a real daughter a substitute like the
soil-born (i.e. wife's) daughter and the rest may be
adopted.\textsuperscript{144} He recognizes the identity of a
daughter with a son and adduces in support of his
contention the rules of grammar, the *Ṛkṣa* and the
texts of *Ār̥tis*.\textsuperscript{145} It is propounded by him that
an adopted daughter, resembling the legitimate one,
is a substitute for issue (i.e. a real daughter).\textsuperscript{146}

\textsuperscript{143} IN, pp. 206-734.

\textsuperscript{144} 'वारेंशुद्रो वैर्युधुताः वध्यपारे रूपायु: पुत्रः प्रतिविनिवासितकी
'पुत्रपारे प्रतिविनिवासिता: विश्वसिता ज्ञान।'

\textsuperscript{145} वारेंशुद्रो वैर्युधुताः ! *Panini* 1.2.68

\textsuperscript{146} वारेंशुद्रो कुदुधुद्रो ! IV, pp. 206 ff.

\textsuperscript{146} वारेंशुद्रो कुदुधुद्रो ! IV, p. 227.
Reinforcing their arguments with such instances as the adoption of Santa, the daughter of King Damaatha, by King Lomapada, and of Prtha, the daughter of Sura, by King Kuntibhoja, the Saktas as well as the Dasaíndhu hold that a daughter may also be adopted in the similar fashion. In the case of a daughter, being adopted from a family having a different family name, her marriage with a man coming of a family connected with the gotra either of her natural or adoptive family is barred. An adopted daughter is held entitled to inherit to the adopter on default of a son and the wife.\textsuperscript{147} According to the Dātakamimamsa, the order for succession is the same as in the case of sons.

The adoption of a daughter is not recognized by the Vyāhara-nāyikha. Taking his cue from the prescription regarding the ceremony of investiture of the sacred thread and from the expression 'he is known as the son given' in Menu III.163, it is held by Nilakantha that the adopted son must be a male only.

\textsuperscript{147} SK, p. 188.

\[\text{\textsuperscript{147} SK, p. 188.}\]
and not a girl. This rule has been adhered to by the Indian courts. The dictum of the *Dattakamimamsa* and the *Sam-Kau* was rejected in Bombay and elsewhere and the *V. Mahav* followed. Formerly a daughter could be adopted by custom as, for instance, in the matrilineal families of Kerala or amongst the *devadesas* in South India. But later, the Anglo-Indian law sealed the door on this custom, treating it as obsolete. Under the *Rama*, there is no such bar, but only one son and one daughter may be adopted.

148. Formerly, adoption of a daughter by a *naikin* or dancing-girl held invalid, in spite of a custom to the contrary, being regarded as immoral — Mathura v. Lai (1880) 4 Bom. 545; Hira v. Rakha (1913) 37 Bom. 116, 17 I.C. 834; Chaiti v. Vardeo Jan (1893) 20 I.A. 193, 201-202. For, where the adoption was by a prostitute, who was not a *naikin* attached to any temple — Manjina v. Sheshagiri Rao (1926) 26 Bom. 491, 495. The adoption was valid if it was not for the purpose of disposing of the girl for prostitution — Gangamma v. Kuppana (1933) Mad. 789. *Ponnalai: Kumaun Local Customs* for the adoption of girls by custom in Kumaun.

150. Jemadar Munshi Haji AIR 1931 Lah. 399; 17 Lah. 656 at p. 661.