

SHOULD THE ADOPTED SON BE A CLOSE RELATIVE?  
ON THE INTERPRETATION  
OF VASIṢṬHA-DHARMA-SŪTRA 15.6 AND 7

1. In view of the importance of private law for the administration of justice in British India, it is no wonder that the attention of jurists and scholars was drawn relatively early also to the "law of adoption" and late mediaeval<sup>1</sup> treatises dealing with it, such as Nandapaṇḍita's<sup>2</sup> *Dattakamīmāṃsā* and the *Dattakacandrikā*<sup>3</sup>. Editions of these two works together were published as early as 1817 in Calcutta<sup>4</sup>, and the first translation, prepared by J. C. C. SUTHERLAND, appeared in 1821 in Calcutta itself. Adoption continued to hold the specialists' attention for more than one and a half centuries, WEST and BÜHLER (1884)<sup>5</sup> as well as Jolly (1896) marking the end of the last century, and KANE (1973)<sup>6</sup> concluding the line, as far as I can see, with a corresponding chapter in the 3rd volume of his *magnum opus*.

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1. I am of course aware of the problems involved in attempting to divide up Indian history into periods, and to find appropriate terms for them.

2. See LINGAT 1973: 114.

3. See LINGAT 1973: 117 fn.

4. For details see EMENEAU 1967: 217 ff.

5. This was already the 3rd edition. I don't know when and where the earlier editions were published.

6. The first edition of this volume was published in 1940. – For further literature on adoption see DERRETT 1969: 31 ff., STERNBACH 1973: 56 f. As for primary literature, the references have to be gleaned from KANE 1973. As in the case of other legal subjects it is, of course, possible, and useful, to start from Nibandha works or late

Yet a study of the handbooks and of the relevant portions of the primary sources, first of all, of course, *Dharmaśāstra* texts, reveals that even at the end of this our own century there is still much work to be done in this field of research and that Indology has not yet reached a full and really comprehensive understanding of this legal institution. The *desiderata* particularly felt are in my view the following:

A. KANE (1975: 1039f.) gives a long list of treatises on adoption many of which are still unpublished. Somebody will have to go through this material – even though these texts are likely to be largely repetitive and to contain a lot of scholastic hairsplitting – to see whether, and if so, what information *e.g.* about aspects of the historical development of adoption or regional variants (as regards norms as well as practice), etc., can be gleaned from it. (And why not then also make these texts available in editions?).

B. When one reads the – afore-mentioned – chapter on adoption in KANE (1973) one cannot, even if familiar with his work as a whole, but be struck by the fact that his attempts to analyse the material historically and to give a description of the historical development can at best be styled very modest. The task of giving at least an outline of this development is admittedly not an easy one, but Kane seems to have almost deliberately avoided to take up the challenge at all.

C. JOLLY'S (1896: 71ff.) treatment of adoption is remarkable among other things by references to anthropological literature and modern reports about adoption which are made as a matter of course. To take into account this type of non-philological source-material was for scholars of this period almost natural, but most probably not because they were less narrow-minded or self-content, or because the structure and size of the universities in their days still allowed repeated or even regular meetings with colleagues from other disciplines, but rather because they had much more time and were, for this reason, able to read practically all of the secondary literature that was published, at

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special treatises. With regard to adoption KANE and PATWARDHAN 1933 is particularly important.

least in their field of specialisation, although on a much smaller scale than nowadays. In any case, it would certainly be advisable to gather all the information about adoption that it to be or may be found in later or present day anthropological studies on South-Asia.

**D.** The chapter on “Adoption and Sonship” in C. R. JAIN (1926: 25-37) gives cause to note that our knowledge of the non-Hindu normative ideas and practice and of the relation in which they stand to the Dharmaśāstra tradition is still very limited indeed.

**E.** Last but not least it is individual words or terms or even whole sūtras or verses of “classical” Indian “law-books” which have not yet been properly understood or the translation and interpretation of which call for a critical re-examination.

The following is meant to substantiate the latter point – and thereby to perhaps add persuasiveness to my other suggestions.

2. The chapter (*adhyāya*) on inheritance in the VasDhS, viz. the seventeenth, starts – in keeping with its markedly systematic character – with deliberations on the necessity of having, and the use of, male offspring. Not only “the latter part of the quotation” in sūtra 17.2 (*anantāḥ putrinām lokā nāpūtrasya loko* <sup>(1)</sup>*stīti śrūyate*) “occurs Aitareya-brāhmaṇa VII,3,9”, i.e. (Pañcikā) 7.13.12 a, as stated by BÜHLER (1882: 84, fn.), but the first sūtra as a whole<sup>7</sup> is AiB 7.13.4<sup>8</sup>. The subsequent famous list of the types of sons is preceded, or the transition between it and the preceding section is formed, by two verses, viz.:

7. It reads thus:

*ṛṇam asmin sannayaty  
amṛtatvaṃ ca gacchati /  
pitā putrasya jātasya  
paśyec cej jīvato mukham //*

8. It seems that this passage of the AiB exercised also some influence on the composition of Manu 9.107 (*yasminn ṛṇaṃ sannayati yena cānantyaṃ ānute / sa eva dharmajāḥ putraḥ kāmajān itarān viduḥ //*). Yet, the whole problem of the relation between the VasDhS and the RV as well as later texts connected with it calls for a critical re-examination which I hope to be able to carry out soon.

*bahūnām ekajātānām  
 ekaś cet putravān naraḥ /  
 sarve te tena putreṇa  
 putravanta iti śrutiḥ /10 //, and  
 bahvīnām ekapatnīnām  
 ekā putravatī yadi /  
 sarvās tās tena putreṇa  
 putravantya<sup>8a</sup> iti śrutiḥ // 11 //.*

They closely resemble Manu 9.182 and 183 as well as Viṣṇu 15.42 and 43. The problem posed by the reference to the *śruti* has not been resolved. Thus the doubt is raised that the alleged origin in the *śruti* is just a fabrication – and that there were strong reasons to forge the *vedamūlaiva* –, especially as it is absent in the parallel passages in the Manu-<sup>9</sup> and Viṣṇu-Smṛtis<sup>10</sup>. If the need for pointing to authority, and the latter's relative status, could be taken as indicating historical development, the chronological sequence would, in this particular case, be Viṣṇu, Manu, VasDhS. But a more important problem is what is meant by these two verses. The commentators of Manu do, expectedly enough, disagree with each other as to the precise meaning, but seem to be of the common opinion that the procreational situation referred to here is that of all other brothers of the same father / all other wives of the same husband remaining sonless. As against this JOLLY (1896: 47) has made the interesting suggestion that «the known rule of M. 9.182 etc. ... if it may at all be taken, against the explanations of the commentators, as referring to polyandry, can refer only to such group matrimonies»<sup>11</sup>, i.e. such as that of the Pāṇḍavas with Draupadī. The inference implied, viz. that since VasDhS 17.11 clearly refers to polygamy the preceding sūtra could refer to polyandry, and that in the con-

8a. Note the grammatical irregularity (feminine formed from the strong stem).

9. Note that in Manu 9.182 instead of *iti śrutiḥ* the – notorious – *manur abravīt* is found, and similarly in 9.183 *prāha ... manuḥ*.

10. Nothing equivalent to *iti śrutiḥ* (VasDhS) or *manur abravīt* (Manusmṛti) is found in Viṣṇu.

11. The German original reads as follows: “Auch die bekannte Regel M. 9,182 u.a., dass der Sohn eines von mehreren Brüdern als der gemeinsame Sohn aller gelten soll, kann, wenn man sie überhaupt gegen die Erklärungen der Kommentatoren auf polyandrische Verhältnisse beziehen will, nur auf solche Gruppenehen gehen”.



text of Indian culture, and cultural memory, this cannot but be a reflex of the group matrimony of the five Pāṇḍavas, can indeed not be denied a certain degree of plausibility. But, one cannot but ask oneself: Is it legitimate to interpret the latter in the light of the former, or does one not rather have to assume that the latter was just modelled after the former in that it describes a situation basically similar to that of the former, viz. that all except one person of a group having a common relational status with regard to another person, do not beget a son, only that the group is male in one case and female in the other?

That is to say: Even if it is assumed that the two verses under discussion do not reflect just a manner of speaking ("they have a son", etc.) or a – legally irrelevant – common view of society, but that they are, on the contrary, legal, i.e. *dharmic* statements, at least in their present context(s)<sup>12</sup>, in the proper sense of the word, the problem remains unsolved which legal rule(s) precisely is/are taught in them, and whether the verses have at all, and be it only indirectly, to do with adoption.

3. Although the adopted son (*dattaka*) is, of course, listed (17.28) among the two groups of six types of sons – the first of which is entitled to inherit (*dāyāda*) while the second is not (*adāyāda*) –, adoption itself is treated a little earlier, i.e. at the beginning of chapter 15.1-10. This section is followed by another one of almost equal length (15.11-21) dealing with *patana*, "loss of *ārya*-hood"<sup>13</sup>, or "excommunica-

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12. I fully agree with OETKE (1988: 273 ff.; cf. also 1991) and PREISENDANZ (1994: 16 f.) that it is not simply useful, but rather imperative to give more than one translation of sūtras of Sūtra-texts on which several commentaries from different periods exist in order to clearly keep apart, and enable the reader to distinguish between the interpretation of a particular sūtra which one oneself considers to be the historically correct one in the context of the Sūtra-text when it was composed/compiled, and the interpretation of the same sūtra as given by a particular commentator, and, finally, the interpretation of the proposition before it became a sūtra by being incorporated in a Sūtra-text or of a particular sūtra before other sūtras were secondarily interpolated so as to precede or follow it (PREISENDANZ's "O-Übersetzung"). It is a real pity that none of the two colleagues who have so far published reviews of PREISENDANZ 1994, viz. KELLNER 1996 and VERPOORTEN 1995-96, have correctly understood this distinction inspite of the fact that it is described in clear words, and suggests itself anyway.

13. In an article which is almost ready for publication I am taking a closer look at the concept of the "fallen" (*patita*) and its original significance.

tion” as the term is traditionally rendered. I wonder if there is any connection between these two sections, be it logical or associative or of still another kind; in any case it evades me<sup>14</sup>. Since the first section – on adoption – ends with rules about inheritance, one could gather the impression that in terms of systematics it belongs to chapter 17; on the other hand one cannot ignore, but on the contrary has to properly weigh the fact that in this section (15.1-10) the *dattaka* is indirectly stated to inherit all the property of his adoptive father – for it is only on this condition that the statement of 15.9<sup>15</sup>: «(i)f, after an adoption has been made, a legitimate son be born, (the adopted son) shall obtain a fourth part» (Bühler 1882: 78), can be regarded as meaningful; and the *dattaka*’s right of inheritance contrasts sharply with his being classed with the *adāyādas* in chapter 17. Therefore the explanation suggests itself that we have to do with are two different strands of tradition both of which found their way into the VasDhS, but were – naturally – allocated two different places.

The special position of the section 15.1-10 is justified also by the fact that it really deals with adoption, including the necessary ceremony/ritual, a subject which would have disturbed the systematic and brief enumeration of the various types of sons in *adhyāya* 17 (allowing but brief explanations or definitions of each of them). That it so say, there are a number of observations which make one understand that adoption itself is dealt with at another place in the Sūtra; but they do not, admittedly, also explain the particular place, before

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14. BÜHLER’S observation (1882: XXII), viz. that “(T)hroughout the whole of the first twenty-four chapters and in the last two chapters we find a mixture of prose and verse” and that “(W)ith one exception in the sixth chapter, ... the author follows always one and the same plan in arranging his materials. His own rules are given first in the form of aphorisms, and after these follow the authorities of his doctrines, which consist either of Vedic passages or of verses, the latter being partly quotations taken from individual authors or works, partly specimens of the versified maxims current among the Brāhmans, and sometimes memorial verses composed by the author himself”, is certainly highly valuable, but too general to be of any use for the problem at issue here.

15. It reads as follows: *tasmiṃś ced pratigṛhīta aurasaḥ putra utpadyeta caturthabhāgabhāgī syād dattakaḥ*; note that *caturthabhāga*- had become a fixed term at the time of the formulation of this sūtra so that in order to express the idea of “one who gets the fourth part [of the heritage]” one had to add *bhāgin* to the compound.

the section about *patana*, which in fact has been chosen by the author/compiler/redactor. For the theoretically possible explanation that this particular position is due to the relation of similar, albeit contrary social movements, viz. up into the group of *āryas* and down into that of those expelled from that group, is not acceptable because – as we shall see a little later – the section on adoption contains a rule which quite clearly precludes this possibility.

4. Now, quite remarkably this section starts with two fundamental statements, viz. “Man formed of uterine blood and virile seed<sup>16</sup> proceeds from his mother and his father (as an effect) from its cause”<sup>17</sup>, (Therefore) the father and the mother have power to give, to sell, and to abandon their (son)”<sup>18</sup> (BÜHLER 1882: 75). BÜHLER rightly started from the assumption that the relation between these two sentences is an – implicitly – causal one: The parents’ power to give, to sell and to abandon their son is evidently derived from their being his cause in the biological and hence general factual, and in the philosophical sense of the word. This looks very much like the result of reflection on the ground, and justification for an existing social practice. It deserves scholars’ attention also in that it recognizes the role and power of the mother and that it is not, at least not on the surface, religious in conception<sup>19</sup>.

4.1. For want of space I cannot discuss the immediately following sūtras, too, tempting though it would be, but have to confine myself to 15.6 and 7 which read thus:

16. On the ideas about the process of conception, etc., in Indian medical and erotological literature see now DAS 1999.

17. The original reads thus: *śoṇitaśukrasaṃbhavaḥ bhavati mātāpitṛnimitṭakaḥ*; note that the “irregular” sequence of the members of the *dvandva* compound *śoṇitaśukra*<sup>o</sup> has been evoked by the *yathāsaṃkhyā*-principle, i.e. the regular, old and solemn, of *mātāpitṛ*<sup>o</sup>.

18. The Skt. original is: *tasya pradānavikrayatyāgeṣu mātāpitarauprabhavataḥ*. On the idea expressed here cf. KANE 1973: 563 f.

19. A more fundamental fact to be noted is that it was at all considered necessary to give an argument supporting a central element of adoption, viz. the giving away of a boy.

*putraṃ pratighrīṣyan bandhūn āhūya rājani ca nivedya niveśanasya  
madhye vyāhrtibhir hutvādūrābāndhavaṃ bandhusannikṛṣṭam eva pra-  
tigrhīyāt || 6 ||*  
*sandehe cotpanne dūrebāndhavaṃ śūdram iva sthāpayet || 7 ||.*

The only variant reported by FÜHRER (1883), viz. *cāvedya* instead of *ca nivedya*, is negligible. But if the secondary transmission, i.e. the reception of these sūtra, is also taken into account, more variants emerge, viz. *niveśanamadhye* and *bandhusaṃnikṛṣṭa eva* (Mitākṣarā on YājñS 2.131) as well as *asaṃnikṛṣṭam eva* (Mitākṣarā on YājñS 2.131) as well as *asaṃnikṛṣṭam eva* (Nandapaṇḍita on ViṣṇuS 15.19, who however also mentions the other reading, viz. *bandhusaṃnikṛṣṭam eva*)<sup>19a</sup>.

The two sūtras have been translated by BÜHLER (1882: 75f.) as follows: «He who desires to adopt a son, shall assemble his kinsmen, announce his attention to the king, make burnt-offerings in the middle of the house, reciting the Vyāhrtis, and take (as a son) a not remote kinsman, just the nearest among his relatives». «But if a doubt arises (with respect to an adopted son who is) a remote kinsman, (the adopter) shall set him apart like a Śūdra».

Quite clearly BÜHLER started from the assumption or came to the conclusion that *adūrābāndhava* means “not remote kinsman”, and *dūrebāndhava* of the next sūtra, accordingly “remote kinsman”, and he was followed in this also by the Large Petrograd Dictionary, as also the Small one<sup>20</sup>. It is precisely this assumption which calls for critical re-examination, and for a number of reasons at that.

**A.** The fact that the prior member of the compound (*dūrebāndhava*) is in the locative cannot be ignored. WACKERNAGEL (1957: 45, § 19.b) states that apart from the composition of an originally parathetic connection of words “already the wish to indicate the syntactical relation of both members could lead to the result that instead of the end of the stem the corresponding case ending was uttered, without parathetic

19a. It should, however, be noted that there is no critical edition of the VasDh S available so far; cf. FALK 1998.

20. Viz. in the third part (“3. Teil”), p. 248 s.v. *adūra*, i.e. in the “Nachträge und Verbesserungen” (“Additions and Corrections”).

connection of words preceding" [the composition]<sup>21</sup>. Hence with regard to *dūrebāndhava* one could at best, i.e. if it really were a *kar-madhāraya* compound, start from the meaning "a kinsman far off", i.e. "who lives far away".

**B.** But what also has to be noted is WACKERNAGEL's further statement (1957: 278, § 109 a)δ)) that "particularly frequent from the RV on are" – the *bahuvrīhi*- compounds –, "that begin with *dūre*- and that have their parallels in the equally frequent Avestan ones with *dūraē*- (e.g. *dūraē-karana*- "whose ends are far away")"<sup>22</sup>.

**C.** Sūtra 15.7 quite clearly refers to the situation that a doubt arises with regard to a boy who has already been adopted: He should be assigned the position of a *sūdra* in terms of the *varṇa* hierarchy, i.e. treated like a *sūdra* – not allowed to learn the Veda, etc. –; most probably what is implied is: as long as doubt persists<sup>23</sup>. Yet a number of questions call for answers. What does the doubt refer to? Quite evidently to the hierarchical status of the adopted son, to his descent, i.e. whether he is an *ārya* or not, to which *varṇa* he belongs. Is it imaginable that inspite of the existence of a very complicated, detailed and comprehensive system of kinship terms, in Sanskrit as well as other Indian languages, a member of one of the three upper *varṇas*, including the Brahmins, adopts a person of whom he – and all the relatives assembled by him – only know that he is somehow related to him, but not exactly how? And is not already the assumption that there are, in Sanskrit, expressions meaning "(not) remote relative", besides (at least

21. "Daneben aber konnte β) an sich schon der Wunsch(,) das syntaktische Verhältnis beider Glieder anzudeuten(,) dazu führen, daß man an Stelle des Stammauslauts die betr. Flexionsendung sprach, ohne daß eine parathetische Wortverbindung vorausging".

22. "Besonders häufig vom RV. an sind die mit *dūre*- beginnenden, denen die ebenfalls zahlreichen avestischen mit *dūraē*- (z.B. *dūraē-karana*- "dessen Enden in der Ferne liegen") parallel laufen".

23. Cf. Aparārka l.c. (see below p. 20 and fn. 57) who adds *ā niscayāt* after his paraphrase, and *sthāpayet* (which he leaves unexplained). – A problem also not recognized, at least not explicitly addressed, by BÜHLER is that of the reference of sūtra 15.8 (*vijñāyate hy ekena bahūṃs trāyata iti*), the question of the source of this quotation (if it is at all a quotation) apart: Is this proposition meant to give a reason only for that immediately preceding it, i.e. 15.7, or for the section as a whole, i.e. adoption as such?

traditionally comparatively well-defined) terms such as *sagotra*, *sapiṇḍa*, etc., in itself problematic, *i.e.* rather unwarranted?

D. If *dūrebāndhava* does really denote a “remote relative” one would also have to wonder why – if the boy adopted is still too young<sup>24</sup> to himself give reliable information about his descendance – his parents, etc., are not requested to help to determine the exact degree of relationship.

5. Fortunately the expression *dūrabandhu* is attested also in texts other than the VasDhS.

5.1. A classical and hence perhaps even well-known occurrence is Meghadūta I (= PūrvaMegha) 6, *i.e.* the first of the many verses addressed by the Yakṣa to the cloud<sup>25</sup>. In the second half of this verse the Yakṣa confesses that it is as a petitioner that he approaches him, the reason being that he is “by the power of destiny”<sup>26</sup> a *dūrabandhu*; there cannot be the least doubt that this is a *bahuvrīhi* meaning “one whose relatives are far [from him]”, and it is very likely indeed that it is one particular relative who is in fact referred to here, if not solely then at least first of all, *viz.* his beloved wife, *i.e.* that Mallinātha is right when explaining it by *viyuktabhāryaḥ*<sup>27</sup>. The attribute

24. Clearly father and mother may give their son – under certain conditions – for adoption only as long as he has not attained his majority; cf. also KANE 1973: 679 ff.

25. It reads thus:

*jātaṃ vaṃṣe bhuvanavidite puṣkarāvartakānāṃ  
jānāmi tvāṃ prakṛtipuruṣaṃ kāmavūpaṃ maghonaḥ /  
tenārthitvaṃ tvayi vidhivaśād dūrabandhur gato 'ham  
yācñā vandhyā varam adhiguṇe nādhame labdhakāmā //*  
(HULTZSCH 1911: 6).

26. This expression seems to cover up the real cause of his exile; cf. also 93 (*daivagati*), 99 (*vairin vidhi*) and 102 (*kṛtānta*). I am not, however, sure that this interpretation is correct.

27. Vallabhadeva's explanation is *asaṃnihitadāraḥ*, Pūrṇasarasvatī's *dūrabandhuḥ* [=] *dūre bandhur yasya saḥ* / 'dharmārthakāryeṣu bhāryā puṃsaḥ saḥāyini / videśagamane cāśya viśvāsakāriṇī' [cf. BÖHTLINGK 1870-73: II p. 184 (Nr. 3118)] *iti*, 'na hi bhāryāsamaṃ mītram' [?] *iti ca tadatiśāyino bandhor abhāvād bhāryaivātra bandhur ity ucyate* / *tathā raghuvaṃṣe* [14.33 d] 'vaidehibandhor hrdayaṃ vidadre' *iti*; Sumativijaya's is *dūrasthitasvabhāryākāḥ* and that of the author of the Kātyāyanī *dūre bandhuḥ priyālakṣaṇasvajano yasya saḥ*.

*dūrabandhu* thus echoes, *i.e.* resumes and at once makes concrete, the qualification *dūrasaṃstha*<sup>28</sup> of the *kaṇṭhāśleṣapraṇayin jana* in the *arthāntaranyāsa* of verse 1.3. In fact distance, separation by space, and the means for overcoming it is the central theme of the poem.

5.2. Another occurrence, also already mentioned in the Small Petrograd Dictionary<sup>29</sup>, is Mbh. (Poona ed.) 13.95.64. As the preceding verse is, contextually and for other reasons<sup>30</sup>, also important, both of them will be quoted here. They are spoken by ṛṣi Jamadagni who curses the person who has stolen lotus stalks from the pond watched over by Yātudhānī:

*purīṣam utsṛjaty apsu  
hanty gām cāpi dohinīm /  
anṛtau maithunaṃ yātu  
bisastainyaṃ karoti yaḥ || 63 ||  
dveṣyo bhāryopajīvī syāt  
dūrabandhuś ca vairavān /  
anyonyasyātithiś cāstu  
bisastainyaṃ karoti yaḥ || 64 ||<sup>30a</sup>,*

“he shall defecate in water and  
kill a milkgiving cow<sup>31</sup>, he  
shall have intercourse [with his wife]  
outside the proper period ...;  
he shall be the object of hatred [of  
other people], one who lives [as a pimp?]  
on his wife, one whose kinsmen are  
far away, [a man] full of hostility,

28. Cf. also *dūrībhūte mayi sahaicare* in verse 80, *dūrabhāvāt* in 46 and *dūravartī* in 99.

29. If it is really this passage which is referred to by “Mbh. 13, 149, 125”.

30. I find this – and similar (cf. Mbh. (Poona) 7.51) – ‘lists of sins’ extraordinarily interesting, *i.e.* revealing in terms of an Indian history of ideas, and intend to deal with these two on another occasion.

30a. For parallels from puranic texts see KLEIN-TERRADA 1980: 139.

31. In that it is only milk giving cow which is not to be killed, this passage seems to indicate that there was no general taboo against the killing of members of the bovine species yet in this period.

one who is the guest of another [person]  
 who in his turn [becomes his guest]<sup>32</sup>, ...”

The punishment which Jamadagni wishes upon the thief consists, quite remarkably, of actions which clearly infringe traditional social customs and moral ideas and lead to the culprit’s social marginalization or even practically his excommunication, no matter what effect they have in terms of the retributive ‘*karma* theory’. The question apart whether *dveṣyo* is a separate predicate or rather an attribute of *bhāryopajīvī*, and, similarly, whether *dūrabandhuś* is syntactically to be connected with *vairavān* or not, what is expressed by the compound *dūrabandhu*, in this context, is to all appearance not only the fact that the person lives far away from his relatives and from those who are dear to him – and suffers because of this separation –, but also, if this is not even the dominant meaning, that he becomes for other people the object of suspicion, of cautious social distancing, avoidance of contact because his descendance, the legitimacy of his birth, and hence his real position in society is not known and cannot be checked.

**5.3.** There is still another passage in the Mahābhārata where the expression *dūrabandhu* occurs<sup>33</sup>, viz. the brief description of the lament of the queen of Kamboja about her husband who has fallen in battle (Mbh. (Poona ed.) 11.25.1-4). The relevant part reads thus:

*avekṣya kṛpaṇaṃ bhāryā  
 vilapaty atidulḥkhiṭā* //2

...

*dūrabandhur anātheva  
 atīva madhurasvarā* // 4,

“seeing [her dead husband] his wife  
 laments pitifully, in great

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32. P. C. ROY (1952-62: 167 fn. 1 (marked by a “T.” which is not clear to me)) gives the explanation “(T) receive acts of hospitality in return for those rendered was regarded as not only meanness but also destructive of merit”, but it is not clear whether he has any additional evidence for this belief.

33. I thank my friend Thomas Oberlies for referring me to this passage; he, of course, used TOKUNAGA’s computerized Mahābhārata to find it.



torment with an extraordinary pleasant voice<sup>34</sup>,  
like a woman without a protector,  
one whose kinsmen are far away.”

This passage is similar to Meghadūta 1.6 in that here too, and even more clearly at that, it is the conjugal partner who is referred to by *bandhu* – as is also confirmed in the context by the expression *tvayā hīnā* of 11.25.4 b – and that only this separation is of semantic importance.

6. When the wider linguistic and cultural context of the VasDhS is considered, one has therefore to start from the assumption that *dūrebāndhava*, and then of course also *adūrabāndhava* of VasDhS 15.7 and 6, respectively, are *bahuvrīhi* compounds, too. Certainly, the external evidence, just presented, does not prove this, *i.e.* does not entirely preclude the possibility – preferred by BÜHLER among others as we shall presently see – that these nouns are *karmadhārayas*. But it would in any case be necessary to give a reason/reasons for this deviation from the externally attested use of the compounds, and to be sure the reason(s) would have to be particularly strong in view of the problems which the latter assumption involves – and which have been stated above (§ 4). Hence what I propose to do now, – because I regard it as methodically more justified – is to heuristically explore the *a priori* more probable assumption that *adūrabāndhava*, in VasDhS 15.6, equally denotes “one whose kinsmen are, *i.e.* live, not far away”. What are the consequences of this interpretation and historical analysis of this – and the subsequent – sūtra?

6.1. Although patent, it is useful to remember here that “far”, (*dūra/dūre*) and “not far” (*adūra*) are both relative concepts. Nevertheless, “close kinsman” and “not close kinsman” could easily have developed into distinct relational terms, the only thing left to be determined by us being the borderline between the two categories, whereas in the case of the *bahuvrīhi* compounds there is but little likelihood that “farness” and “nearness” are conventionally delimited.

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34. *Madhurasvarā* looks very much like an *epitheton ornans*, or rather expresses the extraordinarily big difference between her former and her present state.

Thus *adūrabāndhava* could refer to a person whose relatives live in the same house, next door, in the neighbourhood in the same village, etc., and *dūrebāndhava* could, in contradistinction, refer to a person whose relatives live at another place, not necessarily the next village, but most probably farther away. Distance is, of course, by and large, measured and defined in terms of the natural and/or technical means of covering it<sup>35</sup>. There is quite clearly no exact borderline between “near” and “far”, but the area of that what is considered to be “near”, in the geographical sense of the word, can nevertheless be defined as that area within which a person or group of persons (excluding nomads, transhumants, etc.) move in the course of their normal social, economic, religious etc. activities. That is to say one “whose relatives live not far away” is a person whose kinsmen can be contacted without undertaking oneself or sending someone else on a journey markedly longer than those regarded as normal in everyday life. And this amounts to stating that the relatives of an *adūrabāndhava* can be contacted relatively easily, at least without an exertion that goes beyond what is normal in the sense just explained.

Now, when one considers which relatives a man who wants to adopt a child has or would wish to get into contact with, it is two different classes that suggest themselves, viz. the child’s parents, on the one hand, and the man’s own other relatives, on the other. In accordance with VasDhS 15.2 and 5 (both) father and mother, or the mother alone though only with her husband’s approval<sup>36</sup>, “give” the boy for adoption, and there is no indication that a third party may be commissioned with this act of *dāna*<sup>37</sup>, be it orally or in a written form. Therefore the conclusion seems to be justified that at least one of the parents has to be present in person for an adoption to be legally possible, and effective<sup>38</sup>.

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35. Cf. expressions such as *kośa*, *yojana* etc.

36. The right of the mother is quite understandably one of the issues which attracted the particular attention of the commentators (cf. e.g. on Manu 9.168) and the Nibandhakāras.

37. Cf. also VasDhS 17.28. Note that as in other cases, too, the act of giving is accompanied, i.e. its validity is expressly confirmed, by the pouring out of water (cf. Manu 9.168).

38. I should like to add that even if I should be mistaken in this regard, the main result of my study would not be affected.

The other relatives of the boy are important<sup>39</sup> because by knowing them, too, the future adoptive father is able to critically check what the boy's father or mother tell about their own descendance, social rank, etc., and to form for himself an idea about the boy's character, talents, etc. The principle on which the rule involved is based could hence be formulated as follows: If you want to really know somebody, especially a person under age, don't just look at his parents, but take a close look at his family too! This sounds only too familiar, and not only within the context of the Indian socio-cultural traditions. Though adoption does not in contradistinction to marriage mean the establishment of a relation between two families, it is nevertheless very similar indeed in view of its only aim, *viz.* securing the continuation of one's family, i.e. the preformance of the necessary rituals for oneself and one's ancestors (*ekoddiṣṭaśrāddha*, etc.), and in view of the implication adoption also has in terms of the bequest of one's earthly possessions.

And if this maxim is disregarded, or rather cannot be followed because the male child to be adopted happens to belong to the category of the *dūrebāndhavas*, then, as is asserted in VasDhS 15.7, it is possible that after adoption itself a doubt arises (for whatever reason) with regard to the descendance, the legitimacy of the birth, etc., of the "artificial" (*kṛta*, *kṛtrima*) son: Adoption as such, i.e. as a legally valid act, cannot be annulled, but the hierarchical status of the adopted child can, and has to, be changed, *viz.* to the lowest one within the *varṇa* system, a solution by which the central goal of the adoption comes to nought almost entirely, for some time (or if the doubt proves to be justified even for ever?).

**6.2.** With this meaning of *adūrabāndhava(m)* in mind, one wonders what could be expressed by *bandhusaṃnikṛṣṭam*<sup>40</sup> (*eva*) immediately following upon it. BÜHLER's proposal is "just the nearest among his relatives". In view of the foregoing discussion (§§ 4.1 ff. and 5)

39. The relatives of the adopting sonless person, of course, for other reasons: It is essential that they are directly, i.e. by witnessing it, informed about the adoption, and thus really accept it or put up with it, on their part.

40. Cf. also expression *adūraviprakarṣa*, "a not far distance", i.e. "small difference", in Patañjali's *Mahābhāṣya* (ed. Kielhorn) II 413,14 and 414.1 f.

however, a much more probable solution suggests itself, viz. that what we have to do with is an ancient gloss which was meant to explain the expression *adūrabāndhava* by adding “[a boy] who is near to/stays with his kinsmen” and which was inserted before the particle *eva* which already formed part of the original text. The only difference between the *explicandum* and the *explicans* worth noting is the exchange of a not entirely unequivocal *bahuvrīhi* by the clear and precise *tatpuruṣa*, and thus also a semantic shift of focus.

That presumably quite early in the transmission of the VasDhS the need was felt to clarify the meaning of *adūrabāndhava* could give us a clue for explaining the non-occurrence of this word in later Dharmaśāstra texts except for commentaries or Nibandhas where the sūtra(s) under discussion here are quoted *verbatim*.

**6.3.** Many of the corresponding passages are quoted, at least in part, in the new Poona Sanskrit-English Dictionary s.v. *adūrabāndhava*, but quite clearly this is done because they allegedly support, i.e. are further evidence, of the only meaning given, viz. “near relative”. Yet a critical examination of these passages quoted by the compilers of the Dictionary reveals that *adūrabāndhava* has undeniably to be regarded as a *karmadhāraya* compound only in one case, viz. at Vīramitrodaya (*Samśkāra*) 209.16<sup>41</sup> where it is thus explained by Mitrāmīśra: *adūre cāsau bāndhavaś cety adūrabāndhavaḥ (= saṁnihitaḥ sapinḍa ity arthaḥ*; but one, of course, wonders whether *saṁnihitaḥ sapinḍaḥ* really means a “near relative”, and not rather “[a relative] of the *sapinḍa* class who is/lives/stays near by/in the vicinity”. The same holds good for the paraphrase of *adūrabāndhavam*, of VasDhS 15.6, at Vīramitrodaya (*Vyavahāra*) 309.31 and 378.12 by *saṁnihitamātulādibāndhavam* – which by the way could also be taken to be a *bahuvrīhi*.

But from which interpretation does the author of the Mitākṣarā start when he states on YājñS 2.130 by way of explanation again of *adūrabāndhavam* (235.9)<sup>42</sup>:

41. The edition referred to is, of course, that by Parvatīya Nityānanda Sarmā Pant [vol. 1 f.] and Paṇḍita Viṣṇu Prasāda Bhāṇḍārī (ChSS work 30), Benares 1906-1932.

42. The edition referred to is that prepared by Nārāyana Rāma Ācārya (NSP), Bombay 1949 (5th).

*atyantadeśabhāṣāviprakṛṣṭasya pratiṣedhaḥ,*

“what it excluded [by this expression] is [a boy] who is extremely far removed [from the adopting person] as regards the place/region [from which he hails] and the language [which he speaks]”? A distant relative could, no doubt, come from a far-off place/region; but would his language<sup>43</sup> be entirely different? Hence there is some reason to assume that Vijñāneśvara, too, regarded *adūrabāndhava* as a *bahuvrīhi* compound. And this is quite evidently what Balaṃbhaṭṭa took him to have done; for otherwise his own explanation of *adūrabāndhavam* by *saṃnihitadeśavṛttipitrādikaṃ*<sup>44</sup> *jñātakulaśīlam* (!) (Bālaṃbhaṭṭi II 172.22<sup>45</sup>) would not be explicable.

In summing up this subparagraph it may be stated that the indigenuous recipients of VasDhS 15.6 (f.) in reality do not fully agree with each other and that some of them in fact support the interpretation proposed by me.

**6.4.** Nevertheless BÜHLER’s interpretation of VasDhS 15.6 and 7 cannot be denounced as arbitrary or even whimsical; and this not only because of the evidence presented in the preceding paragraph (6.3), but also, or rather first of all, because the idea that “in selecting a boy for adoption, when several are eligible” “a brother’s son” should be preferred is amply attested in Dharmaśāstra literature. KANE (1973: 678f.) deals with it and states that “(t)he Mit. on Yāj. II.132 declares that the verse of Manu IX.182” – quoted and translated above by me (§ 2) – ... “does not provide that he becomes the son of all but it indicates that when a brother’s son is available for adoption another boy should not be adopted.” And he continues by observing that “(t)he D.M., D.C. (pp. 5-6)”, *i.e.* the *Dattakamīmāṃsa* and *Dattakacandrikā*, “and *Sam.K* p. 150”, *i.e.* the *Samskāra-Kaustubha*, “quote passages of Śaunaka and Śākala<sup>46</sup> that a man should prefer a *sapiṇḍa* or a *sagotra*

43. If this is really the meaning the word *bhāṣā* has here. Perhaps both words taken together express (metonymically) cultural difference, an otherness that excludes adoption.

44. *I.e.* “one whose father, etc., stay/live in a place near by”.

45. The edition referred to is that prepared by J. R. Gharpure (Collection of Hindu Law Texts), Poona 1914-24, which is available to me only partially.

46. For the quotations see KANE 1973: 679 fn. 1281.

to one who is not a *sapiṇḍa* or of the same *gotra*". Subsequently KANE reports the order of male relatives to be followed in adoption as recommended among others in the *Dharmasindhu*.

Yet the authorities referred to or quoted by KANE clearly testify to two things only, *viz.* to specific tendency in adoption practice or jurists' thinking about it, and endeavour on the part of legal writers to find support for their idea(s) and convictions in *Smṛti* texts themselves. And in the latter regard the commentators and *Nibandhakāras*, etc., cannot be said to be very convincing. For the interpretation of M. 9.183 given by *Vijñāneśvara* cannot be reconciled with the wording of this verse, and *Śaunaka* as well as *Śākala* are authorities of unclear identity and dubious importance, also because nothing is known about their dates<sup>47</sup>.

One need not even take into consideration the earliest, *i.e.* Vedic, evidence on adoption, in order to clearly see that the principle 'the closer related the boy to the adoptive father the better' is the result of a historical development. But this development cannot be simply described in terms of the general direction of the development of *Dharmaśāstra*, *i.e.* from comparatively liberal and 'reasonable' earlier rules to more and more rigorous and 'unnatural' later ones<sup>48</sup>; it is rather based, *i.e.* was triggered off and fuelled, by the fact that an adopted son is given the *gotra* of his adoptive father and inherits at least a considerable part, if not all the property of his adoptive father, and the emotional reaction this consequence was bound to provoke among the non-"artificial" relatives. Will they not feel sorry, to say the least, that the property goes to a person who, even if he now bears the same *gotra* name and performs the *śrāddha* for his adoptive father, is not a relative, but ultimately a stranger?

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47. As for *Śaunaka* see BÜHLER 1866 and DERRETT 1973: 46. I couldn't find similar information on *Śākala* in the *Dharmaśāstra* handbooks.

48. See e.g. THIEME 1963. I do not disagree with THIEME, but just wonder whether this development can be regarded as general and typical and, if not, whether the areas of *dharma* for which it is rightly assumed can be specified somehow. For, if I am not mistaken, one has also to reckon with the possibility that in spite of the essential requirement of any legal tradition that law should be formulated in an unequivocal manner (*lex certa*) (cf. GREWENDORF 1992: 7f.) the early *Dharmaśāstra* texts contain not a few statements (e.g. *BaudhDhS* 2.2.3.20) which lack clarity to an amazing degree, so that the need for replacing them by more precise ones must have been, and quite evidently also was in fact, felt.

In other words, what I should like to suggest is to take into consideration, when analysing adoption in its historical dimensions, the friction between its religious, and emotional<sup>49</sup> aim on the one hand, and its economic consequences, on the other.

As for Manu 9.182 and 183, and VasDhS 17.10 and 11 as also its other parallels<sup>50</sup>, all I am able to do is to point out another possible interpretation, not taken into account by JOLLY and scholars after him or by Indian commentators (in the wider sense of the word)<sup>51</sup>. It starts from the assumption that the second of the two verses or sūtras, respectively, is meaningful, too, *i.e.* not just a mechanically created, but meaningless analogy; but that this meaning need not necessarily be exactly the same as that of the first verse/sūtra. Also with regard to the context, in the VasDhS, *viz.* the subsequent list of sons, what suggests itself is, in my view, to take the first sūtra/verse to state that the religious duty of begetting a son is to be regarded as in principle fulfilled if to one out of several brothers of the same father a son is born: Through this one son all of them become *putravantaḥ* in that all of them are now free of the corresponding *ṛṇa*: There will be a son to take care of the *śrāddha* of their common father if they themselves are no more and happen to die without male issue of their own. Analogously transferred on the situation of a polygamous family this could mean that the socio-religious duty of (a) wife/wives to bear her/their husband a son is similarly regarded as in principle fulfilled, if one of the several wives delivers a male child: Through this one son all of them become *putravatyah* in that all of them share in the fulfilment of that duty. Theoretically – and this is by no means inconsistent – one son is enough to fulfill this *ṛṇa*<sup>52</sup>, – and therefore it is imperative to have at least one son, and be he an adopted child<sup>52a</sup>. Hence the privileges of the first born son, the distinction between *dharmaja* and

49. In the case of ruling dynasties it can, of course, be even political.

50. According to KANE 1993: 678 fn. 1280 the Vyavahāranirṇaya quotes similar verses from Hārīta and Brhaspati.

51. *I.e.* in general the recipients, *i.e.* later writers of whichever ‘specialization’.

52. Cf. the – unidentified – quotation *putreṇa jātamātreṇa pitṛṇām anṛṇaś ca saḥ* in Kullūka’s commentary on Manu 9.106.

52a. It would hence appear that it is the subject of the importance of having a son which connects these two verses with the issue of adoption.

*kāmaja* sons<sup>53</sup>, the outstanding importance of descendance in India, etc., etc.

6.5. The experiment started in § 6.1 can hence be stated to have been carried out successfully: The interpretation of VasDhS 15.6 and 7 proposed by me has clear advantages over that of BÜHLER in that it resolves all the problems raised by these two sūtras<sup>53a</sup>. Only one apparent difficulty has still to be discussed. It might be objected that my interpretation implies that in the VasDhS nothing is said about the relation between the future adoptive father and his adopted son in terms of their *varṇas*, and that this silence is surely rather bewildering<sup>54</sup>. But this would certainly be a wrong conclusion; for the two sūtras as interpreted by me, on the contrary, in fact cover two mutually compatible purposes of the examination of the *bāndhavas*, viz. that it is undertaken, firstly, in order to ensure that the boy to be adopted is of the same *varṇa*, or if a boy of another *varṇa* is at all eligible<sup>55</sup>, secondly, that he is suitable as regards his family background, his character, etc.<sup>56</sup>. And this is in fact what Aparārka says in his commentary on YājñS<sup>57</sup> 2.130 after explaining *adūrebāndhavā yasya so 'dūrabāndhavaḥ*, viz. *bāndhavānām adūradeśatvena tasya kulīnatā śakyā jñātum / tenādūrebāndhavaṃ viditābhijanaṃ pitraṃ pratigṛhṇīyād ity arthaḥ* <sup>58</sup>. All I have to add on my part is an exclamation mark!

53. See above p. 3, fn. 8.

53a. Including that of a contradiction between the two sūtras involved by BÜHLER's interpretation, viz. that according to the former a "not remote kinsman" should be adopted, and that the latter refers, strangely enough, to the adoption of a "remote kinsman".

54. This problem should be kept apart from the question whether e.g. a Brahmin may adopt a *kṣatriya* boy as is maintained by Medhātithi (on Manu 9.168); cf. KANE 1973: 675.

55. See the preceding footnote.

56. Cf. also the discussion(s) about the meaning of the expression *sadṛśa* e.g. in Manu 9.168, and note that it is also used with reference to the bride (e.g. GautDhS 4.1).

57. P. 738 (of the ĀSS-edition).

58. Aparārka adds: *na punar bandhusaṃnidhau gṛhṇīyād iti bandhūn āhūyety anenaiva siddheḥ* / (a not very strong argument).



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#### List of acronyms

AiB	Aitareyabrāhmaṇa
BaudhDhS	Baudhāyanadharmaśūtra
GautDhS	Gautamadharmasūtra
M	Manusmṛti
RV	R̥gveda
VasDhS	Vasiṣṭhadharmaśūtra
YājñS	Yājñavalkyasmṛti