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He acquires all the rights and status in this new family and his ties with the old family come to an end.

Manu says, “ He whom his father and mother give to another as son, provided that the donee have no issue, if required be of the same class, and affectionately disposed, is considered as a son given, the gift been confirmed by pouring water”. The religious motive behind the adoption is evident from Baudhayana’s text which reads as follows—” I take thee for fulfilment, of my religious duties. I take thee to continue the line of my ancestors”. The foundation of the doctrine of adoption is the duty which every one owes to his ancestor to provide for the continuance of the line and the solemnisation of the necessary rites. With the passage of time the number of subsidiary sons diminished with the increasing abhorrence and repulsion to the sexual looseness which characterised the recognition of many of them, and the importance of the adopted son began to increase. The rise of the adopted son in the estimation of the society was further accelerated by the Brahmin priests who advocated the institution of adoption as absolutely necessary for every sonless man’s solvation both here and the world beyond. It was on account of the firm belief of every Hindu that by leaving a male child in this world, he can secure himself from the torments of the next world as also to the secular desire for the perpetuation of family names, the institution of adoption became most popular.

In Rama Subbaya v. Chenchu Rammayya, the Privy Council observed: “ that the substitution of a son of the deceased for spritual reasons is the essence of the thing and the consequent devolution of property a mere accessory to it.” The ancient Hindu Law recognised five kinds of adopted son, but they

were reduced only to two namely, the Dattaka and the Kritrima. The Duttaka form is prevalent throughout India whereas the Kritrima form is in use in Mithila and the adjoining states.

The two authoritative works on adoption namely, Dattaka Mimansa and the Dattaka Chandrika emphasised upon the religious or spritual necessity of adoption as well as upon its secular aspects. With them, according to P. N. Sen; Adoption had two aspects; In its secular aspects, it consisted of gift and acceptance which could only result in transferring the boy from the parental dominian of the donor to that of the donee; but in so far as adoption was supposed to establish a certain non-sensuous religious relation carrying with it certain religious and juristic consequences, it could only be reached by the due performance of the religious ceremonies prescribed. According to this view, therefore, the father by giving his son to another without the accomplishment of the religious ceremonies can perhaps make the son slave to the latter, provided he has got the necessary authority to make such gift, but in order to create filial relation with a person who is not the natural father, so as to make the boy competent to take part in the religious ceremonies in his adoptive family as a member thereof, the religious rites, prescribed by the shastras for adoption must be duly performed. The Supreme Court agreeing, with earlier decisions of the Privy Council has expressed the view that the validity of an adoption is to be determined by spiritual rather than temporal considerations and that devolution of property is only secondary importance.

The Legislature, while passing Hindu Adoption and Maintenance Act, 1956 has accepted only the secular object of adoption. Under this Act the

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daughter could also be adopted even when she is incompetent to offer funeral oblations and perform last rites of deceased, although she can only continue the family line of the adopted family. The Act does not provide for the performance of any religious ceremonies at the time of adoption.

It prescribed only the act of actual giving and taking of the child. This fact renders the act of adoption as a secular act. Adoption is not recognised in any other personal laws. There is no provision of adoption in Mohammedan law nor is it recognised by the English or the Parsi law. It is recognised by Hindu law, but even in this system of law there were some families or castes where adoption was prohibited by custom and if such custom was proved, effect was given to it by the court but according Section 4 of the Act, all texts, rules, interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Act shall cease to have effect. Thus any such custom amongst any section at Hindu families prohibiting the adoption will be invalid and adoption made in such family or caste shall be regarded as lawful. In *Amin Chand and others v.*

Sukhbir Singh, the Court observed that, custom relating to adoption has ceased to have any force after the enforcement of the Adoption Act. Because the customs do not make any provision for challenging adoption under the Act. In view of provisions of Adoption Act appointment of heir under customs is not the same as adoption under Adoption Act. Under this Act the adopted child is completely transposed from the family of the natural birth to the adoptive family. However, in case of appointment of heir under the custom it was not possible.

Consequently in matters of adoption the provision of the Act, shall have overriding effect and shall prevail over the custom. According to Sir Henry Mayne the entire law of adoption is based on different texts of Manu and Vashistha and Metaphor of Shaunak.