CHAPTER IV

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(a) Ārya

The picture of the early Āryan society that the Ṛgveda and other Vedic and post-Vedic literature presents is strictly agnatic and exogamous. Daughters, on marriage, go out of kinship altogether and it is the son alone who propagates the race. In the later Ṛechas ceremony, which was developed from the Vedic ritual of Pindanitvadha, pindas were offered to three paternal ancestors only. Even the Geatama Dharmasutra and the Āpastamba Dharmasutra, which came into existence centuries later, do not seem to recognize a daughter or her son as a sumpa. Males had a dominant role to play in a Vedic family and there are several Ṛks extolling the legitimate son begotten on one's own wife. According to Sen-Gupta, the śv does not accord recognition to any son other than the mūrāsa, i.e., 'procreated by self' or literally, 'born of the body' as is evidenced by the conspicuous absence of any ritual connected with the affiliation of a secondary son in the Gṛhya-sūtras, although they are complete codes of domestic rituals of the Vedic society covering the whole life of a man from conception to cremation. The rituals connected with the conception, birth and other adhikāras of sons in these works, in fact, apply only to the mūrāsa son. Had
there been a recognised institution of secondary sons, these codes must have given some ritual connected with it. 1

It may be pointed out here that the Gṛ.ṣūtras contain rituals dealing with those events which inevitably occur in everyman's life as do birth and death, and a sonless man affiliating a secondary son was an incident taking place only occasionally and not occurring in every man's life. Moreover, the practice was not readily acceptable, because, as it will be presently seen, it hardly proved fruitful. Therefore, the Gṛ.ṣūtras, specifically detailing a ritual for this purpose, would have served a very limited section of the society which did not think highly of the custom to which only 'the unenlightened' had a recourse. Hence though there is an evidence of the existence of a 'ease custom' of making subsidiary sons, or the daṭṭha in the early, or the kastraṇa in the later Vedic society did exist, it had to pass through a stage of evolution before it could first be recognized as a grown up institution in the Dharmasūtras. 2


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


See Appendix II, p. 299.
The institution of the *nurtika* 'daughter appointed a son', or 'her son' had already grown to its full stature before it was found recorded in these law codes and had started vanishing into obsolescence by the time of the *Sartip* and the commentaries, as will be seen later in the sequel.

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


4. The text as given by P.V. Kane runs as: *वासिष्ठ द्वाया: पुराण-पुराणाः*; *Vaisēṣika* : ML, p. 646, vol. III, BORI, Poona, 1946. The word *purāna*, here, does not refer either to the extent eighteen works of that name or to the ancient sages as understood by P.V. Kane (ML).
significance in this context. The use of the word *purana* in this text, which deserves notice, implies that these secondary sons were the growth out of tradition and as contemplated by Sen-Gupta, could not be traced to the original *Arya* law.\footnote{Sen-Gupta, *NC* EAL, p. 139.} It may, thus, be concluded that the concept of sonship as extended to subsidiary sons had entered into the scheme of kinship from tradition developed under the influence of the customs of the non-*Arya* communities who, while being taken into the *Arya* fold, were greatly influencing and modifying the customs and usages of the *Aryan* society. The growth of the institution in its fulfledged regular form had to pass through a course of evolution, though, the seedling had already seen the light of the day in the Vedic period itself.

Of these secondary sons, the *dattaka* has a chequered history of rise and fall and enjoys the glory of surviving the ravages of time till today. The origin of the institution of the *dattaka*, though thought to have been lost in hoary antiquity\footnote{Raghavachariar, N.R.: *Hindu Law, Principles and Precedents*, p. 67, The Madras Law Journal Office, Madras, 1965.}, may well be traced far deep into the very early *Rgvedic* age. Sage *Vasishtha*, having lost his sons, prayed to the god *Agni* to bless him with a son, who, in response to his prayer, advised him to affiliate a son by adoption

\[\text{5. Sen-Gupta, *NC* EAL, p. 139.}\
\[\text{\underline{Amarendra Mansingh v. Santan Singh}, 38 I.W. 1; 1933, F.C. 155; 60 I.A. 242; 35 Bom. L.R. 859.}\

\]
and the like. But Vasistha insisted on having a son of his own, for, as the wealth belonging to others must be avoided, so a son born of a stranger must also not be accepted; no son is he who is born of a stranger; such a son is only acceptable to a fool and so, Agni must not corrupt the course of his conduct.

The sage further adds that a son born of the womb of another's wife, though having filial devotion to the adopter, is not to be contemplated even in mind, as fit for acceptance, since, verily he returns to his own house. So let there come to him a son newly born and valourous who may vanquish the foes.

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7. वसिष्ठस्रितिःखंडैव विनिवेशिन अत-पुरुषिन वर्गपर्यंपितः—पुत्रं ते देवित्वा तैं किंवली मिस्तरकाः—कौलक-सुमिनि-स्वागांचायं वृजात्मनमस्य सृष्ट्य पुश्चिनितः।
   —Burge on Nirukta III. 1-3.

8. परिचम्य हृदरणं रेषते नित्यश्रय राजः पतिः यथायाः। न देविः गै जन्मंत्रमदशेशानं या पवित्र सिङ्गः। ||
   सहन्ते परिचम्य रक्षितः। — RV VII 4.7

करणो गणित रागित | — Nir III 1-3 on this r._ Burge explains गणित आस परंन-श्राचत य बा Shastrist francais गणित: रागित आस परंन-श्राचत, जो पिता के जुल का अः न भी, i.e., one that does not own his father's debt, implying that the son of other than the self would not shoulder his adoptive father's debt.

9. न ति पुरायस्य: गुणमां ग्यायकां मलशे।
   वर्त विदेश: पुरुषांपि यथा न राज्यं रोचानु पुष्य:। ||
   — RV VII. 4.8.

न ति पुरायस्यां गम्य: गुणमालः।

कु म या पुरुषां: पारं तातिरि गत वागोत्तरति | — Nir. III 1-3. on th. rK.

कौलक-सुमिनि मेवः। — Burgesarya on Nir. here.
The word grābhāva has been rendered by Yāśka as grahitavyah 'fit for acceptance' which is a doubtless pointer to the existence of the practice of taking in adoption the sons of others. The rend ring of the compound word anvodarvah by Durgāsārya as anvā-jāvodara-sābhūtah, 'born of the womb of another's wife' and the apprehension that the son so adopted might return to his own house precludes the probability of these two rāk verses as referring to the practice of niyoga and the like. 10 Nor should one conclude that these rāk really mean to prohibit the adoption of sons, though it may be conceded that they are incidently intended also to extol the sūnas, i.e., 'self-procreated legitimate' son. 11 The

10. The loose and hence misleading rendering of sāvah, as 'born of another's loins' by P.V. Kane (H.D., vol. III, p. 657) and N.C. Sen-Gupta (E.A.L., p. 136) has led the latter into erroneously concluding that this text of Śrīva discloses an awareness of the existence of the practice of recognising... the kastraka son 'begotten on one's wife by somebody else. Udarvah in this compound word, which may be split into anvāsya (jāvāh) anvāsya va udarāt bhava, is only another form of udarvah which has much more to convey than its equivalent sūnasah, rendered as urasah bhava 'born of the breast'. Sūnasah applies equally to both the male and the female, while udarvah 'born of the womb', being in the womb (literally, belly) cannot but apply to the female alone compelling one to faithfully translate the compound word under reference here as done above, viz, 'born of the womb of (the wife who belongs to) somebody else'. In reference to udarvah (derived from udra), compare urasah, i.e., 'being in the breast, born of the breast', which is another form of sūnasah (derived from urasah, i.e., 'breast'). Udarvah, likewise, is another form of udarvah.

11. वैः सदृष्टं ग्रन्थार्थम्... यस्य त् (R.V., VIII. 4. 8) ॥ उदरवः स द्वायाविविपुष्येत्... सोकाणाविविपुष्येत्... सदृष्टं ग्रन्थार्थम्... सर्वाणामिनिल्लायत्... केषाँ गुणानिविविपुष्येत्... प्रतिविविपुष्य विरागित्यापि... । उदा... ॥ ना III, Purvardha, p. 250
fact that yêṣaka adduced these two ṛk-verse in support of 
the contention that the son belonged to the begetter\textsuperscript{12} and 
the firmness of the refusal on the part of Vaisistha to accept 
a stranger as his own son bear forceful testimony to the 
struggle on the part of the datêśaka son to break into the 
barriers of strictly purit ideal kinship of Vedic Aryas.

The comparative obscurity of the language of these ṛkś also 
indicates that the datêśaka was the first among the subsidiary 
sons in their onslaughts on the Vedic culture. That these 
ṛśa constitute a sure evidence of the existence of a custom 
of adoption, though not such welcome, can also be inferred 
from the following perusal of other Vedic texts.

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

\textsuperscript{12} न च नास, नास व वसवानी हुवामात्तरभ्याम्, द्वादशिष्टः । निरा ज्ञ [I].1-3.

\textsuperscript{13} अवस्याद दौष्ट्यं जयं गुरुपात्या ॥ परिवर्तात्मा, अन्यत्र निर्मलोऽस्मि:

- शरस्वती II 6.13.5.

- श्रवण वII 1.8.3.
another story in the Ait Br. where Sunahsepa was affiliated as his son by Visvamitra and named Devsrita with the express consent of his fifty ones with Madhuchandas at their head. But he met with stiff resistance from the rest fifty sons of his who strongly disapproved of their father’s action and disobeyed him. N.C. Sen-Gupta contends that ‘this is not a story which supports the institution of adoption amongst the Aryas or at any rate, in the form which we find.

14. The story of Sunahsepa occurs in various texts like the Sakh Br. (XV. 17), and the MBh, but is recounted in full only in Ait Br. Ajigarta, Sunahsepa’s father, sold him off to King Harisaendra to be sacrificed to Varuna in fulfilment of his vow as a substitute for his own son Rohita who was born to the king on his profission of the god. Sunahsepa saved himself by his invocations to the god (cf. also RV. 24.12 ff) and refused to return to his father whom he accused of crime more heinous than what a sudra was capable of. Upon this Visvamitra offered to make him his son who asked the former how he, being of a different gotra, could become his son. Then Visvamitra called upon their elder brother, etc.

This verse is quoted in RV p. 17 (with the reading amasi in place of amani) in support of the contention of those who hold that a man, who already has a real son or sons living, may also take another son in adoption with the express consent of the former. The words of Sunahsepa deserve notice in connection with the history of adoption, viz. yathalya ... unyam tava patrata implying how he could become his son.
The story of Sunahasepa is certainly not an evidence of the existence of the institution of adoption as it evolved in its regular form in all its details in the saptas and later legal literature of commentaries and digests, it doubtlessly contains indications of the practice of affiliating as one's own sons those who belonged to others. The story ofatri giving away his son to Aurava positively uncovers a stage already reached in the development of this institution, where a natural father is giving away his real son to the adoptive father, while Sunahasepa is nothing short of an instance of the avamunigata or the amaviddha form of the adopted son, i.e., 'a son cast off by parents', here, disowned by the father himself by sale.

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

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

17. युक्तः, प्रकालाः

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

19. Op. cit. fn. 12, p. Also,
on one's lawfully married wife was eagerly sought for and the adoption of a stranger's son was declared not worthy of being thought of. It was apparently on this count that the custom of adoption did not gain much ground and had to lie low for centuries to come giving way in the Sruti period itself to other kinds of subsidiary sons as the putrika, her son, the ksatra, the kanina, the sushoda and the like who were the product, among other factors, of the quest for an alternative to the dattaka son as a substitute for the real one.

The Rise and Obsolescence of the Putrika

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

20. Supra, p. 34 of this chapter
of the cognates. 22 There was a greater measure of satisfaction, reassurance and comfort in appointing one's own daughter as one's son and treating her son called the putrikā-putra, as one's own grandson. A daughter was as much body-born as a son and her son could as much be treated as an object of affection as was one's son's son. A son of a daughter could by no means be treated as a stranger in the house of his maternal grandfather though, originally, purely agnatic traditions did not entitle him to inheritance and to his admission in the ceremony of śrāddha.

A very obscure verse from Rājaveda has been relied upon to trace the origin of this institution wherein the father of a brotherless daughter rests assured after having stipulated with her vahniḥ, i.e., bridegroom that she would be treated as her father's son and that her son would be his grandson. Yāska restates an express declaration made by her bridegroom, vodha, confirming the agreement. 23 It appears, though the thesis merits a detailed treatment elsewhere, that at the very outset this custom, borrowed

23. अवान, दीक्षितं अन्तर्गतः सवाल: उपाधिः पादाविन्भिः भवन्ति || राज. III. 31 f. यास्क उपाधिः पादाविन्भिः भवन्ति ||

Yāska explains:

नानां कुर्यादानकारी दुःखिल: पुत्रगृहं इत्यादि

कार्यादीप्तविन्भिः पादाविन्भिः भवन्ति || राज. III. 31 f.

Durge explains the last part as:

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

24. [Vedic text quoted]

25. [Vedic text quoted]

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

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

27. नन्दु-सूर्य नुस्तात् पुरुषोपशेषाय। गद्ग २८.१७।
Later law-givers like Vasiṣṭha and others, either by themselves or on the authority of others, make a brotherless girl ipso facto a putrikā:

28. व्याकरणं विनवाकरणं विनवेदां विनवेदि। दुःखात नाना सिक्षा सिक्षा कर्मणि कर्मणि। गद्ग २८.१७.१
The apprehension that the daughter of a sonless man was likely to be treated as a putrikā made the lives of such girls gloomy. There are several instances in the Bhāgavata showing that brotherless maidens, failing to find husbands, had to stay and grow old in their father's house with their splendours lost.

R.V. II.17.17 also cf. R.V. IV 5.5. Yāśka adds AV I.17.1 (fn.24) and a fragmentary R (fn.26, p.12) in support of his rule that brotherless maidens must not be chosen as brides. The fury of this reaction as expressed in various injunctions against marrying such damsels remained unabated from the time of Yāśka and the Dharma-sūtras down to the Sūtrānta: योज्यते न्यायानां कर्मणि कर्मणि कर्मणि। गद्ग २८.१७.१८.

Gautama's halting recognition, which regained force later, of putrikā as a dāvadānbhāva, is attributed to this opinion held by some of his forerunners

(Sen-Gupta: ibid. p. 143).

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

मनुस्मृतिः द्रष्टान्त कुरुहि परिशिवुः। ॥ १३ ॥

.... वेदाण्वे। ....... ॥ ॥ १३ ॥
regulated form of an institution which could not withstand the ruthless on-slaughters of this reaction, inspite of various remedies till, as a result of which, the daughter and the daughter's son entered into the legal scheme of kinship in the Ārya law first by the adaptation of some non-Āryan practice in the modified form of Putrikākarana and gradually by the elimination of the formalities until the daughter per se became entitled to inherit, so that

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

रत्यो हरीयन पुण्यमयस्य:- लघ्यं ग्रहणाति ब्रह्मण-पार्वेष्कप्रयत्नं प्रायः।

Gop. 28.17;

संस्कृतम् पुष्पे स मा नाथे विद्वानम् ।

Vişnu 15.3.1

q. in VR, p. 562.

बंगलान्तः प्रहर्णार्थम् स्रृं नवावनस्य ताथः।

अवयो हि जगन्ती पूर्णः स हि जगीन वरिष्टां॥

VR 17.7.

लन्त्रो प्रवत्त्य, सिंधिया सुतं कुशालं रुद्रकामो।

पदपत्रं ऋभयस्य: राजा दुते प्रधनामि।

MS IX, 127.

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

अनुष्ठानु यथा जन्मभागी तुष्ट।

राजा-माता-व्यक्तिपति कर्म यथा व तुष्ट।

c. in VR, p. 563; Viṣṇ. p. 598.

In addition to this, efforts were afoot to treat a daughter as a daughter - whether appointed or not appointed - as an heir since the ancient times, to which Mr. III, 6-5 bears unambiguous witness, down to Manu (IX, 130, 132) and later Sārti-s. Again, the practice of treating a daughter as an appointed son by the mere fact of her being brotherless instead of being discontinued, proved conducive, in conjunction with the above two factors, to eliminate the distinction between a putrikā on the one hand and any
neither the *putrikā* nor the *putrikāputra* find any place in 
Manu's enumeration of twelve kinds of sons.

(b) *The Dharmaśūtra-s*

There is a great yawning gap between Vedic Samhitās 
and the *Dharmaśūtra-s*. Meanwhile, customs had been 
developing over a fairly large area widely separated in 
time and space before the extent *dharmaśūtra-s* came into 
existence. Law, as propounded in them must have passed 
through a pretty long course of evolution as is borne out 
by the fact that they themselves cite several authors who 
had gone before them. The Āryan concept of sonship, which 
was originally confined to the *suraṇa* alone, was gradually 
modified by the inclusion of *kastriya*, *putrikāputra* and 
*Kanina* under the impact of non-Āryan customs and it was 
further extended to other sons born of the women of the 
family, once it ceased to be essentially connected with 
procreation in lawful wedlock. Sen-Gupta asserts that the 
concept was also later on extended to sons of strangers 
born out of the family.\(^{31}\) Thus, as many as twelve kinds 
of sons had already come into existence before we embark 
upon the era of the *Dharmaśūtra-s*.

\(^{30}\) Sen-Gupta: *EAL*, p. 149. Also see his article on 
*Putrikāputra* in *JRSB* Vol. IV 1939, No. 1.

\(^{31}\) *EAL*, pp. 153-54.
It must be pointed out here that while the theory evolved by Sen-Gupta is certainly very plausible and it is very difficult to disagree with him, it is difficult to completely agree either. The growth of the putrikā, her son, the kāminā and possibly of some others, must have been the result of the influence of the matrilinear culture, but the dattaka and other sons of his class as well as the kastraia and possibly the ṣūdhāna, on the other hand, do not owe their origin to this influence. The dattaka and the like were the result of merely the search for an alternative to the ṛurasva where even the kastraia (in the family) failed, while the latter was a part of the Vedic culture itself. It has been asserted above that a Vedic family was male-dominated and it will be seen shortly that a woman given in marriage belonged to the family and not to the formal husband alone. Thus the formidable fee that the dattaka had to encounter was not only the putrikā, but the kastraia also who, even as the putrikā was fading into obsolescence, re-emerged with redoubled strength impeding the growth of the institution of the son-given, till with the addition of new dimensions to the concept of morality, the kastraia also became obsolete giving place to the dattaka as the only alternative to the ṛurasva by the time of the later āsadda.

Before further tracing the history of development of the dattaka son, it will be useful to analyse the nature of various sons. A look at the classification of sons as
given by Vasistha\textsuperscript{32} shows that there has been a struggle for superriority between one class of sons and the other.
In the first class of preferred sons, who are heirs and kinsmen, the following are included - 1. Auras\textsuperscript{33},
4. Svayamārjata, 5. Apaviṭṭha and 6. Śūḍrāmūtra. Sen-Gupta points out that the set of preferred sons, who are illegitimate save the auras, are recognised as belonging to the family because they are born of the women of the family and on the principle of attributing paternity to a member of the family. Thus, the ksetra\textsuperscript{33} is looked upon as the son of the mother's husband, the kāṇīna and putrika\textsuperscript{33}putra as sons of the mother's father, paunarbhava as the son of the person to whom the mother belonged and śūdhottamā, whose begetter was unknown, was the son of the mother's husband.\textsuperscript{34}

\textsuperscript{32} Sen-Gupta, N.C.: \textit{EAL}, pp. 139, 154.
This analysis will further make itself interesting if the definitions of various sons as given by Baudhayana and, say, by Yajñavalkya are closely examined. Interpreting the definition of putrikāmṛta, as given by Baudhayana in the light of his definition of kānīna, Sen-Gupta very convincingly concludes that kānīna is the son of the girl who must be both apāśākṛta and anāśīrṣita.

35. वृहत् अपाशाक्रते: तत्स्म: पुत्रिका जन:।
तिम: चोच्चरत दु: शरित्तिराय वा ॥

36. नबुध यो पुत्रिकानिर नात पुनःकामुनय वन्य शरितिरय।

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

IN अनितिपृष्ठ यथा वर्षकामुनय: कान्य न दास्तिराय वा शरितिरय।

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

*Unnaychhet seems to be a better reading grammatically as well as exegetically.*
i.e. unmarried and ungiven (not appointed). On the other hand, if she was unmarried (anavakṛta) but given (atisṛṣṭa) for the purpose of raising an offspring by her father, she would be a putrīka and a son born of her, a putrikāputra. Unless she was so approached the son born of her would be daughitra (son of a guhita, i.e., ‘daughter’). If the son is begotten on a married woman, even though she may be given for the purpose, he would be kaśtraṇa or guḍotpanna according as she was approached with the consent of her husband or otherwise.

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

37. तौजारा धान-प्रभातिष्ठ काक्ष विधाने न गृहः। विनंति: III.4

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

38. प्रस व प्रसंसन्वत: पंचधर्मवाच्यं वा पति देवेन व: स तेजः ॥ ॥ ॥ ॥ III.18. पुरै दूरस्त: नो-नागे जातिव: गृहः ॥ III.2.2.

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

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

The Rise of the Bātatkā

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

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40. एडलं सचारं स्वर्ण लक्ष्यं ह एकन्तम्: II

41. पुत्र तुर्ग-पितार-वनस्पतिः गुर्भं गुर्भस्य दानोज्जातम् | प्रत्येको रागोः-पीतेऽव्यभिचारे पवनाद्विगुल्लाति गार्भ-नामस्कृत्यांभिः: च। वृ, प. 543.
heir and kinsman while the other hand, the son of the putrikā and others of her class are recognised as only kinsmen and not heirs who take only the fourth share, obviously, on default of the former's maintenance.

42. The kanina and others have been described here as takers of gotra i.e., they are kinsmen of the affiliating father. The kastriya and the rest, who have been described as inheritors of property, must also be treated as kinsmen by virtue of their being classed with the real son. On the superficies, it may not be clear what exactly Gautama meant by riktha-bālāh, but it will be proper to take it to correspond to bandhu-dāvāda of Manu, Devala and others, and it may, therefore, have two imports: (1) 'they inherit the wealth of their father and his kinsmen' and (ii) 'they inherit the wealth of their father alone and no one else'. It may be inferred from Manu I., 15-60, that bandhu-dāvāda implies that 'they are kinsmen as well as inheritors' and adavādabandhāvā means that 'they (i.e. the other six) are non-inheriting kinsmen'.

Cf. Jha, G.N.: Hindu Law in its sources, Vol. II, p. 254. Manu (IX.59) himself splits bandhu-dāvāda as a Karmadarāva compound and not as gaathītatrūra (… dāvāda bandhavāgā sat) and hence adavādabandhāva must also be split as such, i.e., 'kinsmen but not inheritors'. A text of Kautilya agree with the second interpretation given above and is treated as most scientific, based as it is on the sound principle of blood relationship.

- Arth. III. 7.

But the law in actual practice is different. Devala's text q.e., in the Dāvabhūga (X.7), p.147; the VR p. 555 and the LG p. 40, clinches to the issue that the term bandhu-dāvāda and hence, the riktha-bālā (k) has been used in the first sense. He says that six of them inherit to their father alone, while the other six also inherit to his kinsmen. The use of the terms bandhu-dāvāda, 'inheritors to the kinsmen (also)' and adavādabandhāva, 'not inheritors to the kinsmen' by Harita is confirmatory (q.e., in LG, p.39). Hence, it may be concluded that in Gautama, the dattāka and other preferred sons of his class inherit not only to the adopter, but also to his kinsmen and are related as kinsmen, whereas the other
The Rise and Decline of the Kastriya

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

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

43. This attitude is fairly echoed in a modified form later in Hanu’s rule where the declares that among brothers born of the same father, if one has a son, all of them are regarded as mūtrīkā, i.e., men having a son. Of course, the commentators have turned this and the following verse (IX, 1:3) to use to lay a prohibition on the practice of nivṛta and to lay down that such a son would offer the śraddha to, and inherit the property of, all the brothers and that, so long as it is possible, he should be preferred in the matter of adoption. Vide Jha, G.N.: 311, pp. 234-35.
on one's daughter. The grandson of a man begotten on his daughter-in-law by his one son (to whom she was lawfully married) was as good as the one begotten on her by his other son, who was treated as a second husband of his deceased brother's wife, perhaps even during his lifetime as will be presently seen, but the son of a putrika, on the other hand, begotten by a stranger could stand no comparision. Males had a position superior to the females in the Arya social scheme; the family belonged to the males and one is inclined to believe that a woman was given in marriage, not to an individual but to the family and all the brothers were equally regarded as her husbands. In the course of time, the relationship narrowed down and the concept of second husbandship got confined only to the brother-in-law (devaka) of a woman whose legal husband had

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

[[त्रिवृक्ष प्रदीप्ता पञ्चप्रतिलिपिः]]

i.e., a woman is given to a family. It may be assumed that in the most ancient times there existed a state of society when a bride was given not to the husband alone but to the family of the husband (cf. Kane, F.V.; Hist. of Ph., Vol. III, p. 644) and she belonged to all the brothers equally. Even in the case of a changed circumstance of distress such as the demise of the husband, it may be argued, the situation seems to have remained unchanged and she continued living with the rest. But with the gradual withdrawal from promiscuity in the family it was only on the death of a brother that the other took the family property and the widow of the deceased (cf. Kane, F.V.; HE, p.606).
passed away. A woman, whose husband died issueless, could obtain a child by getting her brother-in-law to procreate on her if she so desired. Later, she could bear a child by her brother-in-law only if appointed to do so by the elders in the family.

**45.** AV, X, 40.2 refers to the practice of a widow turning to her brother-in-law on the death of her husband. This verse is an evidence of the custom of espousal by a widow of her brother-in-law as her second husband. Devote in this verse has been explained by Yaska (Mir. III, 15) as dvitiya varah, i.e., "second husband". It does not point to a secret relationship between the two as a superficial reading of the other simile contained in the verse, viz., marvam na vasa, i.e., "a damsel shares a bed with her lover (lit. 'men') might suggest. The latter simile, as a matter of fact refers to the practice prevalent among the matrilineal societies where a young girl was free to invite a young man to procreate on her. The rk-verse does not contain a reference to the institution of nivogna either, as understood by Visvarupa (on Yaj. I, 69) and Medhatithi (on Manu IX, 66), for, no such compulsion is implied here as, for instance, is indicated by the term anyayaliprah and the like in the rules about nivogna; cf. also Brhat Smritih, Isi kram 20, 19 and 20, 18. It appears that a widow could always turn to her brother-in-law for this purpose if she so chose and take him as her husband, but when she had a recourse to this practice only when urged by her elderly relatives and not of her own accord, she could have sexual intercourse with him only during the menstrual period. The denial of recognition to an offspring born of a woman who was not appointed, evidently, points to the fact that it was a much later development evolved only to curb the freedom of the widow in this regard:

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

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

48. In Amr, p. 787, VS, pp. 575, 577. Under these distressing circumstances the kshatriya women had to step out of the confines of their families and class to approach brahmanas to procreate sons on them, cf.

49. In VS, p. 505.
Notwithstanding the fact that the institution of the appointment of a widow or the wife of an important or permanently diseased person to obtain a son from a person other than the real husband was widely accepted, at the same time it did receive a left-handed compliment, too. The religious efficacy of a son obtained in this way was considered doubtful and he was ultimately classed with the garhita 'conceived' sons. Like all other secondary sons except the dattaka, the kastraśa was also prohibited in the Kali Age.

Ar. Pr. (II, 6, 13, 6) also quotes these views of Supaṭaṅghari: Śrīrājaṃ nemiṃ yataṃ pashṭaṃ kṣamitaṃ saṃśayaṃ

**50.** in VR, p. 577.


As it has already been pointed out, there has been a great struggle for supremacy amongst various kinds of subsidiary sons which can be witnessed as we further trace down the history of the development of the adopted son. By the time the Baudhavana Dharmasutra was being written, the putrikasutra once again pushed back not only the dattaka, but also the kastra. However, the dattaka managed to retain his position as a legal heir and kinsman which he lost too by the time Vasistha was writing his Dharmasutra. He was pushed steeply down the scale to be listed at number eight in his list of twelve secondary sons. He could only retain his status as a kinsman now. He not only lost his position of legal heirship but also his social status in as much as he was preferred only to the saudra son, if as explained above, the krita, avavamayata and anaviddha sons were regarded as only forms of the dattaka son affiliated under different circumstances. He could take the estate of his adoptive father and offer pinda and water to the latter and his deceased ancestors only if he had no heirs of the preceding kind.

52. ग्राध्य प्रथमिः सुवर्ण दस्मृक-निभायः।
धर्मान्त वर्धनुिः व रंग्नात्ताः प्रकाशः ि।।
काः सा व भागी व भोग योग्यां तता।
रामिः व गोजः व (४३ निर्णयं)

53. ग्राध्य प्रथमिः ि।।

Also cf ग्राध्य प्रथमिः विमुः q. in VR, p. 567.

53. ग्राध्य प्रथमिः सुवर्ण दस्मृक-निभायः।
धर्मान्त वर्धनुिः व रंग्नात्ताः प्रकाशः ि।।
काः सा व भागी व भोग योग्यां तता।
रामिः व गोजः व (४३ निर्णयं)

Also cf ग्राध्य प्रथमिः विमुः q. in VR, p. 567.
Vasistha further lays down that if, subsequent to the adoption of a son, a legitimate son is born, the former would be entitled to the fourth of a share (v.l. if the property is a large one); and only if the property has not been employed in suspicious acts.\textsuperscript{54} \textit{Vishnu Bh.}, which has a mixed character of a \textit{dharmaśutra} and a \textit{aparti}, coming as it does in the period of transition from the former to the latter, does, in no way, accord the \textit{gattaka} son a status better than was done by Vasistha except that he is now regarded as preferable to the \textit{ashodha} son instead of the \textit{dhripa}tra whom he deletes from his list of twelve sons and adds the \textit{krśendriya} instead.\textsuperscript{55} He is entitled to maintenance alone and will inherit the estate only after each succeeding one is exhausted. The one who succeeds to the estate will be responsible to support the rest.\textsuperscript{56}

\textbf{Formation of the Institution of Adoption}

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

\textsuperscript{54} तारंगकिंद्र ऋणबद्धो वेदेऽवर्तमान े कुर्सु किरः गात ॥ (व। कुशर ॥)

\textsuperscript{55} श्रेष्ठेऽवेदाय पुराणायाम श्रृविद्याया यावते न व यात्रायथा योहसुलवतान् ज्ञाति ॥ किष्ठेऽवर वेदम् प्राप्तवेण परं पर। c. by \textit{VCint.}, p. 232; \textit{VS}, 14.1-7.

\textsuperscript{56} ऋचात् यय: प्रमादः कृत्यः हि सम्बन्धः हि स जनानु चिकुरादु ॥ Vishnu q. by \textit{VCint.}, p. 231; \textit{VS}, 14.1-4.
the time of the Dharma-sūtra-s, the son given had already assumed overwhelming importance so that only the kṣetraśa stood between the āryasa son and the dattaka himself as in the Gautama Dharma-sūtra and, later, was pushed back only one step by the addition of the putrika's son in Baudhāyana's list of sons entitled to inheritance and kinship. It is rather strange, however, that these available Dharma-sūtra texts hardly contain anything about the dattaka son, except his name or the definition, as in Baudhāyana, II. 1.3.20 and Vis. Upr. XV. 13-19. Apastamba does not even recognise any secondary son - not the dattaka even. The idea of sale or gift of a son as property was simply obnoxious to him. 59

Although the Vis. Upr., does not recognise the dattaka son as a āryasa son, its text 59 on adoption perhaps enshrines a tradition of the first recognition of the dattaka son. 60 It is looked upon as 'one of the

57. Āṣṭāṅga Upr. fn. 41, p. 72 and fn. 52, p. 79.


\textit{Translated by: A. R. K. M.}
earliest texts to dilate on the rules about adoption. In sharp contrast to what Apastamba holds, Vasistha assigns a natural reason to invest the mother and father with the right to dispose of their son as a gift or for a consideration or to abandon him. He adds, however, that no woman, had the right to give or receive a gift of a son except with the permission of her husband. Then follow the _sutra_-s laying down rules regulating the act of adoption. The _Baud.Gra_, a supplement appended to the _Baudh Dh._, which is ascribed to Baudhayana (iti ha smaha Bhagavan Baudhavanas) but, which is said to be a late work, has the first five and the last of the _sutra_-s (II.6) contained in Vasista's text under reference here. Laying down the rules about adoption (athatam putrapratigrahakalpani vyakhyasvanah), it also gives a brief improvised ritual and a couple of vedic _mantra_-s appropriate to a _samskara_ of a legitimately begotten son including a _vyahriti-homa_ already prescribed by Vasistha in his said text on adoption: which is merely an auspicious ritual in almost every religious ceremony and has nothing specifically associated with the taking of a son in adoption. A significant development in the _Baudhayana Ghrvasesasutra_ is that it attempts to make the act of adoption a legal record by making it obligatory to involve the king or a court of law and inviting other

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These *dharma sutra* texts bear witness to the attempt on the part of Hindu jurists to adapt the law to the changing needs of the society as is the case with the law of any section of human civilization at any stage. The inclusion of the word *andhram* is the definition of the *krtrima* son (BhII. 3.3.21) and of *nairabandhavem* and *bandhvanah krtameva* in Vasištha’s text on adoption is an index of the emphasis being laid on the consanguine propinquity of the adoptee to the adoptive parent to lessen the impact of admission of a stranger in the family. This rule was later made obligatory for compliance in the orthodox revival in the period of *apati*-s and the digests failing which the adopted son was not entitled to full rights of a natural son. In order to authenticate the execution of adoption it was required to be brought to the notice of a legal authority.

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

63. वस बन्धुनां यती सौजन्य बालेश परिवारद नागार्य दृष्य । — B.G.S. II. 64.

64. वस बन्धुनां यती सौजन्य बालेश परिवारद नागार्य दृष्य । — B.G.S. II. 64.

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

66. अरुणैः पुत्रः जानि ज्ञातः यानि तार्किक प्रसंस्करणः इ
Vasistha quoted by VR, p. 583. The same verse occurs in Ep. (IX, 5), q. in IE, p. 15, LC, p. 2.

67. न त्यदुः पुरा मद्यदुः पुत्रिकपुत्रेऽपादः
Vasistha, 15.2, q. in IE, p. 111.

68. पाण्डुः उ पुत्रिकपुत्रः कदः प्राप्ता तत्तसंहतः

69. तत्परंतः पुत्रिकपुत्री जोतेन देवमेव अ स्तोत्रदत्ताय नामवर्णाय पाये गाबु

(V, 1, गद्य स्वास्त) - Vasistha
q. in Apararka, p. 730; Eit., p. 706; VR, p. 544;
LC, 24.1-6, Vaink., p. 234; VR, 15.1.1.
Vasiatha opened the door for a host of legal literature to grow around the institution of adoption which was still in its infancy in the era of the Brahmasutra-s.

(c) The Ramayana and Mahabharata

There is a whole history of growth of legal literature between the Sutra works and the extant metrical sarti-s. There is an unmistakable evidence of numerous works written by other authors, which are either lost almost in full or are available only partly in the form of excerpts or as referred to in other works. In addition to these, there is also a good deal of literature like the Ramayana and Mahabharata, Arthasastra and Purana-s which allows an insight into the stage reached by the society in the evolution of its various institutions. Although these can, by no stretch of imagination, be termed, properly speaking, as legal codes laying down rules of law, they have an important bearing on the social political and legal institutions, e.g., a substantial chapter in Santiparva deals with politics.76

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

serve as an evidence of the prevalence of the custom of adoption which, later, had an indirect bearing on the evolution of some of the regulations of the law of adoption. Bharadva\textsuperscript{a}, son of Brhaspati is referred to as having been adopted by Bharata son of the celebrated king Dusyanta.\textsuperscript{71} He was a brahmana who became a ksatriya on his adoption and was treated as a son of two fathers, the adoptive and the natural.\textsuperscript{72} It was perhaps with reference to this instance that the term and saw in Manu IX.168 was interpreted by Vedanta as meaning 'similar to the adopter in qualities and not in caste and so the adoption of a ksatriya by brahmana was allowed by him.\textsuperscript{73} The Ramayana has a reference to the adoption of Sita, daughter of King Dasharatha, by Rama while the Mahabharata refers to Pritha, daughter of Sura, as having been adopted by Kuntibhoja.\textsuperscript{74} Later, the \textsuperscript{11} (pp.230-34) the \textsuperscript{12} (p.188) and the Dharma-samhitas relying upon such instances as these hold that even a daughter may be adopted.

\textsuperscript{72} 71-7. 9-157.

\textsuperscript{73} 74-9. 168, or also

\textsuperscript{74} 11.11.12-3

\textsuperscript{12} 11.11.2-3

\textsuperscript{11} 11.11.2-3
The list of twelve sons and the dettaka is placed seventh in the hierarchy. He is treated better here than he was in the Vaisistha-Dharmasutra inasmuch as he is preferred to the sahodha who is relegated to the eleventh place. He had yet to reckon with the formidable competitors, the putrikarutra, the ksetra, and almost the whole of their clan. The Mahabharata is replete with the cases of nivasa and the justification of the institution whereas the dettaka son hardly receives any attention.

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

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75. क्षणात: क्रित्वा परिक्षितव्य: छुः।

76. P.V. Kane thinks that pranita, parikrita and avairininutra correspond to putrikarutra, ksetra, and dudhaya respectively and takes jnatiratna as an objective of sahodha and ksetravardhita as saudra. MBh. (ArUp 49.11.)
sons as if they were one’s sons and if a boy is abandoned by his natural parents whose identity is not known and is brought up by another, he belongs to the caste of the man who brings him up.

(d) The Smriti-s

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

79. MBh. (Arul), 49.25-26.
80. MBh. (Arul), 49.25-26.
The law of inheritance amongst various sons seems to be arbitrary and often contradictory in the dharmaśastras, the ārtis where as it is based on the most scientific principle in the Arthasastra of Kautilya.

According to him a legitimately self-born son alone is entitled to inherit to his father as well as to his kinsmen, while on the other hand sons begotten by others inherit only to him who affiliates them by performing their sacramental rites and not to his kinsmen. On the birth of a legitimate son, those only amongst the secondary sons who belong to the same caste as the father, receive the third of a share while those not belonging to the caste of the father are only entitled to food and raiment. The son born to a Brahmana of a ksatriya wife, and that born to the ksatriya of a Vaisya wife, are of the same caste as the father', whereas, if the son is born to a Brahmana of a Vaisya wife, or to the ksatriya of a sudra wife, such son is asavarna i.e. not of the same caste as the father.

It may be inferred from his definition of a asavarna son i.e. 'one of the same caste', that a son born of a sudra wife to a member of a regenerate class is not recognised by him even for the purpose of maintenance. He is also not included in his enumeration of secondary sons. In the list

82. उपातन: रूपन्तरण व दागपद: । परत: संस्कृतिनः
   न वृत्तूऽनाः।
   - Arth. p. 41.

83. कर्तिकुतलयं सक्माः सत्त्ववाक्य: । काण: वाणाय चाक्योर्ज्जितः।
   व्यायाम परिक्षितं नात: पुन: । सक्माः: ज्वलितः । कविकृतः।
   सन्त. 11. p. 44.
of twelve sons as given by him, the son of an appointed
daughter is treated by him as equal to the real son,
perhaps because, by this time, the purpose served by him
was the same as done by the legitimate son. The son-given
is not accorded a respectable place in the hierarchy of
the secondary sons and is listed as ninth. He is treated
as equal in character with the son of a remarried woman
who is placed eighth in the list. It may be concluded
that if a real son is there and the division of estate is
made during the lifetime of the father, each of the
secondary sons belonging to the same caste as the father,
receives the third of a share and those not of the same
caste receive only maintenance. If the division is made
on the death of the father each succeeding son of the same
caste will inherit the estate on failure of the preceding
one and will be responsible to maintain the rest. It
may be noted that the definition of the dattak is essentially
the same as given by Manusmrti.

84. 1. यथं जन्मतः हत्वात् हति जोतः । 2. तैन तृत्यः पुरवधुः ।
3. लघुः क्रिया सा न्यायेष्व ब्राह्मण सत्साहस्तः सौभाग्यः पुथः ।
4. तत्तथायूः वन्धूः गुमाम गुम्हाय गुम्हातः दुःखः । 5. भगुरुपतस्तः कापियः
पुरः । 6. भन्यागधः लाभे मः । 7. भस्तीसुधः भस्तीः ।
8. पुनःसुधः पार्वतः । 9. तत्तथायूः बालापितामहास्यंतजः पतः ।
10. यथं वन्धूः पुरः पुरः पुरः । 11. पुरः पुरः पुरः ।
12. भस्तीसुधः भस्तीः । अथः ॥ II, p. 46.

85. For partition amongst the sons of the same caste and
those of different caste, see Jha, Ch. III, All., Vol.II,
pp. 264 ff.
Like the dharmasutras, the sartis hardly contain a detailed treatment of the dattaka, and in some cases the definition alone is given and his name mentioned amongst the twelve kinds of sons. There is a lot of confusion and arbitrariness about the place and the rights of various sons. One may find oneself all at sea when one peruses these codes as a class to identify the stage of evolution of adoption in this period.

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

Most of such works as the dharmasutras and the sartis are said to be compilations made, at different

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

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

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

Therefore, notwithstanding the fact that the dattaka
had already made an advance over other secondary sons in
their struggle for superemacy as is inferrible from these
codes, the tendency to cling to the post and its institutions
inspired their compilers to incorporate in them obsolete rules either in full or in a slightly modified form irrespective of their relevance to the times. Yajnavalkya's work, which is said to be of independent growth following Vismu, lays down the law regarding the secondary sons almost in similar words and import. The dattaka is accorded the seventh place followed by others of his class, whereas the natrika and the ksetra in immediately follow the surasa in his list. 

He then lays down that each succeeding son will offer the funeral cake and inherit the estate on failure of each preceding one. He further says that this rule has been laid down by him only with reference to those sons who belong to the same caste as does their affiliating father. It has been interpreted to mean that this rule of Yajnavalkya will hold good if the division of estate takes place on the father's death, otherwise it would be as the father desires.

Nareda, Hari, Senkha-ikhita, Yama and beval, all follow it and assign the dattaka

97. Yaj. II.123-133.
98. ibid. 14.1-4. and 1. रिणानां जार्ययां पुत्राः परः परः ।
2. अग्रात्मधन ग्रहित तस्य युग्म न यथः ।
Yaj (I.132-133).

100. 1.

शरणं व कृत्याणुं गुरुवाच यतं ।
गौरिणां नासर्वं दूषी सुपम्म तैवं ॥
पांडवोत्स संसारस्य गतं: भवेत: इति तव ।

संवै रिवागम: दु:स्य दाता दिने भवेतः ॥

रंथः श्रां गतं दाताबाधाः: भवसंगमयं नाग ।
पवः गृहः: मुवस्य विशेषः सत्याणां गृहयातः ॥ (श कर्म प्र)
son seventh or ninth position. If adavada-bandhava or abandhu-dayada is interpreted to mean that they are only

- Narada, q. VR, p. 551;
- Sankhalikhita, q. Visvarupa, p. 249;
- VR, p. 547.
kinsmen and not heirs, they keep the dattaka out of legal heir-ship and treat him only as a kinsman entitled to


The text seems to be a mix of Sanskrit and English. The English text reads:

kinsmen and not heirs, they keep the dattaka out of legal heir-ship and treat him only as a kinsman entitled to

The Sanskrit text refers to Vana, q. Voint, p. 230; Vša, 13.2-3.
maintenance alone. If these terms are interpreted to signify, that they are heirs only to the father and not to his kinsmen, all, except Sankhelikshita who treats the dattaka non-inheritor, admit him to heirship. Only Beulas unambiguously treats him as an heir to his adoptive father on failure of the eight sons preceding him. As noted earlier, the distinctive enumeration of the putrika or her son as a secondary son in this period serves no useful purpose, because the distinction between him and the real son or grandson disappears and the doubt: pur sa by this time has entered into kinship and legal heirship of her father and her son inherits to his sonless maternal grand- father. It is, however, not clear as to how the principle of the sameness of caste will apply to such sons like the kanina, the madhotnana, the sahadaka and the kancerde.

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

91. Manus: तेषांमेव दा: जुनिन च व।

92. तथा विषय कार तेषां सहीत: प्रदैस्यमित्रिप्रसन्न।

93. तथा विषय कार तेषां सहीत: प्रदैस्यमित्रिप्रसन्न।

See also MS IX. 67-68.
... and the sahodha sons could be accorded no worse treatment. The kaniya and the saugardhva along with these three kinds of sons have been declared by Brhaspati as condemned. Manu has likened these condemned sons to a worn out and inking boat and concludes that a man trying to realize the other world with the help of these condemned sons will achieve no better results than he does by trying to cross the waters with the help of such a boat. Such sons born from the seeds of strangers have been spoken of by him only by the way. He, however, does not mean either to propagate the institution of these bad sons or to state that such practice is well-received, for they belong to him whose seed they spring from. Thus, it does not seem unsafe to infer that in this period all other secondary sons, save the adhkara, were pushed down the scale. They fell into abeyance leaving the field clear to the adhkara son who ruled the roost now. He not only re-entred the legal scheme of heirship to his adoptive father but also to his other kins, obviously, in the latter case on failure of any other consanguine successor to the latter. Of the secondary sons, he is listed second to none but the ksetraja who is only a vestige of yore. So, as a matter of fact he is next only to the suressa son. Manu lays down that...
a man must make a substitute of whatever description on failure of a real son. In view of the foregoing analysis he is left with no other choice but to take to adoption for making a substitute for a real son. The adopted son according to him does not take the gotra or property of his progenitor. He takes the gotra and inherits the estate of the adopter to whom he offers the funeral cake. The obsequies, therefore, to him who has given away his son, will cease.

Arhaspati grades the real grandson and the mutrika-putra as conducive to the attainment of heaven by the grandfather and his spiritual welfare and equates them in the matter of inheritance and pinda and rates the dattaka, the anaviddha, the krita and the saudra as coming next only to the above two, actually pushing out the ksetra who intervened between the dattaka and the real son in Manu's text. The ksetra and the rest are now expressly condemned and implicitly treated as not worthy if being affiliated. Of the secondary sons only the dattaka, in opposition to the anaviddha, the krita and the saudra, if pure in birth and conduct, is now left entitled to inherit and is the first amongst the preferred ones.

96. नाप्रति दुः: का याईव्य गाध्य प्राप्तम् | MS P. 2; DRM, p 15.
97. गौचेराववेस्वराय वरोह सापि: क्लबिध | नाप्रति दुः: का याईव्य गाध्य प्राप्तम् | MS IX. 142.
98. परत्र! धुतानाथ: सभौप्रस्थापार्थान् | रित्सितत्तकाशण! जभ्र। यम कामप्रक्षेतात॥
   BR. q. VR, p 589, also described a vaishuha with negligible ablations, see also p. 81 and 92.
(e) The Puranas

According to the *Brahma Purana* the *dattaka*, the *avandatta*, the *krtima*, the *bhita* and *prayogda* sons are entitled only to maintenance, belong to different *sutra* and *manda* and are regarded as perpetrators of different family line. They have to observe impurity resulting from birth and death for three days. Another text of this *Purana* allots a part of a share to each of the secondary sons, if a real son is born subsequent to the affiliation of a son. The affiliation of such sons as the *sudhatpanna*, the *karnina*, the *sahodha*, the *keshatra* and the *pauvarbhava* seems to have been treated as a cognizable offence punishable under the law (raja-danda bhavat).

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

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

102. राजा उ शाप्तेऽर्पतिष्ठानां निलं तत्र सत्ताः तथा। 
वषे (क) प्राप्तीभाष्यानां क्षत्रियाः का कर्ष्यते न ॥

(व) न क्षत्रियाः का कर्ष्यते ॥

ौनां यी यथा या युपात्तया या प्राप्ताणुः ॥

ौक्तिः न तथा शेषर या चैयोः तैहासिः ॥

वन न युपात्तयाः ॥ क्षत्रियाः का कर्ष्यते ॥

ब्रह्मणां धार्मिकाः ॥ शेषर या चैयोः तैहासिः ॥

ब्रह्मणां धार्मिकाः ॥ शेषर या चैयोः तैहासिः ॥

ब्रह्मणां धार्मिकाः ॥

103. यद्य वर्षे (क) प्राप्तीभाष्यानां क्षत्रियाः का कर्ष्यते न ॥

वर्षन पप पम ॥ तेषाच तेषां भाषनस्य कालाभ्यात ॥

सर्वां शाश्वता यां तैहासिः क्रिया ॥ तैहासिः ॥

वर्षन पप पम ॥ तेषाच तेषां भाषनस्य कालाभ्यात ॥

सर्वां शाश्वता यां तैहासिः क्रिया ॥

- Brhaspati, Q. by Apurkar (on Yaj. I, 63-65), p.97 and Kul (on Manu X.66) and Dattakabodhi (on Ch.2), p.2 and a reference made to it by Dr. Ke., p.4.
sons except the one given away in adoption. Though the production of legal works laying down in full details the provisions of the law of adoption had yet to see the light of the day in the far off future, this period doubtlessly marks the rise of the son given over the obsolescence of all the rest of the subsidiary sons.

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

104. दानकारणरूपः तु प्राचीन परिष्करः।
१०५. दैविका सूत्रिक्योः वाक्रणां यथा।
करो गुरुः रज्जवान्धर्म जनानी ज्ञातवाक्यावृत्तिः।
जानकी नरदेव पुराणं काके कस्तुरिणि लोकपत्यारण
q. by K. Takabouchi (on the IC) p. 7; Jha, G.N. III, 2, p. 616.

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

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

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Also cf.


to introduce order out of chaos notwithstanding, the medieval
digests are full of varying interpretations of the same satra
texts. Consequently, the law of adoption differed from
province to province according to the medieval works held in
authority there on the one hand and modern case law on the
other. In modern times, voluminous works like those of Sastri,
Colapchandra Sarkar and Kapur were written on the subject.
'No branch of Hindu law in modern times has been so fruitful
in litigation as adoption. There are instances, where, fifty
years after a point in the law of adoption was deemed to have
been settled by a Full Bench decision, the Privy Council
intervened and over-ruled the Full Bench decision inspite of
its usual practice of follow the rule of stare decisis ...'
There has been so much of case-law on several aspects of
adoption that it resulted in a great deal of confusion.108
Only legislation was thought to be a solution and accordingly,
Hindu Adoption and Maintenance Act, 1956 (Act No. 78 of 1956
as amended by Act No. 45 of 1962) came into being. The story
does not end here. However much may we codify the law into a
series of seemingly self sufficient propositions, these
propositions will be put a phase in the continuous growth109
and suggestions for reform in the present law of adoption will
continue to be made.110

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