CHAPTER VII

Socio-Legal Consequences of Adoption
(e) Extinction of Adoptee's Relationship in the Natural Family:

An act of adoption produces consequences which have a great bearing on the adoptee's social, legal, religious and biological relationship with his father and other kins in the natural family. On his adoption his ties with the natural father are deemed to have been rescinded in general except his connections based on blood relationship, both lineally and collaterally in the paternal as well maternal line which are recognised to persist on an area of a fairly big amplitude. Most commentators and digest writers from the medieval down to the jurists of the modern times alike have drawn upon Rama's text on the subject, "A son given (in adoption) must never claim the family and the estate of his natural father; the funeral cake follows the family and the estate; (consequently), of the person who has given away his son, the funeral repast ceases."  

1. नायाक सिद्धे जनतावदने नर्तकम्: नृत्त।
   नर्तकगोपालसिद्धान्त: पिन्दे, उमेतिषयानं: उपनाम॥

   Ex. IX. 142.
Both the *Lattakamisana* and the *Lattakamisanda* draw upon the *Sapticandrika* to explain the import of Kanu's text under reference here, affirming that from the mere gift of the son, his filial relation to his natural father is extinguished with the result that his right of ownership over the latter's estate and his relation through gotra to the family of the giver are annulled. The *Lattakamisana* refers to a text of *Pattabhishahi*, viz., 'The sons given, purchased, and made and the son of an appointed daughter, who are here affiliated by another person through adoption, as propounded by an holy saint, are not sons of two fathers (being) unconnected to those of the (natural) family and propounds that those (sons), who are duly adopted according to the form laid down by an holy saint like Saunaka and the rest, are not connected to those of the family of the natural father and are, therefore, not sons of two fathers, viz., the adoptive and the natural. The implication is that the relation-

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2. *... षातु भैति पुत्रजय द्वारा उद्वैगुर्ज्ञान व व- ...

3. *कन्त-दत्त-त्साग-दुहिकामना: परपचिकानीश्ल योः भवि

The LC refers to this text of the *Sm.C* (II, p.230) without, however, naming the source.
ship, as a kin, of the son given, with the natural father is terminated on the act of giving and adoption having been duly accomplished.

Explaining Manu's text under perusal here, Vedabati states that since a son, on his adoption, does not inherit the gotra or the estate of his progenitor, he does not offer funeral cakes to him; a son offers funeral repast only to him whose gotra and property he participates in. In other words, the first hemistich of the verse signifies the relinquishing of privileges by the dattaka son in

The reading admitting a different reading of Kaittitesh's text here, holds that it may, alternatively, refer to the state where the son given, if various initiatory rites are performed by both the natural and adoptive fathers, is a son of two fathers, namely the dyuasyavasya:

In that case would read as implying that absence of extinction of kinship of the natural son given from the natural family.

Notwithstanding its retention of the reading, the PC (p. 160) takes this text as relating to the latter case where a son affiliated through adoption in accordance with the prescribed form, under an agreement between both the natural and adoptive fathers, belongs to both of them. It, however, bypass an explanation as to how it would construe same aakullah in consonance with the interpretation which is put on the passage under review:

The reading would read...
the natural family where as, quite consistently with
that, his natural father shall relinquish the
privilege of receiving the funeral repast and other
obsequies offered from the son whom he has given
away.

This has led modern jurists into constructing
a fallacious and so, misleading legal fiction which
has drawn courts on delivering contradictory and
unwarranted judgments. Not realising that there were
provisions, in several authoritative legal texts,
subjoined to this text of Samu, investigating it with
adjustability to different sets of circumstances,
they construed it literally and applied rigidly. A
learned judge observed that the theory of adoption
involved the principle of complete severance of the
son given, from the family of his birth, both in
respect to the paternal and maternal lines and his
complete substitution in the adoptive family, as if
he were born in it. The Privy Council also upheld

S. Subhavacharier, N.P. : H.L., p. 460;
Kamindas v. Birch, 40 Cal. 270 = 15 B. L. C. N. 172;
Uma Shanker Goitre v. Kali Nand, 6 Cal. 256 (P. N.),
p. 260.
the view expressed in this case. This legal fiction was stretched so far as to yield the result that the adopted son was 'treated as having been born from his birth in the adoptive family and as having never been in the natural family.' Again, Sir Asutosh Mukerji, citing Manu IX. 142, observed "an absolute adoption appears to operate as birth of the boy in the family of adoption and as civil death in the family of birth, having regard to legal consequences that are incident of such adoption." Construing the text of Manu in the same manner, the Bombay High Court held that a man, though he may be absolutely entitled to an estate as sole surviving co-pecore in a family, will, on his subsequent adoption into another family, forfeit that property which will then pass on to his heir as if he had died on the day of his adoption.  

5. Kali Komul v. Uma Shurkar, I.A. 1011. 139, 140.  
decision in an intervening case, the same court held, quite inconsistently with the decisions in these two cases, that a separated co-partner, on his subsequent adoption, could not be divested of the estate which he had already taken at a partition of the ancestral property between his father and his sons on the plea that the share taken by him could not be said to be the estate of his natural father within the meaning of Manu, IX, 142. The Privy Council, as noted above, at first approved of the application of this construction put on the text of Manu, but later, thinking that matters were being stretched too far, sounded a note of caution, "As has been more than once observed the expressions 'civilly dead or as if he had never been born in the family' are not for all purposes correct or logically applicable, but they are complimentary to the term 'new birth'" and disapproved of the decision of the Bombay High Court decreeing the forfeiture of property already vested before adoption in Dattatraye v. Govinda 40 Bom. 409. The Madras and Calcutta High Courts did not admit

of this interpretation of the text in question and held that an adoption did not divest any property taken by an adopted son 'by inheritance, gift or under any power of self-acquisition prior to his adoption' into another family. As will be seen hereinafter, the Privy Council was right in adding a rider to this legal fiction.

It may be noted that the rule contained in Manus IX. 142 rescinding relationship of the son given from the natural family and admitting him into the kinship of the adoptive family, is based on four terms, viz., sotra, riktha, pinda and svadha which signify all those consequences connected with them and recognised by legal authorities. It will be found on examination of authorities that not an inkling even of the concept of 'civil death or birth' is associated with the law of adoption. The theory of complete severance of connection, through oblation of food and succession, is applicable only in a

restricted sense and in a case no more than the one where the son given is absolutely adopted one whose progenitor has, besides the one who has gone out of the family on his adoption by another, other son or sons and, not in a case where the progenitor either has no other son or dies sonless. Furthermore, some other related issues remain unaffected. Thus, it is held by various authorities that where the progenitor is sonless or dies sonless without a survivor entitled to perform his obsequial rites (putradhavan), his son, whom he has given away in adoption, performs funeral rites and other obsequies in honour of such father and his other ancestors and the rule of Hara does not obtain in such a case.

12. तथा दातनी श्रवणात: पुत्रांतरडात। प्रमाणः श्रवणी श्रवणे देवता: पुत्रमित्रः।

Kedrasaṇḍha on ḵhaḍīra-sūrya, III.5.16:

तत्त्वं गुरुयुतसु गुरुपापाते क्रान्ति कस्यवचनः... गोकुलित माता । अः सनका-पुत्रात्मिकिकम्।

-K&, III. Uttaraśrava, p. 399.

नद्य गुरुपापाते... गर्भार-अति सनकाकावः देविकरणः कस्यवचनः

From what is attributed to Visnu in this passage of Durmavativilasa, it may be deduced that Visnu
The Dattakacandra refers to the objection that technically speaking, only the son of the wife, viz., the kaetraja can bear relation as a son to two fathers and that this relation cannot apply to the son given on account of Manu's rule that he does not inherit the gotra and estate of his progenitor.

Visiting this objection on the grounds given hereunder, it affirms that the general adopted son may be son of two fathers. It further affirms that the general rules governing the kaetraja, viz., that he is lawfully heir and giver of funeral oblations of food to both the natural and adoptive fathers, performs two funeral repasts or one even (designating both severally at each oblation) in honour of the progenitor and the adoptor including two ancestors in immediate ascent above each and is related to both the families including the patriarchal saints (i.e. gotra and pravara), apply to the adopted son, too.

does not admit of dattaka son's right to offer funeral repast to his natural father on account of Manu's rule, while Kome's inadvertent interpretation as Visnu enjoining upon the dattaka son to perform the obsequial rites of his natural father in this passage, viz., baravativilasa quotes a text of Visnu that even the adopted should perform the obsequial rites of the natural father and explains that Manu IX. 142 applies when the natural has no issue at the time of his death', is wrong. Vide Hs., Vol. III, p. 692.
1. Baudhayana rules, 'what is declared in respect of one even, of many who are governed by the same law, is applicable to all of them, since they are considered of the same description'. Here, the son of the wife, the son given and the rest excluding the son of a remarried woman and one begotten on a woman of servile class (who, like the aurochs, are begotten by the man himself), are treated to be of the same description. So, what applies to the ksetra also applies to the dasyaka son.

2. The following text in the Pravarsayana of Shankhyavana has a general application to the substitute sons -

He should perform two funeral repasts (araddha), or at one, contemplating them separately, he should designate at each oblation (ekarinde) both the adoptive and natural fathers.

3. The satyaaraddha, through its compendious rules 'of absolute dvarmasyayavanas, of both', propounds the relation of the ksetra sons to both the natural and adoptive families through prayaga and otra, and applies the rules regarding those sons of the wife who are designated as 'absolute dvarmasyayavanas' to
the sons given and the rest who are called 'amitya avyavanavaya' (not in all cases so) in virtue of the analogy contained in its other aphorism, 'of sons given and the rest, like the avyavanavana.'

However, the relation to both the families is restricted unto these only and not to issue beyond. In the case of descendants beyond the son given, the gotra i.e. family is determined through him in the manner as under:

(a) Should there be a compact between the (fathers) two stipulating the relation of the son given to both, he will participate in the families (gotras) of both.

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13. मुझे दिनिश्चित तिरियुक्तस्य हुवऽऽ। ... उपयोगस्यायत्रियोऽधिकारिकाः पिधवान । व भवस्य नानादेव यस्य नानादेव अनुभविते तेषा गतिपदेशात्मकोऽर्थस्यायत्रियोऽधिकारिकाः।

राजस्य नौं यज्ञोद्विकेन नीश्चित्य यज्ञसंस्कारः। जातियुक्तस्य भवज्ञातः प्रतिहारं जात्युक्तस्य भवज्ञातः।

कस्त्या नौं यज्ञोद्विकेन नीश्चित्य यज्ञसंस्कारः। जातियुक्तस्य भवज्ञातः प्रतिहारं जात्युक्तस्य भवज्ञातः।

वर्णस्य नौं यज्ञोद्विकेन नीश्चित्य यज्ञसंस्कारः। जातियुक्तस्य भवज्ञातः प्रतिहारं जात्युक्तस्य भवज्ञातः।

अवृत्तस्य नौं यज्ञोद्विकेन नीश्चित्य यज्ञसंस्कारः। जातियुक्तस्य भवज्ञातः प्रतिहारं जात्युक्तस्य भवज्ञातः।

तत्त्वं नौं यज्ञोद्विकेन नीश्चित्य यज्ञसंस्कारः। जातियुक्तस्य भवज्ञातः प्रतिहारं जात्युक्तस्य भवज्ञातः।

तेज, pp 25, 26.
(b) if all the initiatory rites have been performed by the natural father he will participate in the family of such father, but

(c) in the case of such rites having been performed by the adopter, he shares the family of the latter.\textsuperscript{14}

The Battakasandrika further proclaims that the adopted son, under all circumstances, irrespective of whether a special compact (that the son shall belong to both), on the part of the adopter, is non-existent and the natural father has no other son, and whether there exists such compact on the part of that person and the natural father has other issue, the filial relation to both the natural and adoptive fathers does obtain.\textsuperscript{15}

\textsuperscript{14} नवक्ष्मा नीतसात्ताओऽ। ... \vsa... \vsl... दक्षरायमानापातित, भविष्य अभोगसंस्कृत तर्कार्क मा नारकान्ता भासित्यं न दुहृतत्त्वपातित्यं। \vsg... संवार्तकं ॥ द्वारापल्लवः... नात्र नस्ते जातिः।

\textsuperscript{15} This is LC's interpretation of Sābara's gloss on the two compendious rules of Satyasadha, namely, "नकारात्मक दुःखानुपातम् दुःखानुपातानां। द्वारापल्लवः... नात्र नस्ते जातिः।"

See also fn. 7, p. 219.

\textsuperscript{16} \vsl... \vsg... \vsa... \vsl... अर्ध्यानुपातानां।
Thus, in case the natural father has no other issue begotten on his wife, the adopted son (whom he has given away to another), will not only offer, in his honour, oblations of food (i.e. pinda), consecrated to three ancestors, but will also inherit his estate. However, where such issue of the natural father exists even, the adopted son, all the same, will offer oblations of food to both even, (but will not, as the text seems to suggest, participate in the estate of the natural father). 16  Both the Bharmasindhu and Kairnavasindhu are declaratory of the same import. 17

16. वह कर्मचारी भागुणो वशते न यथा कहा कामं करा: शिक्ष देन्या
कुर्सिचिरीं देन्: वस्त्राय भागुणाय व्यवस्था किरीत्यावणगिताः ...

17. दक्तं उपकरित्व: पुत्रां वाणी उक्तकरित्व: कामं छात्रं व गुश्नेवादि
अर्था नकाले परि: शिक्षा: सत्त्वानरि भवनि उक्तकरित्वः अस्ति त्वमि न देव यथा
प्रसिद्धेऽन्तः कर्ममावा व कार्यवक्ष्यात्: प्रसंसतोऽति:।।

NS III Uttaradha, p. 29.

NS III Uttaradha, p. 384.
It has been noted that the Dattakacandrika considers every general adopted son as bearing relation to both the fathers and their families extending at least unto himself. Whereas the Dattakamisanga does not hold every adopted son to be so. Accordingly, should a son, directly on being born, be adopted - since his initiation under both the family names would be wanting - he would be related to the gotra only of the adopter. Unlike the Dattakacandrika, the Dattakamisanga treats the avvavasvavas, who are sons of two fathers, as of two descriptions, viz., nitvavat or nitva dvve.

It may be noted that the reading in the part of the text, viz., ‘(vide fn. 16 above, p.) is better than the one in MS quoted herein above which reads as (vide fn. 16 above, p.) It is obvious that under the general law itself a son given is affiliated only in case where the adopter has no other son and that the former performs his funeral repast and other obsequies. To include the same import in etc., i.e., in the event of the adopter having no son, the adopted son would offer funeral repast to him, would mean a needless repetition of the general rule and to restate what has already been said in the related part of the text preceding it viz., etc. should there be no other son of the progenitor on begotten on his wife', would be unmeaning. As a matter of fact, the first part of the text propounds a special rule and the premiss in the latter clause has to be in sharp contrast to the former. Therefore, the construction of the text in simple words should run as: should there be no other son of the progenitor etc... and even
musvayanaa i.e. absolutely sons of two fathers and
anitva dyvyasuvayana i.e. those who
are incompletely so. Where a son is given with the
compact between the natural father and the adopter
that 'he shall be a son unto us both', he belongs
to the first category and if he is initiated by the
natural father, in the ceremonies ending with that
of canda i.e. tonsure inclusive and by the adopter,
in those beginning with that of the investiture of
the characteristic thread, namely unanayama and the
rest, he will be distinguished as the latter. The
Battakakamamara assigns initiation having been performed
under the two family names as the cause of the state
of being an anitva dyvyasuvayana (tenas gotradyayavana-
pismasiart atvat).19 The Battakacandrika also,

if the progeny or his other son or sons etc...
Thus, the construction of the text in the
Battakacandrika, viz. 251666 17 17 17
is correct and preferable.

The text of this cited above (in fn. 17,)
viz. 190216100100 100100 100100 100100
occasions similar criticism.

19. 1710 14 (fn. 14).
without however making any such distinction between
the nitya and anitya dvayamasyayana, treats a son,
whose initiatory ceremonies are performed by the
adopter beginning with or without or repeating even,
that of tonsure or with that of the investiture of
the sacred thread and the rest, as a son of two
fathers and as belonging to two families. But
according to the Lattakacanirika, performance of
initiatory rites by both the fathers is not the only
cause for producing the state of being a dvayamasyayana,
rather the legal stipulation, as described above,

20. For the repetition of the ceremony of tonsure -

The ascetic nature of the sons given is of a
broader nature; it characterises an absolutely
accepted son as uddhadattaka and the one who is
between the two fathers is treated by it as the binding condition (ubhayoruputrabhisandhane sati, IC, p. 19; tace--- abhissandhane sati bodhvan, IC, p. 25).

It may further be noted that in the explanation of a passage of Faithinasi, the Dattakamamasa adds samakскоракत्वे, whereas the Dattakacandrika does svikārāṇa as the condition producing the state of dyvyamasyavayaṇa.21 The Dattakamamasa also differs with the Dattakacandrika on its interpretation of Sabara's gloss on the two aphorisms of Satyasadha and asserts that he alone, who has been initiated under the gotras of both the fathers, is related to the families of both and this relationship does not extend to his descendants. If his initiation unto the ceremony of tonsure inclusive is performed by the natural father, the family is his, where as, if his initiation is performed by the adopter in all the ceremonies beginning with the one for the male born, namely, jatākarma and the rest or at least with that

a son of two fathers as simply dyvyamasyavayaṇa. It seems to agree with the satyasadha to christen the kṣetraṇa as pita-dyvyamasyavayaṇa and the dattaka, in general, as antya-dyvyamasyavayaṇa, or, to be closer still, simply as dyvyamasyavayaṇa.

21. See fn. 3.
of tonsure and the rest, the family in the case of descendants is of the adopter.22

Thus, it has been seen that the adoptee's relationship is not completely extinguished from his natural family at least under all sets of circumstances as understood by the modern authorities, while in the case of an absolutely adopted son even, the ancient authorities, by and large, entitle such a son to inherit and offer funeral repast to his natural father and other ancestors where the latter either has no other real son or sons, or dies without such a one. That his biological relationship or ties of blood still persist will be discussed in the sequel.

22. For the Deśa's interpretation see fn. 14.
Adoption brings about a substantially significant change in the socio-legal status of a child who, on his being given away, loses all his rights in the family of his birth and is transferred into another family which is naturally not his. He is treated as equal to a natural born son in the adoptive family and is invested with all the rights which a real son would have in virtue of his birth there except in a few well defined situations. Unlike as in the modern law, the ancient and medieval Hindu law does not treat the transfer of the adopted son as operating as an absolute and complete new birth in the adoptive family. As will be seen in the sequel, a situation may occur when he is treated as a second class member of the family, turned from prominence and relegated to a subsidiary status.

The locus classicus on the subject, here again, is the text of Man IX. 147. The Patasaka mimamasa reports Saptiandrika's deduction from this text that from the act alone (of giving), result the
creation of filial relation of the son—given (with the adopter), the ownership of the former on the estate of the latter and his connection to the adopter as belonging to the same family viz. gotra.  

Rama's text does not expressly declare the adopted son's participation (i.e., bhārītvam) in the family and estate of the adoptive father. However, since his participation in the family as well as the estate of, and the performance by him of the funeral repeat in honour of, his natural father are barred, the adopted son's partaking of the family and estate of the adoptive father is implied. This is the import of the author of the Sūrīcandrika. According to the Nandari, the act of gift, comprising two (distinct but inseparably connected) parts, on the part of the natural father, consisting in creating the property of another preceded by the extinction of the self, is productive of the filiation of the adopted son of the adopter. By the first part, namely 'extinction of the property of self', through the

24. लेन पुक्कपायदर चिन्तेय दर्द।चर्या पुरितिकृष्णैः आल्यं तदु विन्यासं भृत। कृति सतचारः। 

For the intervening text ending such relationship of the adoptee in the natural family, refer to fn. 2, p. 217.
termination of relation of son, the property of the son-given in his natural father's estate and his connection to the family of the latter is annulled. And by the other part, namely, 'creation of the property of another', the adopted son's ownership over the estate of, and acquisition of the estate of, the adopter, follow. This has been explained to be the import of the Burticandrika on Kanu IX. 149.25

Though, the Burtakacandrika omi s the first part of the Burticandrika's explanation of Kanu's text as referred to above,26 an inference may be drawn that it admits the filiation of the son-given with the adopter to his acceptance of the gift of such a son. It declares the incompetence of the

25. प्रातिलोकसौत्पत्तिकं यदाहें गुस्तं ततु पारिशक्यं व कालस्तीतिश्चुन्नायकं परं व नाल्पलात्मकायारात्मकं वराढ़शृङ्गशुम्र दानाधिकं तत्तविः।
... कालस्तीतिश्चुन्नायकं दानाधिकं दानाधिकं दानाधिकं दानाधिकं दानाधिकं दानाधिकं दानाधिकं दानाधिकं दानाधिकं

adopter to perform those initiatory rites of the adopted son, which should have taken place prior to his adoption, since his authority to perform the initiatory rites results from his relation of father (to such a son) which takes place only subsequent to adoption.²⁷ It seems to imply that the filiation of the adopted son to the adoptive father takes place on the extinction of the property of the former over the gotra and the estate of the natural father, since it is only subsequent to filiation that the adoptive father is called upon to perform his initiatory rites, the authority to do which is primarily vested in the father.²⁸ In effect Pattikacandraika's uniformity of import with the Pattakasimamse may be seen.

The Pattakasimamse further adduces a text ascribed to Brhaṇ-Manu in proof of the acquisition.

²⁷. ॥ किंव प्रकटात जनपदी विहृतैन संपार्काराधे तु पुरैन्नायदुं 
संकावी प्रतिरूप यु रत्नाकार — — ॥

EG, p. 19.

²⁸. ॥ तत्र क गोपवार्तानां प्रक्ष्य वैज्ञानिक जैसवार्तेन स्वयमी न प्रिय नि 
संकावी प्रक्ष्यात्तत्त्वार्तक्ष्याय तथा राज्य संकायस: प्रतिनिभोगा 
कांग: — — ॥

etc. as in fn. 27. above.
by the adopted son, of the gotra of the adoptive father. Erhan-Manu rules that though the relation as sapinda, of the son given, purchased and the rest, to the natural father persists after adoption even, as extending to the fifth and seventh degree, the state of lineage to the adopter is attained by such sons. 29 Another of his texts also is confirmatory of the same import where it states that sons given, purchased and the rest, who are affiliated from amongst those of the same general family acquire the state of lineage, though not the relation as sapinda. That the term gotra in the phrase, vishnina gotratam vanti, signifies 'the state of offspring' implying that sons given and the rest become sons of the adoptive parent is confirmed by two extracts, one from the Kalikapuranam, and another from a Sanskrit Glossary called the Trikondi or sapinda-kosa. 3 The relation of sapinda here, refers

29. ... प्राणियोऽरुण्याप्राणेऽति पाणिविश्व नव वृक्षाणुः।
    दक्षिणालिप्रविभागः बोधसनुः सपीयवतः।
    पवये सत्यसे तदाध्यावर्तास्मिन तत्पापः।। DM, p. 164.

30. आदेशु कृत्यं न वर्णक्रयेणादयं पुजनं।
    सिद्धान्तं गौरवं गौरवं न चार्णावं तद्विर्भाषी।
    तैर गौरवं सार्थित्वं।
    देवाभिभुषणयुपक्रमेण संपूर्णं।।
    दायार्यं पुजनं से-संबंधवेतव्यध्वन्य स।।
    सि गुरुस्य प्राणादाय।

DM, pp. 142-143.
to the kinship based on bonds of common blood and not to the one that obtains through oblations of food to cota on ancestors.

The great stress laid by the Hindu legal authorities on the consanguineal proximity of the adopted son to the adopter, in which is reflected a highly purist Aryan mind, is intended to effect the transfer of the adoptee in the adoptive family as much real and close as could be possible. The best choice would be, therefore, from amongst the ascendants belonging to the same general family. In all instances of adoption, however, the adopted son and the adopter must belong to the same tribe (or class i.e. jati). In no case should an adoption be made from a different class. This is what Vasistha has been reported to

31. तदां स्त्रियायोऽनि - समाकृति: वैधिकः गुणः | DM, p. 96.

32. अन्यात् हु न वासोदति | सौपी वैधिकः किंवद् न एकाङ्खः,

तथाबि-

हर्षायं वर्णात्मां जातिरथेन न वानः.

जै न आद स्वरूपाः स्वन्तुष्टिपदाः महत गताः निर्णायनात्मानात्माः

भृतिः वैधिकाः कर्मात्माः ज्ञानाति | — समाकृति: निवान्ति अतीतः

न पुनः वासोऽनि समाकृति: | DM, pp. 56-52.

अस्तित्वात् न वासोऽनि विना: निवात उपायः प्रायः प्राचीनाति: यादृच्छिकता विशेषताः.

संमानानां निर्माणं | — DC, p. 7.
ordain in his dictum, 'let him adopt an unremote kinsman (or) only a nearer relation of a kinsman.'\textsuperscript{33} Should a doubt arise as to the lineage and disposition of one adopted, whose kindred are remote, on account of a great difference of country, language and the like, he should be set apart like a \textit{udra} and be not initiated till the ascertainment of these particulars.\textsuperscript{34}

\begin{tabular}{ll}
33. & \textit{वनवासवन कुमारिकोपि युवराजसंगृप्तको प्रतिपूर्वकिते} -
\textsuperscript{578}\\
34. & \textit{सन्दर्भ व भ्रात्रिवादित्वम्}.
\end{tabular}

\textit{DM}, pp 49-50

‘सन्दर्भ-त्यागः’ - \textit{कुमारिकोपि} वनवासवाच वत्सल अस्माताभाषा
\textit{सन्दर्भाविषयविष्णु भ्रात्रिवादित्वम्} सन्दर्भतः सत्तातुशुभे तत्सारः}

\textit{LC}, p. 15.
The rule of the same tribe, however, has not been held to operate as absolute. The relation of one affiliated from a different tribe, as son of the adopter is legally conceded, but he is denied his rights in full as a son. His competence to present obligations of food and water and to inherit to the adopter is barred. He is held to perpetuate only the family line of the adopter, and, since he is beneficial to a small degree, he is entitled to receive only maintenance. Contending against the view of the Kalpastra, the Bhattakamisaman holds that the relation of son is not produced in such a case.

35. विशिष्टसर्वप्रश्नं पाककोणं वाक्यावलिकमकलम तत्प्राप्तमांश्च।
कत लक्षणसम्भवम्?

गदाद्रमातातीमौ गृहनोति न युतः शालित्।
विन्यमर्यं न त मृत्युण्यक य पलं ध्वनि तनु॥

वालसमलातीमोनश्चत्वम् निर्भो भवति। DM. p. 52; see also pp. 182. 05.

36. ॥बृहस्पतिः प्रक्ष्यमुष्यं जनयेत्करिताने कर्मिः।
नरायणः प्रमाणसहितविवेकसूत्रकारस्य।
नामसंहत्केतृसद्यासवस्यकाल सुप्रसूचकत्व अनुवर्णतिः।

DC, p. 6.
Three forms of procedure\textsuperscript{37} have been described to make the transfer of the son-given, complete, religiously, civilly and legally complete — one by Saunaka, the other by Vasistha and still another by Baudhayana. Each of these forms contains four important provisions, viz.,

1. Notice to the ruling authority — the king or the chief of the dominion where the parties reside — which gives legal sanction to the act of adoption;

2. The act to be completed in the presence of the kinsmen invited, who bear witness to the act of adoption; this has significance of civil and legal nature;

3. The ceremony of actual giving and receiving the child, which is the most important and essential part also in the modern law. Without this, no adoption is deemed legally complete; and

4. The performance of a burnt sacrifice, called the dattahoma. According to F. W. Kene, this religious ceremony is also one of the requisites in some cases.\textsuperscript{38}

\textsuperscript{37} \textit{ibid.}, pp. 12-17; \textit{in situ}, pp. 14-157.

\textsuperscript{38} \textit{ibid.}, Vol. III, p. 687.
One of these modes of adoption is considered indispensable, for, otherwise, as the *Pattrakampan* holds, the relation of the adopted person as son of the adopter is not established. If, however, one be adopted without observance of the rules of procedure ordained, he will be entitled only to assets sufficient for his support and not to partake of the estate, of the adopter.

Another requisite to complete the transfer and to create the filial relation of the adopted son to the adopter is the performance of the initiatory

39. सेल्फरत्रिः राजारङः। वेक, प. 15।
40. पिता बुद्धी तथा पुत्रिः भावनाः। द. महो ॥ नादेशांस परमामा (इल-पूर्णिमा - श्रीम-विपरीत-रथांतरिः) पुलावमा शीतलाभिपुष्टिकर्तारः परमावरेन पुत्रादेव पावनाः। द. महो ॥
41. स्मृतिकारादाते परिमरणस्तविवाहिनिवासानां पाकिनी न वेञ्जनार्गीश्चिति। वेक, प. 17।
परिश्रविका वायमः कीमाराः स (पुनः) वकः। विवाहिनि किरातां म. परमावरेत पुष्करः। विवाहिनि किरातां म श्रवन्त अनुसरणाम ||
परिनिर्धारिता विवा विपरीतोर्वा वितावरणां कार्यं गच्चादिपालतन्तुः।
-- ज्ञानं --- तुल्यामानाः। (42.63)
वेक, प. 134-155
rites of him by the adopter under his own family name. Should either of the ceremony of gift and reception of the son-given or the performance of dattahome and the like be wanting, the relation as son will not be produced at all. Hence, the filial relation must be completed by the performance of the ceremony of tonsure and the rest, preceded by the one for male issue, by one of the three regenerate tribes. In the case of a sudra, such relation is produced by the ceremony of marriage even.

Even if the adoption were complete in all respects, should a real legitimate son be subsequently born, his rights as a successor to the adopter and his competence to perform the funeral repast and other obsequies are adversely affected. In such a situation, the adopted son receives a fourth of a share and not

42. कस्मीर नुस्तिलव करे करा तना (निम्नलिपि) प्रतिष्ठ करकर रक्षित करव रैली लोकविशेषता काल दिन: संकेतक -
केव निशुरु: पुजान प्रसरित मानकिन्ये:। दिर. प. 122.

3. दान-प्रकीयता निपाधितता राज्य न्यु पुरोहित वाराण : दिर. प. 161.

इति प्र. 2-73.
an entire share from the estate of the adopter.\(^4\)

But the \textit{Pattakamis\c{c}} permits a city of a share in case the adopted son should abound in virtues and the real legitimate one be destitute of the same.\(^5\)

Referring to a text of Soundar that 'if other sons are born subsequent to the adoption of a son- should the father then divide his estate - let the adopted son not partake of the share of an elder brother', it bars the adopted son's right of primogeniture if a real legitimate son is born subsequently.\(^6\) In the

\(^{4}\) \textit{Pattakamis\c{c}}. p. 152.

\(^{5}\) In the

\(^{6}\) \textit{Pattakamis\c{c}}. p. 153. \textit{Pattakamis\c{c}}, p. 17 (with slight variation in reading making little material difference)
same way, where a real legitimate son exists, the adopted son, though taken before the birth of the former, is not held competent to officiate in the sixteen funeral repasts ending with \textit{samindikarana} of his adoptive father, since his seniority on account of age is denied. Otherwise, that is, a real legitimate son not existing, the adopted son is treated like a real son in every respect, with the exception that, on the anniversary of the day of death, only a real legitimate son is entitled to perform a \textit{parvama} rite in honour of the mother and father, whereas an adopted son is competent to present a funeral repast dedicated only to a single ancestor. According to the \textit{Dattakesandrika} the competence to offer a funeral repast of the \textit{parvama} form vests only in the legitimate son who preserves a consecrated fire. A funeral repast presented by

\begin{quote}
47. \textit{कर विनम्: सपिएक्षिधिप्रभोऽण: नवोक्तम साधे दलमी प्राप्त मणिवत: तत्स्याये नानात्मि:। नेसे पुनरस्यमे सर्वकथायं न वियते।}
\textit{कतदेखमे जैसलापस्थितिश्चनात:। क्रमशर्वेतवां पुवारावे पे: परः अनि याज्ञवल्लकवाच।} वनम सहकाशाल:।
\end{quote}
his i. in honour of three ancestors, while the one by the adopted son is dedicated to a single ancestor.

The consanguineal connection, called the ayavayavaya-niyaminta, of the adopted son, in general, as extending to the seventh degree, is considered to persist only in the family of his birth. But of the absolutely adopted son, characterised as the Suddha-datta by both the Pattrakamasa and the Pattrakasandrika, the relation as one connected by oblations of funeral cake is held to exist only in the adoptive family. This relation of saminda which extends to three degrees in the adoptive family is considered to have terminated from his natural family on his being given away in adoption. However, in the instance of the son of two fathers, i.e., the dyyusyavaya, the relation as saminda by oblations

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48. तारादेवसेना तारा मातापिता: पार्वणेष्वय शास्य। साधारणतः औजिहांसेत्वेत्वं उपाध्य धारणम् योगोत्तमं निष्ठुक। पृ. 252.

वाणू प्रवेशः ---- ' नियमितम् करणम् हरेवर्ग निस्सर्णप्राप्त: (परागक्रम) --- जीतकीवयो। इत्योऽन्तः पार्वणेष्व पार्वणेष्वाः:

-- नारायणीकुन्जसिद्धानन्द साधारणसन्धिमील नारायणानात्पवः निष्ठुक। पृ. 28.
of funeral cake, is ordained as extending to two sets of three ancestors, i.e., one set of ancestors in each of the natural and adoptive families. According to the rule of generation, an adopted son has to perform the rite of gandhika as extending to three degrees, i.e., associate his deceased adoptive father by admixture of funeral cakes to two other deceased forefathers in immediate ascent over him; a dvvausavavana son has to do the same in both the families. Except in the case of the dvvausavavana son, there is no reciprocal impurity occasioned by birth and death in the natural family of the adopted son.

49. वाचार वाचिक्यन्। तथा क्रि वस्तुक्तम् प्रकृतिकृत्यु क्रि विकालान्तवेन प्रियोः वादव् कुदालकरम् व गार्हीकोप्यति।

प्रेमित्वम्। दत्तम्। न यथा प्रकृतिकृत्यु क्रि विकालान्तवेन प्रियोः वादव् कुदालकरम् व गार्हीकोप्यति।

प्रकृतिकृत्यु क्रि विकालान्तवेन प्रियोः वादव् कुदालकरम् व गार्हीकोप्यति।

The text reads नृ in place of न्तु and सापिक्यकरत instead of सापिक्य of the LC's text.
The adopted son has to observe mourning on an occasion of death, for three days only in the adoptive family, while the son of two fathers does not so in both families.\(^c\)

\((c)\) Recognition of Blood Relation or Consanguinity

As it is in every other social group, a man, a woman and their offspring form the nucleus of an Aryan family. The family further expands into bigger groups of **saepindae**, **saepotra**, **gandha-prayaras**, **sahara-gakes** and the rest. The persons related as saepindae are the result of the first extension of primary kinship of the mother, father and their offspring, while the saepotra-s and the rest are larger groups of kindred. The term **saepotra** is used 'in the sense of the group of descendants of a common ancestor.' The names of these rsi ancestors who were

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\(^{50}\) अनु दलाक्षायानिगतः: तथ वषांक वर्षारे नानाच \n--- कर्तवाहारकालकालयोगः न परंपरा नासीवादि।

\(^{50}\) लम. pp. 236-39.

\(^{5}\) तथ इतस्ततः उक्तं परेंक रसाौर्वेक्षान गात्मेष, गौरीरापिप्रमृणिवृत्ता \n--- कर्तवाहारकालकालयोगः न परंपरा नासीवादि।

\(^{5}\) लम. 70 34.
great men of eminence were used by such descendants as their family names which ultimately came to be known as go ra names after long generations had passed from the common ancestor. 51 Samana-pravara connects the members in a still larger community, for, 'pravara is the name given to a number of rsi-s who are associated together, with the founder of the go ra and all of them are supposed to be ancestors.' 52

The two factors, which have played a very important role in the extension of kinship to agnates and the rest, are -

1. Recognition of blood relationship based on the concept of common descent from a rsi ancestor, and

2. A belief in the spiritual kinship created by their common sacræ in honour of their ancestors and other rituals like the eighteen initiatory rites, namely, samakycs-s, performed on the sons.

51. Sen-Gupta, N.C.: 13AL, p. 165;
An analysis of the term *sapinda*, which has been derived from *pinda*, will prove fruitful. It may be split as *sannash ekah pindaḥ yasam te sapindaḥ*, meaning that the term in question includes all those who are connected through common *pinda*. Again, on the basis of the meaning given to the term *pinda*, the relation of *sapinda* has been explained to denote kinship of two descriptions, viz., through consanguinity and through connection by oblation of funeral cake.\(^5\)

\textit{Madanaparijata}, Vijnanavara, Vacaspati and the rest have taken the word *pinda* to mean 'body' and explained the relation of *sapinda* to imply consanguinity. Accordingly, it includes all those who are connected with the same body by participating in the particles of the body of the common ancestor.\(^6\) The kinship of the son, who has been described to proceed from the virile seed of the father and the uterine blood of the mother is nearest and most patently physical. The son is further connected, by bonds of common blood, to his ancestors through his father and mother, who,

\(^5\) \textit{Prācyānām pratirūpāṇa-bhutavāt samayam prakṣa ṣravanti} | \textit{Mā, p. 182.}  

\(^6\) \textit{Svayam prāṇānām pratirūpa-puruṣo-vaśāyām samayam prakṣaḥ} | \textit{Mā, p. 42.}
in their own turn, are similarly connected. Thus, in this sense of the relation of arikan, all descendants of common ancestors, both agnatic and cognatic, however remote would be included. But this sense has been excluded and limited only to the kindred agnatic both of the father and the mother as extending to the seventh degree inclusive and to the fifth degree inclusive respectively.55

The word pinda also means the lump or ball of rice or funeral cake presented to the deceased ancestors in the obsequial rites performed in their honour. Accordingly, the Candrika, Aparke, Vedhatithi, Bhagava, Jumut vahana and others explain relation of arikan as kinship through offerings of funeral cake to the common deceased ancestors and includes all those who participate in such offering.56 Sen-Gupta explains

55. या यथा कितनां कितनानामे देवायामाः दातायामाः सर्वत्रेण। पर्चारनामुस्तां
   पंचमाः च च यात्रायाः। अंसुपर्चाणां| किल्ककीयं कुत्तमवाणसा
   साधनानुभूता के जस्ते पाठुकाः पुष्पमभित्र। ऐ. १६५।

56. सूक्ष्मदेवानाम समस्तानां स्वाम्यार्थिनिः स्वाम्यार्थिनिः स्वाम्यार्थिनिः
   जस्तानां किल्ककीयं कुत्तमवाणसा। ऐ. ४२।
s kính are offered to the three ancestors, these with the offeror himself and, on the other hand the three descendants who offer the kính together constitute the seven members of the sāpinda group.  

The Matsyaspurāna has also been reported as describing the relation of sāpinda through obsequial offerings as extending to the seventh generation. "The fourth in degree and the rest are partakers of the wipins (of the oblations). The father and the rest are participants of the funeral cake. The seventh in descent, is the offeror of the cake. Of these, the relation of sāpinda extends to the seventh degree."

As implied in the second factor herein above, the religious ceremonies and rites are supposed to have supernatural effects making or breaking spiritual religious or even civil relationships. As a result of the marriage ceremony the wife becomes spiritually kin area, her gotra is changed to that of her husband.

58. कैयणनन्दनाधि विनोप्रा: फिन्दागिनि: ||
फिन्दन: संबंधाण्य सापिडन् शास्त्राराधनान्य ||
श्री पालसागरसिद्धांशवारसौर ||

ISL, p. 167.
ISL, p. 33.
and she becomes his kindred as a griva, as she produces in concert with her husband a common body - their offspring. Similarly, the adopted son is made spiritually kindred, and affiliated to the gotra of the adopter on his due adoption according to the religious form; his bio-physical relation, however, is excluded.  

Thus the adopted son is admitted in the family of the adopter by permitting him to participate in the obligations of funeral rite to the deceased adoptive father and his other ancestors, but his consanguineal connection with him is, obviously, not established. Such relation is barred even if he were taken from amongst those of the same general family, viz. gotra, and unless he were related as such.  

50. "कानेवे क्रेस्सुकार्यापि दार्शनिकवायताः प्राणाकेशायकामः प्रणवकृ यायाः
प्राणायाकोत्सवादृकेशार्यामः केवल च।"

60. "अन्ये प्राणायामः तु क्रेस्सुकार्यापि नाहिः।"
"तत्र तत्र निर्माण व अन्यां तु क्रेस्सुकार्यापि नाहिः।"
"सत्ता प्राणायामः तु क्रेस्सुकार्यापि नाहिः।"
"तत्र तत्र निर्माण व अन्यां तु क्रेस्सुकार्यापि नाहिः।"

[50, pp. 167-69.]
[60, pp. 47-43.]
This relation of **aparnda**, through bonds of common blood, with the adopter is denied with still greater force if the adopted son did not belong to the same gotra as does his adopter and was not related as such to him. 61

In the other hand, the bonds of blood are recognised to persist with the natural father and his family and are not snapped even on his gift in adoption in another family. This relation of **aparnda**, which may conveniently be characterised in simpler words as bio-physical connection, cannot be extinguished as long as the body lasts by reason of its consisting in connection through containing the portions of the body of the natural father. 62 This relation, however, is expressly confined by the texts, as seen above, to

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61. ‘कार्यः — विकारः वपति — हैः सम सत्यताः सार्फः/\n| न विकारः शरीरः हैः वपति—सम सत्यताः सार्फः/\n| पाकाहुः कुः तारः सार्फः । श्रीम्, p. 167.

62. --- श्लेष्मः:
| दक्षशतादिनुः बोधकः: शर्पिष्ठकः।
| पुष्पी सप्तकी सद्धोः—तत्परः।।
| हति दक्ष तारिक्षारः श्रीरथवनस्वः शर्पिष्ठकः: श्री दानादिनः।
| —पि सा न हिते।। तरणः सर्यासः वर्ण वध कर्तिरः श्रीरथवनस्वः श्री मृणकः । श्रीम्, p. 32।
| —नाग हंगुः न स्त्रति।। श्रीम्, p. 164।
the seventh agnostic kindred on the father's side and to the fifth agnostic kindred on the mother's side. But the Dattacakamika narrows down this relationship still further and confines it to three degrees in the natural family. The Dattakamisaman quotes a text of Brama in confirmation of this thesis and asserts that the filial relation of the son being here, overtly established with his progenitor is, in fact, for the sake of pronouncing the relation of apipada by the body with him 64 and conclusively propounds its position as above.

(4) Of Marriage of the Adopted Son

The apipada relationship as well as the gatra and, in some cases, also the pravara comprise the instrument to identify the area where the matrimonial alliance of the pattiya could not take place. In the area of the pattiya inter-marriage was forbidden between the apipada both on the father's and

63. जन्मदान परर्णपन्धनं प्रतिप्राप्तकाले व विषयकाण्यां 

64. य कर्माणि जन्मदानम् प्रतिप्राप्तकालम् इति विषयकाण्यां | शरीरं प्रदानं जन्मदानम् प्रतिप्राप्तकालम् परर्णपन्धनं 

शरीरं प्रदानं जन्मदानं प्रतिप्राप्तकालम् परर्णपन्धनं इति विषयकाण्यां |
the mother's sides and also of persons belonging to
the same gotra or the pravara. Besides the agnatic
relations of the father within the seventh degree,
such relations of the mother extending to three or
five degrees were excluded by several texts. On this
subject Menu declares, 'she, who is neither related
as a satpinda to his father and mother, nor belonging
to the gotra of either, is approved amongst the twice-
born (men) for espousal and connubial intercourse.'

whether the satpinda relation in this text refers to
consanguinity or connection through oblations of food,
as understood by the Pattrakamamap and the Pattraka-
candrika respectively, the use of the term 'father'
is certainly intended to exclude from marriage a
female who bears the relation of satpinda to, and

65. सत्पिंदा च या मातृसहस्रीया च या विधुः।
श्रेष्ठा चतुर्विधीं शारिरिणि गुणः॥
SK, III.5.।

66. जनलक्ष्मे अयायेष्कण्डीकारिणीयां कस्यायं पुनः तथेष्व सत्पिंदकुष्मण्यमुस्तकस्ये जनसनगरिणि गुणः तद्वचेत सर्वसंपुरसायायिवभूमः।

pratishthamute

सार्वभूमि स्वायत्त नाथ त। जननिधार्यारिणीयां व ज्ञातानामायेष्कण्डीकणारिणीयां कस्यायं पुनः तत्संपुरसायायिवभूमः।

pratishthamute

कथित तदादित तत्साहिषुष्ट्याकै।

Sanskrit vyakhyena, RC, p. 77.
belongs to the gotra of his real father.\(^{67}\)

Obviously, this includes such connection to his mother, too. The Dattacandrika affirms that the (special) relation of sarinda which is created with his adoptive father through oblations of food down to three kindred agnates of his, is not the one that is applicable to marriage. On the other hand, it is the general relation of the same denomination (obviously through obsequial oblations) extending to seven kindred agnates on the father's side and to five agnate relations on the side of the maternal grandfather.\(^{68}\) From this affirmation of the Dattacandrika and its use of the particle 'also' in 'to exclude (from marriage) a female who is related as a sarinda to and belonging to the gotra also of his progenitor\(^{69}\), it appears that it

\(^{67}\) — DSSA, JNABARAPYI, AYRAVRAYA-AYRAVRAYA-AYRAVRAYA- 

\(^{68}\) — DSSA, JNABARAPYI, AYRAVRAYA-AYRAVRAYA-AYRAVRAYA- 

\(^{69}\) — DSSA, JNABARAPYI, AYRAVRAYA-AYRAVRAYA-AYRAVRAYA- 

applies the same doctrine in the case of the marriage of the adopted son also in his adoptive family. Its reference to the general <em>sarinda</em> relationship extending to the seventh generation as described in a text of the <em>Matsya-purana</em> (viewed in the context of what it affirms on marriage above in opposition to the assertion of the <em>Battaka-samagra</em> that some authors construe the text of <em>Manu</em> under reference here to prohibit matrimony with a female <em>sarinda</em> of his adopter, may be adduced in confirmation of the above contention. This analysis of the doctrine of the <em>Battaka-samagra</em> (if it be correct), will certainly be in line with the observation made by Sen-Gupta, (after his reference to <em>Samutavahana</em> and other

70. ‘हेति वल्मिकिपुराणं चारताकितकाराकाभवं सप्तमानम् शास्त्रेः’ विज्ञापणाय वाक्यम्

<em>LC</em>, p. 33.

For the text of <em>Matsya-purana</em>, see fn. 58.

It will also be fruitful to refer in this context to the <em>LC</em>’s interpretation of a text ascribed to <em>Vrddha-gautama</em> (for text see fn. 60), where the term <em>sarinda</em> of the text is considered as referring to the connection through obsequies extending to the seventh degree as in the case of a real son.

71. ’क्षेत्रासाधिकरणं चारताकितकाराकाभवं सप्तमानम्’ (१९५२) निःसा ।

<em>LC</em>, p. 173.
com. entators understanding by *apinda* persons who participate in that pinda, and who 'constitute the seven members of the *apinda* group'), 'There can be little doubt that when the *Berti* texts refer to *apinda*, or connected through *pinda*, they refer to the offerings made at *sradhan*. Whether the *apinda* relationship in the pivotal text (XIII, 5) here refers to the consanguinusal connection or the one through obsequial offerings, in either case, the marriage of the adopted son with a female *apinda* *sagata* of either of natural father or mother within the seven and five degrees respectively, is expressly barred. A girl beyond this scale alone is approved as a bride.

On the marriage of the adopted son with a female of his adopter's family, the *Dattakama*.

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This passage of Gautama is explained by the *Mani* as:

*गोपिनाथ व विक्रमाधवमूर्योऽपदेशार्थ नियुक्तिः कारणमतिपत्तिः
पवित्रादशिरः* 

*III.* p. 166.
asserts that it cannot be approved on account of the former's participating in the *gotra* of his adoptive father. In this instance, since he bears no consanguineal relation with his adopter, his connection to him through the oblation of *pinda* down to three degrees, as enjoined by Hemadri and Kersna-jini, will operate as the determining factor. The relation of *saginda* as described by the *Matsya-paras* text referred to above is excepted by this special rule.

Since the adopted son, who bears filial relation to both the natural and adoptive fathers, namely the *dvives* belongs to both the *gotras* (of these fathers) with connection to their *sara-varnas*, a female belonging to either *gotra* with

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74. नवविद सरक उ प्रसिद्धो सेव ताकिक पर दयाविद्य भैलु भवधु । कालाच वायु बुध । अः प.173।

75. कालवालान्यावरान्याधुः प्रकाश रोहङ्ग बालवन विजय निवारपुष्प विज्ञापितम । पात्र याच्याभावम्।

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प.182-187.
conection to the pravara must be avoided on the occasion of marriage. A text of the Prahita, which is confirmatory of this rule, cites the case of a rsi called Sunga-Seisira who was the son of two fathers, viz. Sunga Bharadvaja, the owner of the seed, and Seisira Vaisvamitra, the owner of the soil. The persons belonging to the family of this rsi on the one hand and those to that, either of the Bharadvaja-s or of the Vaisvamitra-s on the other, did not inter-marry. And hence the bar.

76. प्रवारकार्याविषये नेवारियां नामस्य कृतिप्रवारस्य श्रुतिः प्रवाहेनां प्राचीनस्य गौतमी अध्यात्मात्मेनाम् गौतमदेव लघुरं नियोजिते कर्मिनः।

77. दशापुरशास्त्रान्ते स्वदेशस्यादित्यादिबः साधनेन्द्रव्याप्त: लोकोंजीरयोऽपि॥

78. Vide Mani. on II, p. 194 for details of the case.
An elder brother existing, in an unmarried state, if a younger brother marry or if he establish a consecrated fire while the elder one may not have done the same, he incurs the guilt of a privy tur.

But this rule does not apply in the case of an adopted son. If a younger whole brother in the natural family marries, while the elder one, who has been given away in adoption, may not have done so, he does not incur the offence of parivedana and vice versa. 79