A NEW VIEW OF THE ECONOMIC HISTORY OF BUSINESS ORGANIZATIONS: EVIDENCE FROM ANCIENT INDIA

By: Vikramaditya Khanna*

Abstract

The popularity of the corporate form and other business organizations continues to grow both in the US and in many emerging markets. This naturally leads us to ask how do corporations and other business organizations develop, why are they so popular and how have they developed in the past. Recently, eminent legal scholars, such as Henry Hansmann, Reinier Kraakman and others, have examined the development of business organizations in Ancient Rome and Medieval Europe providing us with important insights on when and where business organizations, such as the corporation, originated; whether they took the same form everywhere; and what were the pre-conditions for their development. Answers to these questions provide clues about the development of the corporate sector in emerging markets and about broader theoretical issues in corporate law (e.g., the prospects for convergence). In this paper, and a series of related papers, I examine the economic history and development of business organizations and organizational entities in a less well-known context – Ancient India – and find many surprising results.

First, organizational entities and business organizations were used in Ancient India roughly five centuries before the Roman proto-corporations arose. The sreni – a complex organizational entity that shares similarities with corporations, guilds, and producers’ cooperatives – was being used in India from around 800 B.C. until around 1000 A.D. (roughly 2000 years). Further, the development of the sreni indicates that the factors leading to its growth are consistent with those put forward for the growth of organizational entities in Europe. These factors include increasing trade, methods to contain agency costs, and methods to patrol the boundaries between the assets of the sreni and those of its members (i.e., to facilitate asset partitioning or entity shielding and reduce creditor information costs). In addition, there is considerable evidence on how these entities were governed and regulated. Their rules of internal governance reflect the familiar concerns of agency costs and incentive effects. Moreover, the methods for addressing these concerns are quite similar to modern corporate governance rules and have developed in ways consistent with underlying economic factors. Finally, the roughly 2000 year history of the sreni provides us with an opportunity to examine a myriad of questions that I can only begin to explore in this paper including why did the sreni decline, which kinds of state structure most facilitated their growth, and a number of other issues of importance to corporate law scholarship.

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I. INTRODUCTION

The popularity of the corporate form and other business organizations continues to grow both in the US and in many emerging markets. This naturally leads us to ask how do corporations and other business organizations develop, why are they so popular and how have they developed in the past. Recently, eminent legal scholars, such as Henry Hansmann, Reinier Kraakman and others, have examined the development of business organizations in Ancient Rome and Medieval Europe providing us with important insights on when and where business organizations, such as the corporation, originated; whether they took the same form everywhere or varied across countries; and what were the pre-conditions for their development. Answers to these questions provide clues about the development of the corporate sector in emerging markets and about broader theoretical issues in corporate law (e.g., the prospects for convergence). In this paper, and a series of related papers, I examine the economic history and development of business organizations and organizational entities in a less well-known context – Ancient India – and find many surprising results.

First, organizational entities and business organizations were used in Ancient India roughly five centuries before the Roman proto-corporations arose. The sreni – a complex organizational entity that shares similarities with corporations, guilds, and producers’ cooperatives – was being used in India from around 800 B.C. until around 1000 A.D. (roughly 2000 years). Further, the development of the sreni indicates that the factors leading to its growth are consistent with those put forward for the growth of organizational entities

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in Europe. These factors include increasing trade, methods to contain agency costs, and methods to patrol the boundaries between the assets of the *sreni* and those of its members (i.e., to facilitate asset partitioning or entity shielding and reduce creditor information costs). In addition, there is considerable evidence on how these entities were governed and regulated. Their rules of internal governance reflect the familiar concerns of agency costs and incentive effects. Moreover, the methods for addressing these concerns are quite similar to modern corporate governance rules and have developed in ways consistent with underlying economic factors. Further, specific attributes of the *sreni* grew to meet demands raised by changing business conditions. Finally, the roughly 2000 year history of the *sreni* provides us with an opportunity to examine a myriad of questions that I can only begin to explore in this paper including why did the *sreni* decline, which kinds of state structure most facilitated their growth, and a number of other issues of importance to corporate law scholarship.4

The paper begins with Part II which defines organizational entities and sets forth the factors that encourage their growth. Part III summarizes the chief attributes of the Ancient Indian organizational entities. Parts IV through IX examine the social, political and economic conditions in different time periods in Ancient India and how they relate to the growth of the *sreni*. Moreover, these Parts provide details on the *sreni* and how its features and general development correspond well to economic factors and concerns. Part X explores how this examination illuminates several historical and theoretical issues. Part XI concludes.

II. ORGANIZATIONAL ENTITIES AND WHAT ENCOURAGES THEIR GROWTH?

Before examining the growth of organizational entities it is important to define what an organizational entity is and what general factors aid in its development. I address both questions in the next two sections.

A. Organizational Entities, Business Organizations & Corporations.

In this paper “organizational entities” means an entity that has “a designated pool of assets and an agent or agents with ongoing authority to enter into contracts that, as a default rule of law, are bonded by those assets”.5 Business organizations are simply organizational entities used primarily for business purposes, such as partnerships and corporations. Finally, a corporation is a type of business organization with the following attributes.

First, corporations are separate legal entities from their shareholders, which means that a corporation is able to own property in its own name separate from its individual shareholders, and that it continues in existence even if its shareholders die or transfer their shares.6 This adds considerable stability to the corporate form over other organizational

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4 These questions are explored in greater depth in the papers listed in supra note 3.
5 Hansmann, et al., supra note 2, at 2 (May 2005 Draft). Hansmann, et al., refer to this as a “contracting entity”, but for purposes of this paper I treat “organizational entity” as roughly synonymous with “contracting entity”.
forms, such as partnerships. Second, corporations possess centralized management so that shareholders need not approve every operational decision. Modern corporations are run by management which is supervised by a board of directors. The board is elected by shareholders on a regular, usually annual, basis. Third, a shareholder’s interest in the corporation is essentially freely transferable. This aids in the raising of capital as passive investors know their investment is liquid which makes it more attractive. Finally, modern corporations possess limited liability. Shareholders are only liable for the amount of money they have invested in the corporation.

Although this provides a modern definition of a corporation, for most of European history business organizations did not possess limited liability, but did possess the first two attributes (separate legal entity status and centralized management) and sometimes the third (transferability of interest). Thus, business organizations do not need to possess all the features of a corporation, but they must at least possess separate legal entity status to qualify as an organizational entity.

B. Factors Leading to the Growth of Organizational Entities and Corporations.

Organizational entities will presumably develop once there is both demand for them and supply of the legal and practical tools needed to make them operational. To provide a useful starting point for discussion I examine the factors generally perceived to be important to the growth of the corporate form, both in terms of demand and supply, as many of them have general applicability to other business organizations as well.

On the demand side, increases in trade and changes in technology during the industrial revolution made it necessary for large amounts of capital to be amassed from dispersed investors to fund the collective efforts to meet the increases in trade and to finance the use of the newer technologies. Legal organizational forms, such as the modern corporation, helped facilitate this increased demand for capital.

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7 See ALLEN & KRAAKMAN, supra note 6, at 83 – 84. This addresses strategic concerns, such as one partner threatening to destroy the going concern value of the entity by withdrawing or dissolving the entity. See Henry Hansmann & Reinier Kraakman, The Essential Role of Organizational Law, 110 YALE L.J. 387 (2000); Henry Hansmann, Reinier Kraakman, & Richard Squire, Law & The Rise of the Firm, 119 HARV. L. REV. 1333 (2006) at ___ [hereinafter Hansmann, et al] (discussing other benefits as well).
8 See CLARK, supra note 6, at 21 – 24; ALLEN & KRAAKMAN, supra note 6, at 95 – 109; KLEIN, RAMSEYER & BAINBRIDGE, supra note 6, at 372. This reduces collective action concerns and helps to devolve management of the enterprise to people who possess more experience and expertise than the average shareholder. See CLARK, supra, at 23 – 24.
9 See CLARK, supra note 6, at 21 – 22; ALLEN & KRAAKMAN, supra note 6, at 97 – 103; KLEIN, RAMSEYER & BAINBRIDGE, supra note 6, at 712 – 13.
10 See CLARK, supra note 6, at 10 – 15; ALLEN & KRAAKMAN, supra note 6, at 94 – 95; KLEIN, RAMSEYER & BAINBRIDGE, supra note 6, at 695 – 715.
12 See EASTERTROOK & FISCHER, supra note 11, at 40 – 62; Hansmann & Kraakman, supra note 11, passim (arguing that limited liability for corporate torts may not be desirable).
13 See Hansmann, et al, supra note 7, at 5 – 7, 18 – 28. All four features were more common in the 19th Century, but the corporate form existed in the U.K. earlier. See id., at 5 – 7, 35 – 39, 43 – 48; William W. Bratton Jr., The New Economic Theory of the Firm: Critical Perspectives from History, 41 STAN. L. REV. 1471, 1474 – 92. The absence of limited liability is not surprising because it is more suited to raising large amounts of capital from dispersed shareholders for large industries – something that became more prevalent recently. See CLARK, supra note 6, at 2 – 4.
15 See CLARK, supra note 6, at 13 – 15.
The importance of growing trade is that it creates incentives for collective efforts. When trade increases people tend to travel more to sell their wares.\textsuperscript{16} Traveling has not always been easy, especially if the traders are moving through foreign and dangerous territory. In such circumstances being in a group of traders may provide some protection against robbers and thieves and also some method of spreading the risks of the journey.\textsuperscript{17} Moreover, as trade and production increase the advantages of working in a large group (i.e., economies of scale) are likely to be quite considerable (e.g., spreading the fixed costs of production).\textsuperscript{18} Further, as trade increases the gains from specialization, and the sustainability of it, are likely to increase.\textsuperscript{19} Increasing trade then increases the demand for collective efforts and organizational entities of some kind.

The importance of technology is that certain changes in the technological environment may require large amounts of capital to utilize them (as some productive technology did in the industrial revolution).\textsuperscript{20} This often requires collective effort in raising and contributing capital because the amount may be too much for any one party to be able, or willing, to provide.\textsuperscript{21} The ability of the corporate form to bring together large numbers of passive investors for the purpose of collectively funding certain activity is quite valuable and is one attribute that helps to differentiate the corporation from other business organizations.\textsuperscript{22} Thus, increasing trade and changing technology influenced the need for collective efforts and hence the development of, and demand for, organizational forms.

On the supply side, it is important to note that the corporate form did not develop in a vacuum. Rather it developed against a pre-existing set of legal and institutional conditions that hastened its development.\textsuperscript{23} Moreover, it was probably these conditions and the monitoring methodologies of the time that made the costs of the corporate form bearable to the business and investment community.

For example, one critical feature of the corporate form (and many business organizations) is that it partitions the assets of the corporation from that of its owners — a matter critical to creditors who transact with the corporation.\textsuperscript{24} Thus, when a creditor transacts with the corporation it knows which assets (those of the corporation) stand behind


\textsuperscript{17} For discussion in the Indian context see RAMESH CHANDRA MAJMUDAR, \textit{CORPORATE LIFE IN ANCIENT INDIA} 13 (1922); KIRAN KUMAR THAPLIAL, \textit{GUILDS IN ANCIENT INDIA: A STUDY OF GUILD ORGANIZATION IN NORTHERN INDIA AND WESTERN DECCAN FROM CIRCA 600 B.C. TO CIRCA 600 A.D.} 13 (1996). See also Grief, supra note 16, at 526 – 28 (discussing the “institutional” system of the Maghribi traders).


\textsuperscript{20} See CLARK, supra note 6, at 2 – 4 (citing to A. CHANDLER, \textit{THE VISIBLE HAND} (1977)).

\textsuperscript{21} See id., at 2 – 3; ALLEN & KRAAKMAN, supra note 6, at 91 – 94.

\textsuperscript{22} See CLARK, supra note 6, at 2 – 3; ALLEN & KRAAKMAN, supra note 6, at 91 – 94.

\textsuperscript{23} It is worth noting that there is some interaction between supply and demand (strong demand for something may induce people to think of ways to supply it). Nonetheless, the supply side cannot be ignored or entirely subsumed within the demand side. Cf. Hansmann, et al., supra note 7, at 1 – 2, 5 – 7, 17 – 23.

\textsuperscript{24} See Hansmann, et al., supra note 7, at 2 – 4, 5 – 10; Kohn, supra note 18.
the transaction. Similarly, when a creditor transacts with the owners in their individual capacities it also knows which assets (those of the owners) stand behind the transaction. An important aspect of this is that corporate assets are then in a sense shielded from the claims of the personal creditors of individual shareholders (i.e., entity shielding or asset partitioning). This means the shareholder’s creditors cannot access corporate assets before corporate creditors. Knowing this is important for a number of reasons including that it helps creditors know which assets they need to focus their monitoring efforts on – the corporation’s or the owner’s – and thereby reduces the creditors’ monitoring and information costs compared to a world where such entity shielding was not possible.

Of course, for this to happen one needs to be able to identify which assets belong to which entity (corporation or owner) and monitor movements of assets from one entity to another. If this monitoring is not practical then it will be more difficult for the corporate form to develop. Indeed, the historical development of the corporate form in Europe suggests that the ability to patrol the boundary between different sets of assets was a very important factor. This becomes easier as accounting systems become more refined and as bankruptcy proceedings become more sophisticated.

Another critical feature of the corporate form and most large organziational entities is that they often bring together a number of people to invest in and run an entity. If rules to address the potential conflicts of interest amongst owners and between managers and owners are not available then these entities will grow more slowly. After all, investors will want some assurance that their funds will not be misused or that their co-owners will not misappropriate the funds for themselves. Fiduciary duty doctrine, some securities regulation, and reputational mechanisms serve to address these agency cost concerns. But for these to function properly there must be monitoring methodologies in place for the owners to have the information necessary to enforce these duties or to impose reputational penalties. The monitoring methodologies could include geographic proximity so that one party can directly observe the other, simple gossip, methods of verifying the production,

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26 See id.
27 See id., at 1.
28 See id. I use the term asset partitioning and entity shielding interchangeably as these were terms used by Hansmann, et al at various points. See id., at 1. Hansmann, et al identify other advantages of entity shielding such as reducing the administrative costs of bankruptcy, protecting going concern value, investment diversification, and promoting transferability. See id., at 10 – 14. Hansmann, et al also identify the costs of entity shielding which include debtor opportunism, higher enforcement costs, creation of a bankruptcy system, de-diversification of creditor claims, illiquid investments and exploitation by control persons. See id., at 14 – 17.
29 See id., at 19 – 25. A prerequisite to this is that the organization can own assets in its own name and that the owners can individually own assets. There is evidence of both in Ancient India. See Atindranath Bose, Social and Rural Economy of Northern India Circa 600 B.C. – 200 A.D. Vol. I, 38 – 65 (1961).
31 See id., at 29 – 35.
32 See La Porta, et al, supra note 1. This is a feature of any multi-agent entity.
33 See id; Allen & Kraakman, supra note 6, at 10 – 12; Gioff, supra note 1; Klapper & Love, supra note 1.
35 This is implicit in the reputational literature (if no one knows that a firm is producing low quality then the firm’s reputation is unlikely to suffer).
delivery, and receipt of goods and services, and reliance on third party intermediaries.\textsuperscript{36} Without some of these monitoring methodologies the legal and reputational mechanisms would carry little bite in cabining agency costs.

Thus, one would expect the development of business organizations, such as the corporation, to be more likely when the demand for production and trade is increasing and when methodologies are present for monitoring the behavior of owners and managers by creditors and other owners. Such situations enhance the value of organizational forms and also help to contain their costs, such as their agency and creditor information costs. Of course, other factors are also important to the development of the corporate form and other business organizations (e.g., property and contract law),\textsuperscript{37} but for our purposes it is sufficient to begin with the three identified above. With this background in mind we can discuss organizational entities in Ancient India.

**III. ORGANIZATIONAL ENTITIES IN ANCIENT INDIA**

Trade has played a consistently important part of Indian history and the residents of Ancient India relied on a variety of organizational forms. Along with the family-run business and individually owned business, other forms for engaging in business or other collective activity included the gana, pani, puga, vrata, samgha, nigama, and sreni.\textsuperscript{38} Of these the sreni, nigama and pani are the ones most frequently engaged in economic activities.\textsuperscript{39} I focus on the sreni because we have the most available information on it and it seems to have persisted throughout much of the period under review (800 B.C. to 1000 A.D.).

A sreni was an organizational entity that was normally composed of people who were engaged in a similar trade, but not necessarily of the same caste.\textsuperscript{40} The sreni could have a large number of members (sometimes over 1000, who all shared in the assets and liabilities) and it was run through a headman and later executive officers as well.\textsuperscript{41} The sreni shares some similarities with corporations, guilds, and other kinds of organizational entities, but is not easily subsumed within any of them. For example, the sreni shares similarities with the

\textsuperscript{36} See Hansmann, et al., supra note 7, at 31. On reputational mechanisms see Klein & Leffler, supra note 34; Grief, supra note 16; Robert Ellickson, Of Cons and Cattle: Dispute Resolution among Neighbors in Shasta County, 38 STAN. L. REV. 623 (1985); Bernstein, supra note 34; Lisa Bernstein, Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry, 21 J. LEGAL STUD. 115 (1992)[hereinafter Opting Out].

\textsuperscript{37} See Timur Kuran, Why the Middle East is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation, 18 JOURNAL OF ECONOMIC PERSPECTIVES 71, 72 – 76 (2004) (discussing the importance of these matters in the Middle East). The listing of factors in the text is designed to be indicative of some of the more important things.

\textsuperscript{38} The gana and samgha seem to refer to political and religious entities. See MAJUMDAR, supra note 17, at 12 – 13, 221; THAPLYAL, supra note 17, at 160 – 61, 164 – 65. The puga and vrata to entities whose members had economic motivations, but were also residents of a town or village devoted to a profession. See MAJUMDAR, supra, at 138, 142, 222; THAPLYAL, supra at 162 – 64. Nigama and sreni usually refer to economic organizations of merchants, craftspeople and artisans, and perhaps even para-military entities. See THAPLYAL, supra at 10 – 12 (noting a nigama was often considered similar to a guild or city and larger than sreni). Finally, the pani often represents merchants traveling in a caravan to trade their wares. See MAJUMDAR, supra at 14. It appears it was not uncommon that one term might be used to refer to an entity with features more commonly associated with another. See THAPLYAL, supra note 17, at 11, 164 – 65. Moreover, a particular organization may have kept its old name, but developed into a different organizational form. See id., at 165. Due to this, I focus on the term most commonly associated with a particular organizational form.

\textsuperscript{39} See MAJUMDAR, supra note 17, at 13 – 17, 44, 45, 138, 221, 222; THAPLYAL, supra note 17, at 6 – 12, 160 – 165.

\textsuperscript{40} See MAJUMDAR, supra note 17, at 17; THAPLYAL, supra note 17, at 8.

\textsuperscript{41} See infra text accompanying notes 98 - 101, 174 – 178.
guilds of Medieval Europe, but the *sreni* was also more complex. To gain a better understanding of this entity I examine the attributes of the *sreni*, its internal governance, the kinds of business it was used in, and its importance in Ancient Indian life.

First, a caveat is warranted. When examining ancient entities there is a risk of projecting onto them our views of how things are now thereby biasing our assessment. To help assuage some of these concerns, this paper examines the *sreni* in the context of the political, economic and social backgrounds of the differing periods of Ancient Indian history (Parts IV to IX). In addition, the paper considers alternative explanations for certain *sreni* features. The features of the *sreni* at their peak are detailed in Table 1 below.

### Table 1
**Summary of Characteristics of the Sreni**

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Present in Ancient Indian Sreni?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Separate Entity</td>
<td>Yes</td>
</tr>
<tr>
<td>Centralized Management (headman and officers)</td>
<td>Yes</td>
</tr>
<tr>
<td>Entity Shielding/Asset Partitioning</td>
<td>Yes</td>
</tr>
<tr>
<td>Transferability</td>
<td>Perhaps</td>
</tr>
<tr>
<td>Limited Liability of shareholders</td>
<td>Probably Not</td>
</tr>
<tr>
<td>Agent can bind entity</td>
<td>Yes</td>
</tr>
<tr>
<td>Management elected</td>
<td>Probably Yes (at times appears hereditary)</td>
</tr>
<tr>
<td>Management can be removed</td>
<td>Yes</td>
</tr>
<tr>
<td>Duty of Loyalty</td>
<td>Probably Yes</td>
</tr>
<tr>
<td>Duty of Care</td>
<td>Probably Yes</td>
</tr>
<tr>
<td>Liability insulation for management</td>
<td>Yes (though not detailed)</td>
</tr>
<tr>
<td>Screens on member suits and internal enforcement</td>
<td>Yes (though not detailed)</td>
</tr>
<tr>
<td>Binding internal governance rules (<em>sreni dharma</em>)</td>
<td>Yes</td>
</tr>
<tr>
<td>Some reimbursement for legal defense</td>
<td>Yes</td>
</tr>
<tr>
<td>Easy formation</td>
<td>Yes</td>
</tr>
<tr>
<td>Register with state</td>
<td>Yes</td>
</tr>
<tr>
<td>State approval needed</td>
<td>Yes</td>
</tr>
<tr>
<td>Use of incentive payments</td>
<td>Yes (though not detailed)</td>
</tr>
<tr>
<td>Easy entry</td>
<td>Some conditions, but no caste bars.</td>
</tr>
<tr>
<td>Sharing of assets and liabilities</td>
<td>Terms of agreement and additional rules</td>
</tr>
<tr>
<td>Easy exit</td>
<td>Yes, but with obligations potentially</td>
</tr>
<tr>
<td>Board/Committee Independence</td>
<td>Probably Yes</td>
</tr>
<tr>
<td>Other board qualifications</td>
<td>Yes (though not detailed)</td>
</tr>
<tr>
<td>Open debate in meetings &amp; shareholder resolutions</td>
<td>Yes, with limits (though not detailed)</td>
</tr>
<tr>
<td>Transparency &amp; disclosure valuable and encouraged</td>
<td>Probably Yes (though not detailed)</td>
</tr>
</tbody>
</table>

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43 There is little reason to believe that the *sreni* members bore joint and several liability, yet each member’s liability was not limited to the initial amount paid at entry. Perhaps a kind of pro rata liability was prevalent.

Although these features developed over a fairly long period of time (800 B.C to 1000 A.D.), a quick glance at Table 1 indicates that the sreni possessed many of the features of more recent organizational entities such as corporations or guilds (e.g., separate entity status, entity shielding, liability insulation, binding internal governance rules). Indeed, it is difficult to compare the sreni to entities in its own time frame in other places because the sreni predates the Roman proto-corporations by centuries and the sreni is considerably more complex and detailed than the Roman entities. However, where on the continuum between corporations and guilds the sreni registers is difficult to say because it shares similarities with both kinds of entities and yet is different in important ways from both.

For example, although similar to Medieval European guilds, the sreni need not be dedicated to a single profession – there is an example of a silk weaving sreni where some members practiced other professions as well (e.g., archery, astrology). Further, the sreni was mobile and has been known to move from one location to another without necessarily being threatened by military force. Moreover, the sreni was used in non-economic activity as well. Thus, certain features of the sreni do not have analogs in Medieval entities, but may have analogs in corporations.

Of course, US corporations possess many features that the sreni do not. For example, there is little evidence to suggest that the sreni had many, if any, passive investors or that the primary purpose of the sreni was to raise capital from passive investors. This is quite a significant difference. Moreover, the amount and detail of regulation governing US corporations is considerably greater (e.g., US voting regulation, disclosure, and private class actions are very detailed).

However, my primary point is that we can compare all attributes of US corporations to the sreni, but that many of the concerns animating some regulation in the US were known and attempts were made to address them in some, however rudimentary, fashion in the sreni. Indeed, given the fact that US corporations and the sreni stem from vastly different times, cultures and technological environments, the degree of similarity in the concerns associated with these entities and the often similar methods of addressing them is quite remarkable. This suggests that the Ancient Indians gave considerable thought to


46 Hansmann & Kraakman, supra note 7, at 25 – 28 (discussing the societatus publicorum and how it was a “proto-joint stock corporation” that was bonded with outside assets or was operating with a state monopoly). These entities may have had full entity status by the first century B.C., but probably came into existence in the 3rd century B.C. See id., at 23 n. 59 (referring to E. Badian, Publicans and Sinners: Private Enterprise in the Service of the Roman Empire 68 – 69 (1983)) & 24 n. 63 (referring to Ulrike Malmendier, Societates Publicorum: Staatsliche Wirtschaftsaktivitäten in den Handen Privater Unternehmer 252 – 55 (2002)). For discussion of organizational forms in Babylon and Mesopotamia see discussion infra note 78.

47 See MAJUMDAR, supra note 17, at 66 – 68 (describing a sreni of silk weavers who migrated from one city to another and then some of its members took up other professions (e.g., archery, astrology, martial endeavors, and religious pursuits) along with some who stayed within silk weaving).

48 See THAPLYAL, supra note 17, at 180 – 194. There could be more than one sreni engaged in the same occupation in the same town (see id. at 40). However, some sources encouraged the monarch to keep only one sreni per region per occupation. See R.P. Kangal, CHANAKYA’S ARTHASASTRA, Part II, Book 2, Chapter 1, Verse 32, at 38 (1972, reprint 1988). Although mobility was possible, some authors suggest it would require state acquiescence. See ROMILA THAPAR, ASOKA AND THE DECLINE OF THE MAURYAS 73 (1997).

49 See infra text accompanying notes 168, 260 – 267, 284 – 299.

50 On proxy rules see CLARK, supra note 6, at 357 – 400; ALLEN & KRAAKMAN, supra note 6, at 171 – 238.
agency costs and incentive effects. Such a sophisticated and developed organizational structure raises a number of important issues meriting closer examination: how did these entities develop; what economic and political factors led to their growth and expansion; and what insights can we gain about the development of organizational forms of business from examining the Ancient Indian sreni.

To engage in this examination I divide the history of Ancient India into the time frames listed in Table 2. One could, of course, present the time line in different ways, but Table 2 is simply a starting point for discussion.

**Table 2**

**ANCIENT INDIAN HISTORY TIMELINE**

<table>
<thead>
<tr>
<th>Period</th>
<th>Years Covered Approximately</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Earliest Civilizations</td>
<td>6500 B.C. to 700 B.C.</td>
</tr>
<tr>
<td>1. Earliest Sites – Mehrgarh &amp; Others</td>
<td>6500 B.C. to 3300 B.C.</td>
</tr>
<tr>
<td>2. The Indus Area Civilizations</td>
<td>3300 B.C. to 1900 B.C.</td>
</tr>
<tr>
<td>3. Indo-Gangetic Civilizations</td>
<td>1900 B.C. to 700 B.C.</td>
</tr>
<tr>
<td>B. The Rise of Buddhism &amp; Jainism</td>
<td>700 B.C. to 320 B.C.</td>
</tr>
<tr>
<td>C. The Mauryan Empire</td>
<td>320 B.C. to 185 B.C.</td>
</tr>
<tr>
<td>D. Post-Mauryan Kingdoms</td>
<td>200 B.C. to 1300 A.D.</td>
</tr>
<tr>
<td>E. The Gupta Empire &amp; India’s “Golden Age”</td>
<td>250 A.D. to 550 A.D.</td>
</tr>
<tr>
<td>F. Harsha Vardhana &amp; The Rajput Kingdoms</td>
<td>600 A.D. to 1100 A.D.</td>
</tr>
</tbody>
</table>

In each time period I begin by briefly sketching out the political, social and economic terrain and providing the background for examining the development of organizational entities. Then in each period I discuss the evidence for the primary characteristics listed in Table 1 focusing on the separate legal entity status of the sreni, entity shielding, sreni structure, sreni internal governance, and how sreni were formed. This approach allows us to view the development of the sreni over time and to examine when certain features developed and in what context.

Through this examination I intend to focus on a number of themes. First, how did the demand for organizational entities and the supply of their terms interact to help in the formation of the sreni? In particular, how did trade grow in Ancient India and what were the monitoring methods used to address the concerns with multi-agent entities (i.e., agency costs) and to police the movement of assets between owners and the entity (i.e., facilitating asset partitioning or entity shielding and reducing creditor information costs). Second, what factors led to the development of specific attributes of the sreni? For example, when did the presence of executive officers become common; when did the use of incentive payments come into being and what led to these developments? Third, what can the development of the sreni in Ancient India tell us about the factors that may have led to it? For example, how important is a centralized empire to the growth of trade and organizational entities compared to alternate state structures seen in Ancient India? Moreover, what might the development
of the *sreni* tell us about other issues of interest to corporate law scholarship? With these thoughts in mind let us begin our journey through the History of Ancient India.

**IV. Earliest Civilizations in the Indian Subcontinent and the Origin of the *Sreni***

The origin of the *sreni* is shrouded in the mists of Ancient Indian history. The earliest Indian writings do refer to organizational forms. The *Rig Veda* makes reference to the *pani* (akin to a partnership amongst traders in trade caravans) and the *Mahabharata* and the *Brihadaranyaka Upanishad* to the *sreni*. 51 This suggests the *sreni* was most likely known in Ancient India by roughly 800 B.C., 52 and thus predates the Roman proto-corporations by roughly five centuries. 53 There is, however, little further detail provided in this time period (6500 B.C. to 700 B.C.) about how the *sreni* was organized except to mention the position of the *sreni* headman or president (*sreshthi*). 54 Nonetheless, there is significant excavational evidence on life during this period, which I briefly canvass below because it provides the context and building blocks for later economic development in the Indian Subcontinent.

**A. Earliest Sites – Mehragarb and Others**

Current archaeological thinking suggests that the earliest settlements in the Indian Subcontinent date to roughly 6500 B.C. 55 Excavations at Mehragarh (near Quetta, Pakistan) and neighboring sites 56 provide evidence of a fertile region and inhabitants engaged in farming, husbandry, dentistry, and various crafts. 57 Evidence of longer distance trade exists

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51 See The MAHABHARATA OF KRISHNA-DWAPAṆAYANA VYASA (PRATAP CHANDRA ROY TRNSL.) XII 37.14, XII 59.49, XII 13.63 [hereinafter MAHABHARATA]. The numeral XII refers to the chapter (the *parva*) of the Mahabharata rather than the volume of the translation. The XII *parva* is the *sautra-parva*. See also *Brihadaranyaka Upanishad with SANKARA’S COMMENTARY* 1.4.11-12 (1955); MAJUMDAR, supra note 17, at 14 (discussing the *pani* in the *Rig Veda*).

52 The 800 B.C. date is based on references in the *Brihadaranyaka Upanishad*, supra note 51. Scholars seem to agree on this dating. See THAPLYAL, supra note 17, at 20 – 24; MAJUMDAR, supra note 17, at 14. There is debate on dating sources before the 7th Century B.C. See THAPLYAL, supra note 17, at 2 – 6, 17 (noting that scholars differ at times on the dating of the earliest writings); RADHA KUMUD MOOKERJI, THE GUPTA EMPIRE 137 (1959) (noting that in the Gupta Empire, circa 400 A.D., the oral tradition still held strong which may have made accurate dating of practices more difficult). I thus rely on dates with some common acceptance for this early material. Dating materials after the 7th Century B.C. seems less problematic, especially as there are roughly contemporary foreign writings and excavations providing a more discernable time frame. See, e.g., J.W. MCCRINDLE, ANCIENT INDIA AS DESCRIBED BY MEGASTHENES AND ARRIAN 1–181 (discussing MEGASTHENES’ INDEA)(REVISED ED. R.C. MAJUMDAR, 1960); H.A. GILES, TRAVELS OF FA-HSIEN (1923); T. WATTERS, ON YUAN CHWANG’S TRAVELS IN INDIA (1961).

53 See Hansmann & Kraakman, supra note 7, at 23 – 24 (noting that the *societas publica romana* started around the 3rd Century B.C. and probably obtained full entity status by the first century B.C.). It is, of course, possible that the *sreni* in the earliest writings meant something different than what it came to mean later. However, the excavational evidence in the next few paragraphs suggests that the *sreni* probably referred to the kinds of economic entities described in later works.

54 See MAHABHARATA, supra note 51, at XII 59.49, XII 13.63. There is debate about whether *Rig Veda* times were sufficiently advanced to support the amount of trade necessary for the *sreni*. See THAPLYAL, supra note 17, at 20 – 24 (discussing the debate); DAS, supra note 17, at 20 – 39 (arguing that Vedic society was advanced enough).


for neighboring sites dating from around 5000 B.C. to 4000 B.C. There is, however, little further evidence of how trade functioned.

B. The Indus Area Civilizations

The next important civilizations were a little further east and spread out across the Indus River Valley (e.g., Harrappa and Mohenjo Daro) and neighboring rivers (see Figures 1 and 2). These city-state civilizations date from roughly 3300 B.C. and flourished for centuries before going into decline around 1900 B.C. to 1500 B.C. Excavations suggest a resource rich, fertile and heavily populated area that was considerably larger than its contemporaries (e.g., Egypt and Mesopotamia). The Indus area was highly developed with advanced city planning and water management systems. Moreover, residents were actively engaged in trade with each other and with civilizations to the west (by land and by sea).

Figure 1 – Map of Early World Civilizations

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58 See Kenoyer, supra note 55, at 39 - 42(discussing longer distance trade and use of the kiln for pottery). Overall, these sites suggest a mix of rural and urban environments (especially in later sites) with internal trade and developed arts and crafts accompanied by a fairly high degree of building sophistication.

59 See id., at 49 – 68.

60 See id., at 173 – 86.

61 See id., at 17, 49 – 50.

62 See id., at 50. Roads were usually built on a grid and the outside perimeter of the city had fortified walls. See id.

63 See id., at 99 – 100. Evidence from the Indus and Mesopotamian seals (circa 2600 B.C.) suggests that the Indus Valley was a large net exporter to Mesopotamia. See id., at 81 – 105, 127 – 73; Dilip K. Chakrabarti, The External Trade of the Indus Civilization 81 et seq (examining the archaeological evidence and discussion of the variety of trade routes, commodities and so forth)(1990).

There is evidence that wealth was an important socioeconomic matter in the Indus Valley. See Jonathan Mark Kenoyer, Wealth and Socioeconomic Hierarchies of the Indus Valley Civilization, in ORDER, LEGITIMACY, AND WEALTH IN ANCIENT STATES (Janet Richards & Mary Van Buren eds.)88 – 109 (2000).

Along with a resource rich environment, a number of factors contributed to the active trade environment. First, urbanization probably furthered trade by bringing people to a central place where they could live and work together to satisfy the demands of city residents. Second, although these city-state civilizations were not under the rule of a single monarch they appeared to live in relative peace with each other, relied on common weights and measurements, and had similar city plans with separate areas of the city dedicated to certain professions. This degree of uniformity is surprising given the absence of a single monarch and some suggest it resulted from a focus on trade and religion.

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66 See THAPLYAL, supra note 17, at 17.
67 See KENOYER, supra note 55, at 99 – 101. There are no large centralized structures attesting to great kings or ritual centers (which we witness in other civilizations). See id.
68 See id., at 15, 42, 81 – 82. The fortified city walls are probably too low to prevent invaders, but probably high (and deep) enough to block floods and wild animals. See id., at 41 – 42. Moreover, there is little evidence in most sites of armed conflict or massacres. See Kenneth A.R. Kennedy, Have Aryans Been Identified in the Prehistoric Skeletal Record from South Asia, in THE INDO-ARYANS OF ANCIENT SOUTH ASIA (ed. GEORGE ERDOSY) 49, 54, 60 (1993); G.F. Dales, Mythical Massacre at Mohenjodaro, 16 EXPEDITION 37 (1964).
69 See KENOYER, supra note 55, at 26, 81, 99, 178, 182.
70 See id., at 69 – 81.
71 See id. It is also possible that there were alliances that encouraged trade or that the various business people agreed on certain basics to encourage trade. A final resolution is likely when the Indus script is deciphered.
Indeed, the factors listed above would benefit trade. Relative peace makes travel safer for traders and opens up new markets for trade. The uniformity of weights and measures, uncommon at that time in world history, benefits trade by simplifying the transactional process and reducing transactions costs. The localization of professions to certain parts of the city might enhance group cohesion, make training of new recruits somewhat easier, and increase productivity (due in part to the reasons just noted). In light of all this, trade was active, substantial and growing which suggests the demand for collective efforts – to protect traders traveling long distances, to engage in larger scale production and so forth – was large. This often enhances the demand for organizational forms.

On the supply side one can examine what kinds of monitoring methods might be in place. First, localizing craft and industry not only enhances productivity, but also makes it easier to monitor what people are doing – they are your neighbors. The geographical proximity of people in the same occupations would, in theory, have provided the monitoring methodology necessary to make duties and reputational penalties, like those in Part II.B., enforceable and thereby reduce agency costs.

In addition, excavations have found many seals which, although undeciphered, are considered by some scholars as ways to identify property. If so, these seals could demarcate property and thereby enhance the chances of monitoring the movement of assets between owners and entities. However, not enough is known about the seals and the business practices at that time to say anything conclusive.

Nonetheless, it appears that some of the pre-conditions for the development of organizational forms (e.g., increasing trade, monitoring methods) were present. Of course, this is not proof that the sreni or other organizational forms existed in these civilizations.

C. Indo-Gangetic Civilizations

Following the decline of the Indus area sites (near 1900 B.C. to 1500 B.C.), there was a rise in the eastern civilizations centered on the banks of the Ganges River which bore

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72 See id., at 18. The elaborate trade routes detailed in Kenoyer attest to a fairly high level of safety. See id., at 81 – 105 (discussing transportation through the Indus civilization).
73 See id., at 26, 81, 99, 178, 182.
74 This is analogous to the European Union creating the Euro to which reduces transactions costs thereby facilitating trade.
78 One might speculate that the Indus area residents may have known of, and perhaps used, organizational entities because they would have been familiar with them from their trade with Mesopotamia and Ancient Babylon, which appeared to have entities similar to partnerships. See SHEREEN RAYNAGAR, ENCOUNTERS THE WESTERNLY TRADE OF THE HARAPPAN CIVILIZATION 215 – 30 (1981); Shereen Ratnagar, Theorizing Bronze-Age Intercultural Trade: The Evidence of the Weights 29 PALEOrient 79 (2003). Nothing definitive is likely to be known until the Indus script is deciphered.
79 See KENOYER, supra note 55, at 173 – 86.
many similarities to the Indus area sites. Scholars debate about whether the sreni could have existed in the early part of this period. However, it is quite clear that the sreni existed by the later part of this period. Indeed, the written materials suggest that by roughly 1000 B.C. to 800 B.C. the pani and the sreni were probably known to the Indians. Moreover, the general growth in trade in the Indo-Gangetic kingdoms and the monitoring methodologies (e.g., localized professions) further contribute to the notion that the prerequisites for organizational entities were in place by about 1000 B.C. However, as mentioned earlier we have little detail about the workings of the sreni in the written materials from this time.

V. THE RISE OF BUDDHISM & JAINISM

The dawn of the 7th Century B.C. ushered in many changes in India including the increasing presence of two great religions – Buddhism and Jainism – which found a number of adherents in the various kingdoms of India. Apart from the religious and political significance of Buddhism and Jainism, trade was significantly impacted.

Both religions did not stress caste divisions and thus permitted easier interchange amongst groups in society, which further helped to expand trade, innovation, and production. On the technological side, the greater use of iron at this time would have helped in constructing tools to enhance the development of agriculture (e.g., iron ploughs, axes and crafts, and improve transportation and storage. In addition, there was significant urbanization (as in the Indus area) and the use of coins as currency was quite common thereby making transactions easier. All these factors contributed to the rise in trade and the demand for collective efforts and organizational forms.

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80 See id., at 173 – 85; George Erdosy, City States of North India and Pakistan at the Time of the Buddha, in THE ARCHAEOLOGY OF EARLY HISTORIC SOUTH ASIA (FRANK RAYMOND ALLCHIN ED) 99 – 122 (1995). There appears to be evidence suggesting that aspects of the Indus civilizations were carried over to the Gangetic ones. See RAYMOND ALLCHIN & BRIDGET ALCHIN, ORIGINS OF A CIVILIZATION – THE PREHISTORY AND EARLY ARCHAEOLOGY OF SOUTH ASIA 223 – 261 (1997). This period appeared to be one of considerable growth in these kingdoms. See Das, supra note 19, at 39 – 83; Agrawala, supra note 77, at 274 – 76.

81 See Das, supra note 19, at 39 – 83; Agrawala, supra note 77, at 266, 274 – 75, 276 (noting the abundance of raw materials and frequent crops). India was apparently the primary source of diamonds and many precious gems. See Agrawala, supra note 77, at 260, 271; Bose, supra note 29, at 236 – 37, 270 – 71. Furthermore, the level of specialization was very high (e.g., arrow making was a separate business from bow making and bow string making). See Bose, supra note 29, at 246, 277 – 80; Das, supra note 19, at 39 – 83.

82 See Thaplyal, supra note 18, at 20 – 24 (providing an overview).

83 See Brihadaranyaka Upanishad, supra note 51; Majmudar, supra note 17, at 14.

84 Hinduism was the dominant religion and the caste system was in place, although perhaps not as rigid as it later became. See Ram Sharan Sharma, Rule of Property, Family and Caste in the Origin of the State in Ancient India, in ESSAYS IN ANCIENT INDIAN ECONOMIC HISTORY (BRAJADULAL CHATTOPADHYAYA ED.) 4 (1987)[hereinafter ESSAYS].


87 See Thaplyal, supra note 17, at 15 – 16.

88 See Thaplyal, supra note 17, at 16; Agrawala, supra note 77, at 273 (noting the presence of metallic currency in Buddhist times). Credit transactions also occurred and would have helped trade. See Agrawala, supra note 77, at 273.
Monitoring of group members was facilitated as the professions continued to be localized in parts of towns and cities.\textsuperscript{89} Further, by this stage accountants were a recognized profession which would have helped in policing the boundary between entity and owner assets.\textsuperscript{90} All the basics were then in place for organizational entities.

Indeed, written sources attest to the presence and importance of the \textit{sreni} by this time.\textsuperscript{91} The \textit{sreni} were in varied fields (roughly 18 to 27 professions) and could be mobile from one place to another.\textsuperscript{92} They were actively involved in trading, production (crafts), and rudimentary banking services.\textsuperscript{93}

Moreover, by now the \textit{sreni} was clearly a separate legal entity and could hold property separately from its owners, construct its own rules for governing the behavior of its members, and contract, sue and be sued in its own name.\textsuperscript{94} Indeed, changes in \textit{sreni} membership or location did not change its obligations to other parties.\textsuperscript{95} Further, some sources have rules for suits between two or more \textit{sreni} and make reference to a government official (\textit{Bhandagarika}) who worked as an arbitrator for disputes amongst \textit{sreni} from at least the 6\textsuperscript{th} century B.C. onwards.\textsuperscript{96} With separate legal entity status one expects that asset partitioning or entity shielding was possible thereby encouraging the growth of the \textit{sreni} by making it a more attractive contracting party. However, there is little evidence at this point about whether entity shielding existed at law – that is, were the entity’s assets shielded from the claims of the members’ creditors.\textsuperscript{97}

\begin{footnotesize}
\begin{itemize}
\item\textsuperscript{89} See \textit{id.}, at 15, 57 – 60; DAS, \textit{supra} note 19, at 68.
\item\textsuperscript{90} See AGRAWALA, \textit{supra} note 77, at 268 (discussing the presence of accounts by the 8\textsuperscript{th} century B.C.); DAS, \textit{supra} note 19, at 55 – 83; BANKEY LAL SHARMA, \textit{ECONOMIC IDEAS IN ANCIENT INDIA BEFORE KAUTHYA} 75 – 100 (1987) (discussing the elaborate tax system, which seems possible with some rudimentary level of accounting); Agrawala, \textit{in} ESSAYS, \textit{supra} note 86, at 149 – 59 (1987) (referencing capital and profit which seems indicative of some accounting).
\item\textsuperscript{91} There was a proliferation of written materials during this period. See THAPLYAL, \textit{supra} note 17, at 2 – 6 (discussing sources including \textit{Jataka Stories} (circa 7\textsuperscript{th} to 6\textsuperscript{th} Century B.C.) for Buddhist perspectives and Dhammasastras (5\textsuperscript{th} Century B.C.) for non-Buddhist perspectives). See \textit{id.}, at 24 – 27; DAS, \textit{supra} note 19, at 60 – 68; SHARMA, \textit{supra} note 90, at 137 – 39.
\item\textsuperscript{92} See MAJUMDAR, \textit{supra} note 17, at 18 – 19; SHARMA, \textit{supra} note 90, at 137 – 39. The \textit{sreni} was used for a variety of professions ranging from carpenters, ivory workers, and bamboo workers to money-lenders, barbers, jewelers, and weavers. See MAJUMDAR, \textit{supra} at 18 – 19.
\item\textsuperscript{93} See MAJUMDAR, \textit{supra} note 17, at 18 – 19; \textit{THE JATAKA OR STORIES OF THE BUDDHA’S FORMER BIRTHS} IV, 37 (W.H.D. ROUSE TRANS.)(1901).
\item\textsuperscript{94} See VYAVAHARA MAYUKHA OR HINDU LAW, INCLUDING SMRITIS OF YAJNAVALKYA 230 (verses 186 – 92 of Chapter 2) (VISHWANATH NARAYAN MANDLIK TRANS.)(1982)[\textit{hereinafter YA}]. Cites to this source are: YA, \textit{supra}, II, at 186 – 92, which represents \textit{Yajnavalkya}, Chapter II verses 186 to 192; The \textit{LAW OF MANU} VIII at 5, (GEORG BUEHLER ED. & TRANS.) \textit{IN SACRED BOOKS OF THE EAST} VOL. 25 (1886)[\textit{hereinafter MANU}]; R.P. KANGLE, \textit{CHANAKYA’S ARTHASAstra, PART II, BOOK 3, CHAPTER 1, Verse 15, at 192 (1972, reprint 1988)][\textit{hereinafter ARTHASAstra} and this would be cited as 3.1.15]. See ARTHASAstra, \textit{supra}, at 3.740 (discussing inheritance); 3.14.1 – 38 (discussing partnership); 4.1.1 – 65 (discussing artisans); 4.2.1 – 36 (discussing traders).
\item\textsuperscript{95} See RADHA KUMUD MOOKERJI, \textit{LOCAL GOVERNMENT IN ANCIENT INDIA} 119 – 120 (1958). To reinforce the independent status of the \textit{sreni} it appears that the \textit{sreni} could normally only affect members when the issue related to \textit{sreni} business. See MAJUMDAR, \textit{supra} note 17, at 62. But see THAPLYAL, \textit{supra} note 17, at 50 (suggesting that the headman of the \textit{sreni} could have a say in property disputes between spouses).
\item\textsuperscript{96} See \textit{THE JATAKA OR STORIES OF THE BUDDHA’S FORMER BIRTHS} IV, 37 (W.H.D. ROUSE TRANS.)(1901)[\textit{hereinafter JATAKA} IV]. The \textit{Bhandagarika} continued thereafter. See MAJUMDAR, \textit{supra} note 17, at 23.
\item\textsuperscript{97} See HANSMANN, \textit{et al}, \textit{supra} note 7, at 5 – 14, 19 – 28 (discussing entity shielding); Caroline Foley Rhys David, \textit{Notes on Early Economic Conditions in Northern India, in} J.R.A.S. (1901) 859, 880 (referring to practices in Buddhist sanghas (roughly, communes) which are not economic entities).
\end{itemize}
\end{footnotesize}
It also appears that the *sreni* could be quite large – some had over 1000 members. However, with such large numbers group action would be difficult without a smaller group being given more day-to-day operational and managerial powers. Indeed, by this time there was already a headman (*Jetthaka* or *Sresthiti*) for each *sreni* who was often experienced, skilled, intelligent, and sometimes already quite wealthy. The headman was critical because he represented the interests of the *sreni* in the king’s court and elsewhere. In addition, the headman could bind the *sreni* in contracts, set the conditions of work within the *sreni*, and was the overall administrative authority within the *sreni*.

There is uncertainty, however, regarding whether the headman was elected or not. Some sources indicate an election, yet others suggest that on the death of one headman the position may pass down to his son or other relations. Although this presents some support for a hereditary position, there are reasons to doubt this. For example, a headman could be removed by the general assembly. In such a situation one would expect that the next headman would not be a relation of the removed headman nor be chosen by him. Rather an election seems more likely. However, the power of the assembly to remove the headman appears most clearly in somewhat later writings so one might infer that initially the position might have been hereditary and then later elections arose or perhaps the elections were simply to confirm the hereditary line. In either case, a definitive answer is not forthcoming on the materials during this time.

Finally, we have the first indications that the customs, traditions and usages of the *sreni* (*sreni dharma* or internal governance) were in place and the sources contained recommendations to the king that he should enforce these rules, absent them being against royal interest or scripture. We do not, however, have references to what was contained in the *sreni dharma* of the time or any further materials on *sreni* formation, staffing or funding.

**VI. THE MAURYAN EMPIRE**

The economic environment in India was growing rapidly, but the incursions of Alexander the Great into Northwestern India in the 4th Century B.C. started the process of significant change. Even after his death a large portion of his army stayed in the area and

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98 See *The Jataka or Stories of the Buddha’s Former Births III*, 281, 405 (H. T. Francis & R.A. Neil, trans.)(1897)[hereinafter JATAKA III]. There was, however, considerable variety in the number of members ranging from small *sreni* (less than 100) up to *sreni* with 1000 or so members. But see Thapalyal, supra note 17, at 39 – 40 (noting the 1000 number was often conventional or an approximation).  
99 See JATAKA IV, supra note 96, at 147 – 48, 161; *The Jatakas or Stories of the Buddha’s Former Births I*, 114 (Robert Chalmers, trans.)(1895)[hereinafter JATAKA I]; *The Jataka or Stories of the Buddha’s Former Births II*, 12 (W.H.D. Rouse, trans)(1895)[hereinafter JATAKA II]; JATAKA III, supra note 98, at 281. Although most *sreni* had one headman, it was possible for there to be more than one headman. See JATAKA IV, supra note 96, at 157.  
100 See Mookerji, infra note 95, at 48 – 49; JATAKA I, supra note 99, at 114; MAHAVASTI III, at 405 (J. Jones ed & trans)(1956).  
101 See Majumdar, supra note 17, at 58.  
102 See JATAKA IV, supra note 96, at 136. For discussion of other relations who might “inherit” the position see Thapalyal, supra note 17, at 46.  
the threat of a Greek invasion loomed. Against this background came the birth of what
two many regard as the first great Indian empire – the Mauryan Empire – which held sway from
about 320 B.C. until 185 B.C.

The primary emperors were Chandragupta Maurya (after whom the dynasty is
named), Bindusara, and Ashoka. All of the emperors expanded the empire until it reached
its zenith under Ashoka and covered virtually all of India, modern day Pakistan, Bangladesh,
and Afghanistan (see Figure 3). Although the empire lasted for only about 135 years, its
development brought changes to India that would reverberate for many years to come.

Figure 3 – Map of Mauryan India

Three changes merit specific mention. First, the presence of the Mauryan Empire
brought all of India under one ruler. Second, the publication and implementation of the
Arthasastra provided the administrative and political backbone to the Empire. Third,
Buddhism became more important when Ashoka adopted the Buddhist faith (although the
empire was still largely administered as per the Arthasastra). I focus on the first two as the
likely impact of Buddhism has already been discussed earlier in Part V.

106 See Thapar, supra note 105, at 13 – 16. Alexander's empire was divided amongst his generals with Seleucus
having Persia and the areas conquered in the Indus region. See id., at 9 – 10.
107 See id., at 13 – 16; Mookerji, supra note 105, at 165 – 82.
108 Ashoka was succeeded by a series of short lived kings ending with Brihadrata who was assassinated in 185
B.C. See id., at 197 – 213 (discussing reasons for the decline of the Mauryans).
109 http://ancienthistory.about.com/od/buddhism/a/MAURYAN%2520Buddhism.htm; Site= http://www.wsu.edu:8080/%257Eedea/ANCI
110 Ashoka spread Buddhism all the way to Afghanistan and encouraged people in Egypt, Southeast Asia, and
China to adopt the faith. See Thapar, supra note 105, at 137 – 81; D.R. Bhandarkar, Ashoka and his Successors, in A
Mauryan India was one of the only times in Indian history when virtually all of India was unified under one ruler. With an empire in place the trade routes throughout India became more secure thereby reducing the risk associated with the transportation of goods. Second, the empire spent considerable resources building and maintaining roads throughout India with some sources noting that there were 15 types of roads.\textsuperscript{111} The improved infrastructure combined with increased security, greater uniformity in measurements, and increasing usage of coins as currency would enhance trade.\textsuperscript{112}

Of course, creating and governing an empire is no easy task which leads us to the second major change – the publication and implementation of the Arthasastra around 300 B.C. to 275 B.C. The Arthasastra (roughly, the knowledge or science of material gain) is one of the most important ancient texts on economics, politics and administration.\textsuperscript{113} Its authorship is usually attributed to the legendary Chanakya who was the chief adviser and prime minister to Chandragupta Maurya and helped him obtain the Magadha Kingdom (in Northeastern India) and unify the bickering North Indian kingdoms into a force to repel the Greeks.\textsuperscript{114}

The Arthasastra is a detailed treatise on how to maintain and expand power, obtain material gain, and administer an empire. It is, at times, ruthless and brutal, but it was the basis for the administration of the Mauryan Empire and indeed many later (and smaller) empires in India for a very long time.\textsuperscript{115} Its influence can hardly be overstated.

In the Arthasastra the central state authority plays a critical role in many aspects of life and most importantly in commercial activity and politics. Although the private sector, including the sreni, was active, it was tightly regulated.\textsuperscript{116} Chanakya appeared suspicious of the sreni.\textsuperscript{117} He was generally concerned with any entity that had many members, good resources and a strong sense of group loyalty as the sreni did.\textsuperscript{118} He probably viewed them as potential threats to the cohesion of the recently formed empire, which was knit together with some considerable effort.\textsuperscript{119} However, the sreni could not simply be outlawed because they existed before the Mauryans and their support was probably necessary to increase the

\textsuperscript{111} See Mookerji, supra note 105, at 236 – 45.
\textsuperscript{112} See Balakrishna Govind Gokhale, The Merchant in Ancient India, 97 JOURNAL OF THE AMERICAN ORIENTAL SOCIETY 125, 129 (1977) (noting that the money economy (i.e., reliance on coins) was in place even during Buddhist times).
\textsuperscript{114} See ARTHASAstra, PART III, supra note 113, at 59 – 115.
\textsuperscript{115} See infra discussion Part IV.F.
\textsuperscript{116} See Mookerji, supra note 105, at 102 (discussing nationalization of industries); 203 – 05 (discussing the private sector). Mauryan India was engaged in large scale commodity production. See D.D. Kosambi, The State and Commodity Production in the Magadhan State (500 to 200 B.C.), in THE CULTURE AND CIVILIZATION OF ANCIENT INDIA IN HISTORICAL OUTLINE 152 – 57 (1982).
\textsuperscript{117} See ARTHASAstra, supra note 94, at 4.1 - .2 (referring to artisans and merchants as “thorns”).
\textsuperscript{118} See id., at 4.1 - .2, 11.1.1 - 56 (discussing methods of dealing with oligarchs).
\textsuperscript{119} For Chanakya unity was important to keep invaders (e.g., Greeks) out of India and anything that impeded this unity would have been looked upon with suspicion. See ARTHASAstra, PART III, supra note 113, at 244 – 65 (discussing defense and internal affairs); ARTHASAstra, supra note 94, at 7.1.1 - 7.4.22 (discussing aspects of foreign policy).
chances of unity in the empire. Moreover, Chanakya was cognizant of the importance of economic prosperity to maintaining the support of the citizenry — a matter of paramount importance to the emperor. The sreni were the engines of economic growth and could not be dealt with in the same manner as a hostile regional monarch. Thus, regulating the sreni was a matter of balance for Chanakya — their support was needed, but they could not be permitted to destabilize the empire and hence they needed to be watched carefully.

In light of this, there were administrative officials whose task it was to superintend the various industries and professions represented by the sreni. This was done through regular detailed administrative processes, but also through the use of spies and assassins. The regulation could be quite minute and encompassed the price of products or services, quality control, weights and measurements, planning of town areas for professions, and even the pay for the sreni headmen.

On the other hand, the Arthasastra encouraged sreni to be active participants in the credit markets (where they provided loans, letter of credit services, and received deposits) as well as providing concessions to sreni in suits involving other sreni. Further, there were markets for commodities as is seen when the Arthasastra prohibits traders from operating in a group to effectively corner a market (which presumes the existence of markets). Thus, the Arthasastra treads a delicate balance to maintain an active economy via the sreni and the state, but not to permit the sreni to present a significant challenge to the empire.

Indeed, the written materials provide considerable information about the sreni, which appeared to play a significant role in the high economic growth of the Mauryan Empire. For example, the sreni continued as separate legal entities (as in the Buddhist period), but now we begin to have some hints that entity shielding was present. In the Arthasastra there is no mention of an entity — like a sreni — being liable for the personal non-sreni related debts of its members, although there is extensive discussion of which family members may be liable for a relation’s debts (i.e., generally sons are liable, but spouses and associated kin are not). Of course, the absence of reference to sreni liability cannot be taken as hard proof of entity shielding, but it is perhaps indicative of it given the lack of reference to sreni liability in the context of a detailed discussion of who else could be liable for a debtor’s debts.

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120 See Arthasastra, Part III, supra note 113, at 166 – 93 (discussing the state economy); Mookerji, supra note 105, at 197 – 225; Agrawala, supra note 77, at 267 (discussing foreign trade).
121 See Arthasastra, supra note 94, at 2.5 – 2.36. There were at least 30 (or more) areas that were being superintended and that kept detailed records on rainfall, crops, mines and so forth. See Mookerji, supra note 105, at 89 – 123. See Arthasastra, Part III, supra note 113, at 166 – 214 (discussing state economy and administration).
122 See Arthasastra, supra note 94, at 2.7.9 - .10; 2.9.12; 2.9.25; 4.5.1 - .18; 5.1.45; 11.1.6 - .14.
123 See id., at 2.1.1 – 2.36.47 (discussing the variety of regulation of the superintendents); 4.1.1 – 4.2.36 (discussing regulation of artisans and traders); 5.3.9 (discussing pay of various persons).
124 See id., at 3.11 & 3.12 (discussing the law of non-payment of debt and of deposits).
125 See id., at 2.7.2, 2.7.6, 3.11 - .12, 4.1., 5.2.46 - .48.
126 See id., at 4.2.18 - .19.
127 See Thapar, supra note 87.
129 The only references to an entity being liable for the personal debts of its members were in the context of Buddhist sanghas (a religious order usually of monks and nuns who renounced the world). See Rhys Davids, supra note 97. Such liability is unlikely for sreni during the Mauryan period because (1) the liability of sanghas is dated from the earlier Buddhist period, (2) the sreni are not really similar to sanghas (e.g., sreni have a profit motive) and (3) by the Post-Mauryan
In addition to this, there is detailed discussion of accounting in the *Arthasastra*. Chanakya required the keeping of detailed accounts for tax purposes, frequent auditing to prevent and deter fraud and corruption, and fairly specific accounting treatment for many items (e.g., costs were divided into fixed and variable and there were rules on different sources of profit). This suggests accounting rules were certainly advanced enough to sustain complex organizational entities. Finally, although there is little discussion of how bankruptcy may operate, there were simple and clear rules about debt obligations and when a debt would cease to be enforceable. There were also detailed rules on the provision of pledges and deposits to secure loans (a form of security or collateral). With this background in place one is not surprised to see trade growing and *sreni* being active.

Although the number of professions represented by *sreni* increased only somewhat (i.e., to over 30 industries), the king was now expected to respect *sreni dharma* as compared to being given a recommendation to follow *sreni dharma* in Buddhist times. This suggests that *sreni* had become significant enough that kings paid heed to *sreni dharma* formulated by the *sreni* (and indeed recorded them for later use in disputes). This implies that rules of governance need not be exclusively mandated from the state, but could also be devised voluntarily by the entity.

In addition to this, although *sreni* headmen were paid handsomely, there is discussion of *sreni* members being able to remove the headman. The assembly could punish or remove the headman, without needing the king’s approval, for a number of things including violation of the *sreni dharma* and destruction of *sreni* property. This bears some

period *sreni* had no liability (i.e., had entity shielding) suggesting that a change from liability to no liability in such a short period of time is unlikely.


131 See ARTHASAstra, PART III, supra note 113, at 173 – 83 (discussing taxes and levies). There were *gopas* – village accountants/census takers – who would keep account of (1) all real and personal property for wealth tax purposes (2) each household’s annual income and expenditure for income tax purposes and (3) the number and types of merchants & artisans for sales tax and occupational license tax purposes. See ARTHASAstra, supra note 94, at 2.35.1 - .15.

132 See *id*, at 2.7(discussing general accounts and records), 2.7.16 – .40 (referencing what appears to be detailed auditing), 2.9.33 (evincing apprehension on corruption when stating “[just as fish moving inside water cannot be known when drinking water, even so officers appointed for carrying out works cannot be known when appropriating money”).

133 See Mattessich, supra note 130, passim; Balbir S. Sihag, *Kautilya on the Sota and Methodology of Accounting, Organizational Design and the Role of Ethics in Ancient India*, 31 THE ACCOUNTING HISTORIANS JOURNAL 125, passim (2004).

134 See ARTHASAstra, supra note 94, at 3.11.1 – 50 (noting at 3.11.13 that “[a] debt not taken notice of for ten years shall be irrecoverable...”).

135 See *id*, at 3.12.8 - .17.

136 See DAS, supra note 19, at 132; ARTHASAstra, supra note 94, at 2.7.2, 2.7.6, 3.7.40. The paltry growth in professions represented by *sreni* could, one conjectures, be due to the *Arthasastra*. Although the *Arthasastra* may not have squeezed out existing *sreni*, it may not have made it easy for them to develop in other professions (to limit their power).

137 See ARTHASAstra, supra note 94, at 2.7.2, 2.7.6, 3.7.40. This is somewhat surprising given the more centralized nature of the Mauryan Empire, but such concessions may have been needed to maintain the support of the *sreni*. This tracks the discussion in supra text accompanying notes 143-147. We do not, at this point, have the actual *sreni dharma* from this time.

138 See ARTHASAstra, supra note 94, at 5.3.1 - .11 (noting the pay of *sreni-mukhyas*).

139 See *id*, at 2.7.2, 11.1.6 - .7.

140 See *id*, at 11.1.6 - 7; KATAYANASRAMTRI, verse 672 (PANDURANGA VAMANA KANE ED. & TRANS.) (1933)[hereinafter KAT]; VIRAMITRODAYA, at 428. The king need only be notified of the removal of the headman. See KAT, supra, at verse 672.
similarity to the voting process in the US for removing directors and officers. However, little detail is provided at this stage on how this process worked.

Finally, there are provisions in the Arthasastra regarding the exit of sreni members and how that might trigger a fine on the member if his exit occurred after work on a project had commenced.\textsuperscript{141} There does not, however, appear to be a fine in other instances suggesting that exit was indeed possible.

The fines on exit may address concerns analogous to those seen in modern partnerships when partners use their reputation to obtain contracts and credit from people and then leave the partnership, with little assets, to fulfill those liabilities.\textsuperscript{142} Similarly, if someone contracts with the sreni assuming there would be 300 members working on a project for two months then if some people leave the sreni that might change the time frame for completion or the likely quality of the product. A sanction on leaving may assuage these concerns.

Aside from this there is little written evidence indicating any changes to sreni structure from Buddhist times and little discussion of sreni formation, capitalization and staffing. Nonetheless, the sreni had become an important part of Indian life and many of its traits were visible by now. Moreover, the background of growing trade (increasing the demand for sreni), localization of occupations (enhancing the monitoring of agents and owners) and the usage of detailed accounting rules and potential entity shielding (monitoring the movement of assets between owners and sreni) was a good environment in which organizational entities could grow.

Before leaving the Mauryans it may be useful to compare the situation in Mauryan India to that in the Roman Empire and republic. The Romans and the Mauryans (and later Indian kingdoms) had extensive trade connections, but it appears that Rome did not adopt organizational forms for purely private commerce (such as the sreni).\textsuperscript{143} This seems surprising because, given the extensive and centuries long trade, the Romans would have been aware of the sreni organizational form. What might explain why Rome did not adopt such forms – was it simply very strong path dependence?

It appears that the Mauryans and the Romans were in quite different situations. Both empires could have been concerned about alternative entities (e.g., sreni) that might attract the public’s loyalty away from the Empire, but the Romans did not, it appears, have to contend with \textit{pre-existing} private commercial entities as the early Mauryan Empire did.\textsuperscript{144} One might speculate this would lead the Mauryans (and Chanakya) to be more concerned about keeping the support of the \textit{pre-existing} private commercial entities (the sreni) for purposes of the empire’s unity, while carefully watching that they do not threaten the cohesion of the Empire. The Romans did not have such entities to contend with and hence could have prevented any perceived threat to the cohesion of their Empire by not permitting

\textsuperscript{141} See Arthasastra, supra note 94, at 3.14.1 – 3.
\textsuperscript{142} See ALLEN & KRAAKMAN, supra note 6, at 50 – 54; UNIFORM PARTNERSHIP ACT, section 36 (1914).
\textsuperscript{143} See Hansmann, et al, supra note 7, at 23 – 27 (discussing the \textit{societe publicarum} in Rome which were not engaged in purely private corporate activities). See also JEAN-JACQUES AUBERT, BUSINESS MANAGERS IN ANCIENT ROME: A SOCIAL AND ECONOMIC STUDY OF INSTITUTES, 200 B.C. – A.D. 250, at 325 – 30, 342 – 46 (1994).
\textsuperscript{144} See Hansmann, et al, supra note 7, at 23 – 27.
such entities to develop.\footnote{Cf. id., at 24 – 27 (noting that the Romans did not let such entities develop).} Indeed, the early Roman proto-corporations were largely used for public (state-controlled) projects which would have limited their ability to threaten the Empire.\footnote{See id., at 24 – 27.} This provides a plausible explanation for why we do not see private commercial entities in Rome, but do see them in one of Rome’s primary trading partners. Mauryan India had to maintain the support of the pre-existing commercial entities, but had to be careful to ensure they do not threaten the Empire.\footnote{The Roman Emperors later clamped down on the entities that worked on public projects and this may have had major depressive effects on the Roman economy. See id., at 26 – 27. The Arthaśāstra would probably not recommend such measures, but Emperors do not always follow their advisors.} Maintaining the support of the sreni would be important in even Post-Mauryan times as we shall soon see.

### VII. Post-Mauryan Kingdoms

For expositional ease I divide the developments following the decline of the Mauryan Empire into those in North and, then, South India. After the Mauryans, North and South of India were not under the same monarch for nearly 1600 years.\footnote{North and South India were not united again until the Mughal empire in Medieval India around the 15th and 16th Centuries.}

In the North the first dynasty to replace the Mauryans was the Sunga, which ruled over a smaller empire centered around Pataliputra (the capital of the Mauryans) for about a century.\footnote{See Adhiya, supra note 85, at 11 – 13; Jagannath, Post-Mauryan Dynasties (184 B.C. to A.D 200), in A COMPREHENSIVE HISTORY OF INDIA II 94 – 115 (K.A. Nilakanta Sastri Ed.)(1957)[hereinafter COMPREHENSIVE HISTORY]. The Sungas were replaced by short lived kingdoms until 30 B.C. See Adhiya, supra, at 13.} In the far Northwest the Mauryans were replaced by the Indo-Greeks (for about 150 years), the Shakas (Scythians), and then the Kushanas (from Central Asia) who created a large kingdom that reigned until roughly 100 A.D.\footnote{See id., at 11 – 17; J.N. Banerjea, The Bactrian Greeks in India, in COMPREHENSIVE HISTORY, supra note 149, II, at 138 – 85; J.N. Banerjea, The Scythians and Parthians in India, in COMPREHENSIVE HISTORY, supra note 149, II, at 186 – 221; J.N. Banerjea & Jagannath, The Rise and Fall of the Kushana Power, in COMPREHENSIVE HISTORY, supra note 149, II, at 222 – 62.} Trade flourished in both the Indo-Greek era as well as Kushanas reign, along the “Silk Road”, with Central Asia, China and Rome.\footnote{See Adhiya, supra note 85, at 11 – 17; Das, supra note 19, at 107 – 34; Kamesar Prasad, Urban Occupations and Crafts in the Kaushana Period, in ESSAYS, supra note 86, at 111 – 120.} Following the demise of the Kushana Empire North India broke down into a series of small and warring kingdoms until the third century A.D. when India’s next great empire took shape.\footnote{See Adhiya, supra note 85, at 18 – 19.}

In the South there were several kingdoms of importance. The Pandya kingdom (starting around 200 B.C.) was the longest running lasting until about 1378 A.D.\footnote{The dynasty ended when the Delhi Sultanate invaded the Pandya capital of Madurai. See generally Sakkottai Krishnaswami Aiyangar, ANCIENT INDIA AND SOUTH INDIAN HISTORY & CULTURE VOL. I, 434 - 463 (discussing South Indian history); VOL. II, 577 – 94 (discussing the Tamil Sangam and the Pandyas) (1941); K. A. Nilakanta Sastri, THE PANDYAN KINGDOM, FROM THE EARLIEST TIMES TO THE SIXTEENTH CENTURY passion (1972).} Trade was very active, especially with Rome, as is evidenced by the large number of Roman coins found in this area.\footnote{See Das, supra note 19, at 122. It appears these Indians were fond of Roman wine. See Himanshu Prabha Ray, MONASTERY AND GUILD – COMMERCE UNDER THE SATAVAHANAS 130 – 35 (1986).} Directly north of the Pandyas was the Andhra Kingdom (called the Satavohana dynasty) founded in 40 B.C. and lasting until the third century A.D, which
appeared to follow the Mauryan strong central state model.155 Following the Satavahanas the Chalukya dynasty took hold and ruled from 453 A.D. to 750 A.D. and then again from 970 A.D. to 1190 A.D.156 There is considerable evidence of very active trade during both the Satavahana and Chalukya dynasties.157 Going to the far South brings us to the Pallava kingdom in Tamil Nadu which ruled from the 4th century A.D. to the 9th century A.D., and was then replaced by the Chola kingdom.158 The Cholas ruled until the 13th century A.D. when the Islamic invasions also claimed their kingdom.159

This reads like a story about a region in a state of flux with many different kingdoms and peoples all vying for power and prestige – virtually the exact opposite of the vast and strongly centralized Mauryan Empire. Yet, perhaps remarkably, trade expanded even more in this era. Indeed, many of these kingdoms were considered very wealthy with active and highly profitable trade with Rome, Egypt, South East Asia, and China.160 How was this achieved?

The first thing to note is that India (North and South) was not in a state of constant war, rather there were kingdoms that lasted at least 100 years, sometimes longer, before being displaced. Second, the roads built and trade routes used during the Mauryan times continued to be used. Further, during the reign of the Indo-Greeks, and later the Kushanas, the land routes were fairly secure in the North.161 Thus, safety along the land trade routes was not as weak as one might imagine. Moreover, the sea routes from the West, East, and South of India were quite safe and efficient, especially after the discovery of the monsoon patterns.162 When this is combined with the expanding sea trade with the Roman Empire there would have been less need to rely so much on the land routes for trade.163 Indeed, it may have been that the growth in foreign sea trade more than compensated for the instability, at times, in domestic land trade.164

155 See Adhya, supra note 85, at 20 – 24; K. Gopalachari, The Satavahana Empire, in COMPREHENSIVE HISTORY, supra note 149, II, at 293 – 327.
156 See Gopalachari, in COMPREHENSIVE HISTORY, supra note 149, II, at 293 – 327. The gap in their rule was because the Rashtrakutas ruled the region from 750 A.D. to 970 A.D. On the Chalukyas see Krishna Murari, THE CHALUKYAS OF KALYANI, FROM CIRCA 973 A.D. TO 1200 A.D. 367 – 371 (discussing the genealogy of the dynasty) (1977).
157 See Das, supra note 19, at 107 – 34; Gopalachari, in COMPREHENSIVE HISTORY, supra note 149 (discussing the Satavahanas); Murari, supra note 156, at 283 – 310 (discussing the economy and trade in Chalukyan times); Ray, supra note 154, at 90 – 167.
158 See C. Minakshi, ADMINISTRATION AND SOCIAL LIFE UNDER THE PALLAVAS (1997); Aiyangar, supra note 153, at 490 – 591 (discussing the Pallavas).
160 See Das, supra note 19, at 107 – 34; Adhya, supra note 85, at 113 – 151 (discussing trade with Rome), 152 – 76 (discussing trade with China and South East Asia). Trade with Rome was so substantial that Roman Senators are known to have complained about it and to sometimes have enacted laws restricting it. See Das, supra note 19, at 121 – 22 (citing Pliny), 127.
161 See Das, supra note 19, at 128 – 29. Agrawala suggests that the land routes were less safe and the traders had to pay many tolls to different rulers, which may be another reason to prefer sea trade. See Agrawala, supra note 77, at 267. Also, villages (the productive base) may not have faced much upheaval during the wars. See Das, supra note 19, at 156 – 57.
162 See Adhya, supra note 85, at 124 – 28 (describing the importance of understanding the monsoon trade winds for the growth of trade between Rome and India).
163 See Das, supra note 19, at 107 – 34; Adhya, supra note 85, at 113 – 151. Another feature that may have led to greater foreign trade was the spread of Buddhism to the Far East and with it some of the trade from India. See Agrawala, supra note 77, at 269.
164 Trade with Rome would have expanded much more after the Mauryans because that is when the Roman Empire was formed. See Das, supra note 19, at 107 – 34; Adhya, supra note 85, at 113 – 151. Moreover, although the
Another matter of considerable importance is that with the fall of the Mauryans there was also the fall of their centralized state. Consequently, the sreni were not held in as tight reign and could adapt more quickly to their environment. In this post-Mauryan era the newly unshackled sreni grew quickly and established their sway over much of India. Moreover, kings were quite keen to have the favor of the sreni, no doubt to help stabilize or cement their control over a region. This environment was particularly well suited to the growth of the sreni. There were now many more sreni (at least 74 occupations) and they took a more active role in other aspects of Indian life (e.g., judicial, banking), which would have been difficult to imagine in Mauryan times.

The increasing importance of the sreni led to greater discussion and writings about its internal governance and the rules governing its interactions with others. As before the sreni were separate legal entities, but now we have even more clear references to entity shielding. The materials indicate that a creditor cannot attach the assets of other people or entities associated with the debtor unless the debtor took the debt acting as an agent for these other people or entities (i.e., the debt was not personal). So if the debtor was part of a sreni then the debtor’s personal creditors could not attach sreni assets for the debtor’s personal debts – entity shielding was present. When this is combined with detailed accounting rules the environment appears quite favorable to organizational entities.

Along with this, we have clearer references than in Mauryan times to kings being expected to maintain sreni dharma. This reflects a continuing shift from a recommendation to uphold sreni dharma (during Buddhist times) to an expectation to do so, underscoring the increasing importance of the sreni. Moreover, we have details on the penalties that might be imposed for violation of sreni dharma. For example, embezzling from the sreni was considered an offense as was a sreni member keeping sreni property for himself. Some sources state if a member receives property on behalf of the sreni and keeps it for himself then he is to pay 11 times the value of the property to the sreni. One might conjecture that such a supra-compensatory fine is attempting to address the low likelihood of detection of this offense.

Further, the large fines and increasing role of state enforcement of sreni dharma seems connected to the growth of the sreni. For example, it would be difficult for the sreni, or its

Mauryans traded with South East Asia and China it appears that after the Mauryans there was even more trade with these countries. See DAS, supra note 19, at 107 – 34; ADHYĀ, supra note 85, at 152 – 76 (discussing trade with China and South East Asia).

See THAPLIYAL, supra note 17, at 28 – 29.

See DAS, supra note 19, at 111 – 13; ADHYĀ, supra note 85, at 82 – 94.

See DAS, supra note 19, at 131 – 32; ADHYĀ, supra note 85, at 86.

See ADHYĀ, supra note 85, at 82 (referring to the Mahabachat and the Milindapanha with the latter suggesting over 74 types of professions).


See YAJ, supra note 94, II at 45, 50, 51; MANU, supra note 94, VIII, 166; J.D. MAYNE, A TREATISE ON HINDU LAW AND USAGE 394 (11TH ED., 1950). A potential exception is for religious fraternities that operate as communes – Buddhist sanghas. See Rhys David, supra note 97. The sreni would not be one of these.

See YAJ, supra note 94, at 186 – 92; DAS, supra note 19, at 131.

See YAJ, supra note 94, II at 186 – 192. Borrowing funds on behalf of the sreni and using it for personal purposes was also an offense. See KAT, supra note 140, at verse 674.

See YAJ, supra note 94, II at 190. The Mahabharata suggests sreni dharma violations are very serious. See MAHABHARATA, supra note 51, at XII at 37.14.
members, to self-monitor such a large and asset-rich entity with so many members. This is
due to a number of reasons. First, the likelihood of the _sreni_ apprehending and sanctioning
wayward members may decrease as the number of members increases. If the likelihood of
apprehension drops then some supplementary measure (e.g., larger sanctions or an outside
monitor) is needed to maintain deterrence, and legal sanctions and enforcement can serve
this role.  

Second, as _sreni_ became wealthier the gain to the member from engaging in
misbehavior increases – more assets in the _sreni_ imply more to be gained from obtaining
those assets. This may also call for resort to larger sanctions and tighter enforcement –
something that outside legal enforcement could provide. Moreover, it is plausible that rulers
who were keen to curry favor with the _sreni_ (and obtain their support) might be inclined to
provide additional benefits to them (e.g., additional enforcement of _sreni dharma_).

In addition to this, we witness the first references to the executive officers of the _sreni_.
The presence of the executive team could be seen as an indication that the _sreni_ had become
so large that one could not simply rely on the _sreni_ head to run the entity without assistance.
Indeed, given the growth of the _sreni_ and the amount of matters the headman was required
to address, it is perhaps not surprising that he often ran the _sreni_ with the assistance of two to
five executive officers ( _karya chintakal_ ) who also had the power to bind the _sreni_ on _sreni_
related business.  

The executive officers were generally elected by the assembly and could be removed by them.

Finally, we have some discussion of how the _sreni_ was staffed and how profits, assets
and liabilities might be shared. Staffing required having a group of potential members trained
in the craft. Of course, most training was passed from father to son, but there was the
alternative of an apprenticeship system, which could require a number of years of extensive
training. In terms of profit and asset sharing we see the first instances of sharing based on
the amount of capital contributed to the _sreni_ by the member or perhaps on capital and skill
provided. There were also rules governing the profits members might receive. For
example, if a member acted against the advice of other members and caused loss then that
member would bear the whole loss, whilst if that activity turned a profit that member would
receive an additional one-tenth of that profit amount as his reward.  

These more varied sharing approaches indicate the increasing importance of _sreni_ and how they were used in
differing contexts that might merit a variety of approaches to profit and asset sharing.

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174 As the probability of apprehension declines the expected sanctions drops and so does deterrence. Some
measure (larger sanctions, more frequent enforcement) to counter this is then needed. See Gary S. Becker, _Crime and
Punishment: An Economic Approach_, 76 _J. Pol. Econ._ 169, 193 – 98 (1968). However, the _sreni_ may not have been able to
generate a sanction large enough to achieve this, whilst the monarch might.

175 See _Brihaspatismitra_, _XVII_ at 9 – 10, _The Minor Law Books (Julius Jolly Ed. & Trans.) in Sacred
Books of the East Vol 33_ (1965)[hereinafter _Brihi_]; _Yaj_, _supra_ note 94, _II_, at 186 – 87. Some _sreni_ appeared to have more
executive officers ranging up to 12 for elephant drivers _sreni_. See _Thapleyal_, _supra_ note 17, at 51.

176 See _Brihi_, _supra_ note 175, _XVII_ at 8 – 10. It may have been the case that the officers were often nominated by
the headman and then voted on by the general assembly. See _Majmudar_, _supra_ note 17, at 40 – 43.

177 See _Naradasmriti_, _V_ at 3, 12, 15 – 21, _The Minor Law Books (Julius Jolly Ed. & Trans.) in Sacred
Books of the East Vol 33_ (1965) [hereinafter _Nar_ which represents Book 5 verses 3, 12, 15 – 21]; _Yaj_, _supra_ note 94, _II_, at
184. The apprenticeship contract could involve a twelve year contract with the student living in the _gurukula_ style of
education. See _Brihi_, _supra_ note 175, _XVI_ at 6; _A.S. Altekar, Education in Ancient India_ 190 – 96 (5th ed.,
1957) (describing the _gurukula_). Although not perfect, this provided a way to staff the _sreni_. See _Thapleyal_, _supra_ note 17, at
82 – 83.

178 See _Yaj_, _supra_ note 94, _II_ at 259; _Brihi_, _supra_ note 175, _XIV_ at 3 – 5, 27 – 32.

179 See _Brihi_, _supra_ note 175, _XIV_, at 9 – 10; _Yaj_, _supra_ note 94, _II_ at 260.
VIII. THE GUPTA EMPIRE & INDIA’S “GOLDEN AGE”

The dispersed kingdoms of North India were to remain that way until the dawn of India’s next great empire in the third century A.D. – the Gupta Empire. Although somewhat smaller in size than the Mauryan Empire (see Figure 4), the Gupta Empire lasted considerably longer.

Figure 4 – Map of Gupta India

The Gupta Empire dates from roughly 240 A.D. until 550 A.D. and is usually referred to as India’s “Golden Age”. The primary emperors of this dynasty were Chandragupta I, Samudragupta, and Chandragupta II (who took the name Vikramaditya). All of these emperors expanded the boundaries of the empire until it reached its apex in the reign of Vikramaditya. Much like the Mauryan Empire, the Gupta Empire had a number of long range implications for India and the sreni.

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182 Chandragupta I reigned from 319 A.D. – 335 A.D. See Mookerji, supra note 181, at 13 – 17. Although Chandragupta I is identified as the first Gupta Emperor there were two other kings before him. See id., at 11 – 12.
183 Samudragupta reigned from 335 A.D. – 376 A.D. was a brilliant leader, and a patron of the arts. See id., at 17 – 43; The Golden Age, supra note 181, at 1 – 2.
184 Chandragupta II or Vikramaditya reigned from 375 A.D. to 414 A.D. and is one of the most lauded emperors presiding over one of the greatest economic and literary periods in India. See Mookerji, supra note 181, at 44 – 69, 135 – 55; The Golden Age, supra note 181, at 2; Das, supra note 19, at 134 – 56; Thaplyal, supra note 17, at 32 – 35.
185 See Mookerji, supra note 181, at 44 – 69.
The first was that, although Chandragupta I brought some of the *Arthasastra*’s principles back into effect, the Gupta Empire was not nearly as centralized as the Mauryan. Rather the Gupta Empire was a looser confederation of kingdoms which relied more on tributes, strategic alliances, and greater decentralization. Indeed, it is likely that the increased heterogeneity of Indian society reflected in the general economic and political conditions of the time would probably not have sustained a highly centralized empire. The significance of this for trade was that the central authority did not regulate economic activity as tightly as the Mauryans, yet it provided quite efficient administration, maintained safe trade routes, and encouraged trade. The Guptas lighter regulatory hand can be seen in their use of coins. Generally, they did not change the currency in a conquered region, but would put an imprint of the Gupta Empire on one side and leave the other side with the pre-existing image. This is analogous to the Euro coins which on one side indicate the country that minted them and on the other provide some depiction of the European Union. Another example is where the Gupta emperors provided favorable treatment to *sreni* which relocated their operations to a region where the Guptas were trying to generate economic growth.

Second, the Guptas were quite active in building contacts with other countries and in exporting Indian culture. These contacts bolstered the increasing and active trade with the Far East and South East Asia when the Roman Empire, and trade with it, was weakening.

Third, a number of scientific and technological developments made Indian products even more attractive. During the Gupta Empire India experienced a resurgence of science, art, mathematics, literature and Indian culture. On the mathematics side the increasing use of the Indian numeral system and the development of zero as a placeholder would have enhanced trade by simplifying calculations and the overall transactional process. On the science side, the use and development of iron in India at this time reached the highest levels (e.g., the iron pillar at Mehrauli, which is 99% iron, has remained essentially rust free in the

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186 See id., at 150 – 55 (discussing the administrative set up of the Gupta Empire).
187 See id., at 19 – 29, 150 – 55. It appears Chandragupta I obtained greater control through a strategic marriage alliance with the Licchhavis. See id., at 13 – 17. Samudragupta adopted a more mixed strategy with some kingdoms he preferred complete dominion (usually those closer to his capital) and with others (usually farther from the capital) he would capture their rulers, release them and restore their kingdom if they paid tribute to him and acknowledged his overlordship. See id., at 19 – 20, 23 – 29, 37 – 38. Vikramaditya followed much the same approach along with some strategic marriage alliances as well. See id., at 45 – 46 (discussing family and marriage alliances), 150 – 51 (discussing the officer appointed by the king, *yukta-prabhas*, to return conquered lands). Returning distant conquered lands and keeping more proximate conquered lands may seem an odd strategy, but if the empire needs to keep its army close to its capital then this may be understandable.
188 See Thaplyal, supra note 17, at 32 – 36. Although the Guptas were a Hindu kingdom, they did not appear to persecute other religions. See Mookerji, supra note 181, at 130 – 34.
189 See id., at 148 – 55; Das, supra note 19, at 134, 135 (discussing rest houses for travelers), 136 – 56.
190 See id., at 30 – 32, 139 – 41.
191 See Thaplyal, supra note 17, at 183 – 84.
192 See Mookerji, supra note 181, at 129 – 30 (discussing how Samudragupta and his successors followed a policy of setting up foreign centers of Indian culture).
193 See Das, supra note 19, at 149 – 53.
194 See Mookerji, supra note 181, at 135 – 148 (discussing the achievements in this era).
Indian climatic conditions for about 1600 years.\textsuperscript{196} This would also have been displayed in more efficient tools for trade, transportation and storage.\textsuperscript{197}

Enhanced foreign and domestic trade combined with improvements in technology is an enviable recipe for economic growth. That, indeed, is what we witness and concomitantly an increase in the number and importance of the \textit{sreni}.\textsuperscript{198}

As before, the \textit{sreni} continued as separate legal entities with entity shielding.\textsuperscript{199} However, now the \textit{sreni} represented around 150 professions (nearly double the number in Post-Mauryan times).\textsuperscript{200} Indeed, the king was almost bound to enforce \textit{sreni dharma}, which indicates how important the \textit{sreni} had become. Although we do not, at present, have the \textit{sreni dharma} from this time, it appears that many ancient scholars encouraged (and some required) that \textit{sreni dharma} be written down in a document (often called the \textit{sthiti-patra}) and registered with the state.\textsuperscript{201} Moreover, there is discussion of the qualifications for executive officers. They are expected to be well versed in the \textit{Vedas} (the first Hindu scriptures), not greedy, of noble ancestry, and proficient in their craft as well as not too old or too young.\textsuperscript{202} We also witness \textit{sreni} being mobile, and willing to move to new locations to take up attractive new opportunities, as well as multi-profession \textit{sreni} (e.g., bankers and artisan working together as well as silk weavers and archers).\textsuperscript{203} This underscores the impressive economic growth of the period. Indeed, it is not surprising if \textit{sreni} were willing to take on additional occupations in an environment of quickly growing and profitable opportunities.\textsuperscript{204} Similarly, \textit{sreni} might be willing to move to new locations for the same reasons, amongst others. These features are consistent with the \textit{sreni} being a critical factor in exploiting the opportunities for economic growth in the Gupta Empire.

\textsuperscript{196} See Das, supra note 19, at 138; Mookerji, supra note 181, at 66 – 68.
\textsuperscript{197} Indeed, there is evidence that ship builders were quite aware of the dangers of using iron in their ships and had a very detailed list of different ships for marine trade. See Das, supra note 19, at 139 – 41.
\textsuperscript{198} See Mookerji, supra note 181, at 49, 146 – 50; Thaplyal, supra note 17, at 32 – 36; Das, supra note 19, at 136 – 39, 144 – 45.
\textsuperscript{199} See Nar, infra note 230, IV at 3, 23; Brh, supra note 175, X at 120; Kat, supra note 140, at verses 552 – 557.
\textsuperscript{200} See Thaplyal, supra note 17, at 32 n. 109.
\textsuperscript{201} See Brh, supra note 175, VIII at 9, 26; Kat supra note 140, at verse 254. Undoubtedly, finding the actual \textit{sreni dharma} from this time (i.e., the \textit{sthiti-patra}) would greatly enhance our understanding of the \textit{sreni}. Research on a later time period outside the scope of this paper (roughly the 12\textsuperscript{th} Century A.D. onwards in India) sheds light on the importance of the internal rules of certain groups and their role in the hierarchy of laws and rules in Medieval India. See Donald R. Davis, Jr., Intermediate Realm of Law: Corporate Groups and Rules in Medieval India, 48 J. Econ. & Soc. Hist. Orient 92 (2005).
\textsuperscript{202} See Brh, supra note 175, XVII at 8 – 10 (stating “[e]nemies, dissolve, basful, timid, avaricious, overag or very young persons must not be chosen as intendants of affairs. Honest persons, acquainted with the \textit{Vedas} and with duty, able, self-controlled, sprung from noble families, and skilled in every business, shall be appointed as heads (of an association). Two, three, or five persons shall be appointed as advisers of the association… “).
\textsuperscript{203} See Thaplyal, supra note 17, at 180 – 94 (discussing the \textit{sreni} of silk-weavers who both moved from one location to another and also decided to engage in more than just silk-weaving and how they still were very profitable and considered one \textit{sreni}).
\textsuperscript{204} See Mookerji, supra note 181, at 148 – 49 (discussing the \textit{Sreshti-Kalika-Nigama} or the corporation of bankers and artisans); Thaplyal, supra note 17, at 180 – 94 (discussing the \textit{sreni} of silk-weavers with multiple professions in it). Note I do not suggest that there is no benefit to specialization here. Indeed, there was as noted by Das, supra note 19, at 136 – 39, 144 – 45. However, new products or services may develop that utilize some of the \textit{sreni} members’ skills and make it worthwhile to enter that field. Also, when growth is accelerating it may often be difficult to obtain good talent for your current profession and it may be worthwhile to expand to other profitable areas for your combination of human capital.
Indeed, one suspects it is this growth that led writers of the time to provide us with unparalleled richness in the description of the *sreni*.205 Given the amount of material I divide the discussion into two sections for expository clarity - the first on *sreni dharma* and the second on the formation and funding of the *sreni*.

A. The Development and Enforcement of Sreni Dharma

It appears that *sreni dharma* was usually the result of discussion and debate within the general assembly.206 Indeed, the members of the assembly had the right to free speech within limits.207 Anyone who “interrupted a speaker during his speech and said something absurd” or “opposed what was reasonable” could be punished.208

Once *sreni dharma* was devised its enforcement fell largely to the *sreni*. The primary method of enforcement was via the headman who, with the executive officers, had the authority to act on behalf of the *sreni* with respect to matters of *sreni dharma*.209 Thus, the headman or the executive officers could impose a penalty on a *sreni* member for violation of the *sreni dharma*.210

A member dissatisfied with the result had, it appears, two methods of redress. First, if the member thought this penalty was actuated by malice toward him by the officers or headman then the member could bring an appeal to the king.211 If the king found the imposition of the penalty to be outside *sreni dharma* and motivated by ill will then the punishment could be repealed.212

Another method of redress for the aggrieved member might be to approach the *sreni* assembly and request them to punish the headman or officer. This method existed as early as Mauryan times and the assembly could clearly punish or remove the headman or officers, without needing the king’s approval, for a number of things.213 Of course, if the headman or officer refused to follow the assembly’s decision then the matter would be put forward to the king who was to decide according to *sreni dharma* and impose increasingly severe punishments until the headman accepted the removal or punishment.214 The king’s power extended to confiscating all of the headman’s property and even banishment.215

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205 See Mookerji, supra note 181, at 49, 148–50; Thaplyal, supra note 17, at 32–36; Das, supra note 19, at 136–39, 144–45.
206 See Thaplyal, supra note 17, at 73 n. 121.
207 See Kat, supra note 140, at verse 671.
208 See id.
209 In the *Brihadishvarasrita* the section on violation of agreements contains the relevant passages. See Brih, supra note 175, XVII at 17–18 (stating “[t]he heads of families, companies (of artisans) and associations...shall censure and reprimand offenders, and forsake them [for violating agreements which include *sreni dharma*]. Whatever is done by [the heads] must be approved of by the king as well; for they are declared to be the appointed managers (of affairs).”) The last part refers to the king generally being required to accept the decision of the heads on punishing members for violating agreements (exceptions are discussed infra in the text and in Brih, supra, XVII at 19– e.g., ill will on the part of the heads).
2010 See id.
2011 See id., at 19.
2012 See id., at 20.
2013 See Arthasastra, supra note 94, at 11.1.6 - 7; Kat, supra note 140, at verse 672; Viramitrodava, at 428. The King need only be notified of the removal of the headman in such cases. See Kat, supra, at verse 672.
2014 See Brih, supra note 175, XVII at 20; Viramitrodava, at 429.
2015 See Brih, supra note 175, XVII at 16; Viramitrodava, at 429.
From this it appears that even though the headman and officers had considerable power within the *sreni*, their power was not unfettered. Indeed, one might see some similarities to more modern corporate governance.

First, deference was given to management decisions so that a king would normally interfere only when the *sreni* member could show ill will in the decision to punish the member.216 Thus, honest mistakes of judgment were unlikely to be redressed by the king. Much the same can be said of modern duty of care suits in the US where the chances of imposing liability for a simple mistake of judgment are quite bleak.217 Further, the requirement of ill will serves to insulate management from some liability. Absent such insulation management may be reluctant to enforce *sreni dharma*. This is, one conjectures, because management receives only some of the benefit from enforcing *sreni dharma* and, if they bear liability without some insulation, most of the cost. The rule limiting royal interference to cases of ill will may help to calibrate the cost-benefit calculation for management in enforcing *sreni dharma*. This justification is essentially the same given in modern times for insulating directors from liability (e.g., via the business judgment rule) except for duty of loyalty violations which are closer to the ill will cases described above.218

Second, the assembly had the power to remove management. Although this appeared to require some cause (e.g., breach of *sreni dharma*) rather than just the choice of the members,219 the power to remove management did exist. Moreover, if management tried to resist this dismissal then resort could be had to the king to remove them.220

Third, the treatment of fiduciary duties (i.e., duty of loyalty (conflict of interest) and duty of care) is not entirely clear. Although the sources do not provide evidence on what *sreni dharma* usually said on this point, one might make some reasonable suppositions based on the evidence below.

First, embezzling from the *sreni* was considered an offense.221 For example, as in Post-Mauryan times, some sources state that if a member receives property on behalf of the *sreni* and keeps it for himself then he is required to pay 11 times the value of the property to the *sreni*.222 This suggests that the *sreni* was aware of conflicts of interest and severely penalized certain kinds of fraud. Second, an inscription from South India (from a little later

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216 See BH, supra note 175, XVII at 19. Note the king’s interference in enforcing a *sreni* decision to remove a headman is not a reflection of deference to management. If the *sreni assembly* voted against the headman because of the wrongful imposition of a penalty on a member then the king enters the fray only to ensure that the headman leaves the *sreni* (as per the assembly’s decision) rather than to enforce or defer to *sreni* management.

217 See CLARK, supra note 6, at 126; ALLEN & KRAAKMAN, supra note 6, at 240 – 60; KLEIN, RAMSEYER & BAINBRIDGE, supra note 6, at 316 – 67. Cf. also Bernard S. Black, Brian Cheffins & Michael Klauser, Outside Director Liability, STANFORD LAW SCHOOL JOHN M. OLIN PROGRAM IN LAW & ECONOMICS WORKING PAPER NO. 250 (2003) at 63.

218 See ALLEN & KRAAKMAN, supra note 6, at 240 – 42, 248 – 53.

219 See CLARK, supra note 6, at 105 – 06; ALLEN & KRAAKMAN, supra note 6, at 174 – 76; KLEIN, ET AL, supra note 6, at 713 (discussing how shareholders can vote out the board for any reason at the annual general meeting).

220 This is not quite the same as Delaware courts preventing management from entrenching themselves in takeover battle because it is doubtful if hostile takeovers were possible in Ancient India given how members were admitted into the *sreni* (see infra text accompanying notes 231 – 237 where member votes are needed).

221 See YAJ, supra note 94, II at 187. Borrowing funds on behalf of the *sreni* and using it for personal purposes was also an offense. See KAT, supra note 140, at verse 674.

222 See YAJ, supra note 94, II at 190.
than the Guptas) describes who can occupy important positions in municipal entities. This inscription is discussed more in the next Part.

See id.


4. See Yaj, supra note 94, II at 191; BRih, supra note 175, XVII at 8 – 9 (quoted in supra note 202).

5. See BRih, supra note 175, XIV at 6; NAR, infra note 230, X at 5.

6. See BRih, supra note 175, XIV at 9; NAR, infra note 230, X at 5.

7. See KAT, supra note 140, at verse 671.

8. See SUKRANITI, at 305 (B.K. SARKAS TRANSL.) (1975); ARTHASASTRA, supra note 94, at 27.2. Note that monarchs could refuse to approve combinations of sreni. See NARADASMRTI, X at 4 – 6; THE MINOR LAW BOOKS (JULIUS JOLLY ED. & TRANS.) IN SACRED BOOKS OF THE EAST Vol. 33 (1965) [hereinafter NAR, X at 4 – 6 referring to Book 10 verses 4 – 6]. It seems reasonable to assume that the grounds for doing this are similar to the grounds for refusing to approve the creation of a sreni.
Entry of new members followed two steps. First, the prospective member would need to build mutual confidence with pre-existing members. There were multiple ways in which this could be accomplished including undergoing a particular kind of “ordeal” (koshā), which may not be physically challenging, but had random elements to it, or agreeing to the sreni dharma (lekha-kriya), or having a person of high standing vouch for a new member and act as guarantor (madhyastha).

Second, once mutual confidence was established the admission of a new member was normally put to a vote of the sreni assembly. If admitted, the new member would immediately share all the assets and liabilities with all other sreni members. The rules for sharing assets, liabilities and profits were essentially the same as in Post-Mauryan times.

Of course, the sreni was not necessarily a life long commitment. If a person wished to leave the sreni that person could generally do so without the assembly’s approval. Upon exit, the member would no longer have any claim to the assets or liabilities of the sreni. However, it was possible for the exit of a member to have additional consequences. For example, if a member left the sreni after work had been commenced on a project then it appears that person could be fined as in Post-Mauryan times. Moreover, if a member was removed from the sreni (for, say, the violation of sreni dharma) then that probably made it more difficult for a person to enter another sreni given the reputational consequences of his unceremonious removal.

One more point is noteworthy. In Ancient India the caste system was quite important. What makes the sreni so unique is that it permitted people from different castes to enter and practice the same profession and to leave the sreni of their own volition and enter different sreni if they wanted. The degree of labor mobility suggested by the procedure for entry and exit into a sreni stands in marked contrast to the generally perceived rigidity of the caste system.

The written materials from this time also provide indications on the various sources and uses of sreni funding. However, regardless of the source they were all treated as

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231 See BRHI, supra note 175, XVII at 7.
232 See id; NAR, supra note 177, I at 327 – 31.
233 See BRHI, supra note 175, XVII at 7.
234 See id., at 7.
235 See VIRAMITRODAYA, at 432.
236 See id., at verse 675 – 76. Entry into the sreni did not preclude members from maintaining separate individual businesses. See THAPLYAL, supra note 17, at 37 – 42. This underscores the separate entity status of the sreni.
237 See id., at verse 675; YAJ, supra note 94, II at 259; BRHI, supra note 175, XIV at 3 – 5, 27 – 32.
238 See MAJUDAR, supra note 17, at 58.
239 See KAT, supra note 140, at verses 675 – 76.
240 See ARTHASHASTRA, supra note 94, at 3.14.1 - .3. For more discussion on these fines see supra text accompanying notes 141 - 142.
241 See THAPLYAL, supra note 17, at 78.
242 See e.g., SUVRA JAISWAL, CASTE: ORIGIN, FUNCTION, AND DIMENSIONS OF CHANGE (1998); RANJENDRA PANDEY, THE CASTE SYSTEM IN INDIA, MYTH AND REALITY (1986); ARVIND DASS & SITA DEULKAR, eds., CASTE SYSTEM: A HOLISTIC VIEW, VOLS. 1-4 (2002).
belonging to the entire sreni rather than specific members. This underscores the separate entity status of the sreni and is buttressed by significant penalties for members who received something for the sreni and kept it for themselves.

The sources of assets included the individual contributions made by members to join the sreni, the gifts given by the monarch to various members of the sreni for the sreni, the profits from the various completed projects, the profits earned on other (e.g., banking) activities, and the penalties recovered from sreni members when they violated sreni dharma. This last item underscores both that sreni dharma was enforced and that there were ways to distinguish individual sreni members’ assets from those of the sreni otherwise these penalties could not easily be considered a separate source of income.

Sreni assets were utilized for the costs of producing goods for sale (for craft sreni), purchasing goods for later resale (for merchant sreni), transporting and protecting goods during travel (e.g., hiring guards), and the expenses associated with running a sreni. However, there were other costs that are significant from a governance perspective.

First, sreni often kept funds for defending their members against legal action. Examples include sreni arranging bail for members. This bears some resemblance to modern corporations indemnifying the legal expenses of directors and officers. Second, sreni funds could be expended to provide additional incentives to its members. There are instances of sreni rewarding members who protected sreni property against robbers and thieves on trade caravans. One might view this as an early form of incentive payment to induce extra effort from members. There were yet other incentive rules that mirrored those used during Post-Mauryan times.

Once we have taken account of the assets and liabilities the issue arises as to how the entitlements of the sreni members in these assets and liabilities were determined. As in Post-Mauryan times there were a variety of sharing formulae including equal sharing, sharing based on capital contribution or skill or some combination. Further, in the partnership

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244 See KAT, supra note 140, at verse 677; BRIH, supra note 175, XVII at 24. The sreni thus owned the productive assets.
245 See YAJ, supra note 94, II at 190; BRIH, supra note 175, XVII at 22 (stating “[w]hatever is obtained then by a man, shall belong to all in common...it shall be divided in due proportion”).
246 See KAT, supra note 140, at verses 625 – 26.
247 See id., at 677; BRIH, supra note 175, XVII at 24 (stating “[w]hatever is obtained or preserved by the members...or spent on behalf of the society, or acquired through the king's favour, is common to all (members of the society)”).
248 See THAPLYAL, supra note 17, at 70.
249 See id., at 70.
250 See NAR, supra note 177, III at 4.
251 See THAPLYAL, supra note 17, at 72 (citing to an instance in the Dasakumara-charita)
252 See id.
253 See CLARK, supra note 6, at 664 – 74; ALLEN & KRAAKMAN, supra note 6, at 243 – 48; KLEIN, RAMSEYER & BAINBRIDGE, supra note 6, at 525 – 38.
254 See BRIH, supra note 175, XIV, at 10.
256 For example, if a member acted against the advice of other members and caused loss then that member would bear the whole loss, whilst if the activity turned a profit that member would receive an additional one-tenth of that profit.
257 See KAT, supra note 140, at verse 675.
258 See NAR, supra note 177, III at 2 – 5; YAJ, supra note 94, II at 259; BRIH, supra note 175, XIV at 3 – 4.
context the sharing rules were quite detailed often providing larger shares for more senior, and perhaps supervising, people suggesting considerable thought was given on how to gear incentives and that these incentives would vary based on context.

Finally, we have significant evidence for the other roles the sreni occupied in society. The sreni often acted as a bank for its members and later non-members and generally had an excellent reputation for reliability and stability. For example, they sometimes minted coins used in commercial transactions and often received deposits (usually perpetual endowments) from people, including monarchs and high officials, where the interest earned was used primarily for charitable and religious purposes. Additionally, sreni provided loans for a variety of projects and made sizable profits from the interest.

However, sreni were active in other aspects of life besides trade. Many sreni engaged in acts to support charity and religious institutions (e.g., aid during natural disasters or maintaining a public garden or religious edifice). In addition, some sreni took on adjudicative tasks that did not always involve their members. Some sources indicate that the sreni could be part of the king’s court (i.e., the highest court) in deciding certain disputes. In particular, disputes between trading communities that reached the king’s court could be handed over to a sreni (i.e., headman or executive officers) for decision. However, the sreni could also hear smaller claims that primarily involved economic disputes. There were rules of appeal and so forth, but the presence of sreni in the adjudicative setting is an important and intriguing matter worthy of greater inquiry elsewhere.

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259 See Brih, supra note 175, XIV at 29 – 32 (noting that profits might be shared in the ratio of 4:3:2:1 for the head of a program, the master craftsman, a fully trained person and an apprentice, respectively, and that in other contexts the head could receive twice the share of others); Kat, supra note 140, at verses 632 – 36 (same).

260 See Thaplyal, supra note 17, at 87 – 96.

261 See id., at 89 – 95.

262 See id., at 94.

263 See Brih, supra note 175, XVII, at 11 – 12, 22 – 23. Thaplyal suggests that sreni may have served to insure the poor against calamities. See Thaplyal, supra note 17, at 86. Normally insurance refers to the paying of a premium by the insured. There is no suggestion that the poor paid any premium to the sreni. Rather this seems to be acts of generosity that in modern times go as charity or good public relations. See infra text accompanying note 184.

Note, however, that sreni management could not simply spend sreni resources on whatever they liked. The expenditure could not be contrary to the sreni dharma of this sreni. See Ya, supra note 94, II at 186. This seems quite close to the ultra vires doctrine. See Clark, supra note 4, at 675 – 76.

264 See Thaplyal, supra note 17, at 97 – 98 (discussing stories mentioned in the Vyasdevabindhi and Mricchabhaktiham).

265 See id.

266 See Majmudar, supra note 17, at 62 – 65. The sreni courts were subject to procedural rules similar to other courts and were usually set up in the locale of the dispute. See Brih, supra note 175, II – VI (discussing various aspects of procedure); Kat, supra note 140, at verses 96 – 410 (same). However, the sreni could not adjudicate criminal matters (that was the king’s sole province). See Majmudar, supra note 17, at 64.

267 In these smaller disputes the disappointed litigant could potentially appeal to the king’s court, but if the highest court upheld the guilty judgment then the guilty party would pay a bigger penalty and if the highest court overturned the judgment then a fine was imposed on the lower court officer. See Thaplyal, supra note 17, at 101 – 02. This might help to constrain the number of appeals, enhance lower court accuracy, and ensure that cases where the appellant thought he had a more realistic chance of success were appealed. See Steven Shavell, The Appeals Process as a Means of Error Correction, 24 J. Legal Stud. 379, 381 (1995). The penalties on officials probably provided a strong incentive to “get it right” in the first instance. Cf. J. Mark Ramseyer & Eric B. Rasmusen, Why is the Japanese Conviction Rate So High, 30 J. Legal Stud. 53 (2001) (arguing that the high conviction rate in Japan is due to the stigma imposed on prosecutors (and negative career repercussions) when they fail to obtain convictions, leading them to prosecute only strong cases).
IX. POST-GUPTA & HARSHA VARDHANA

The Gupta confederacy began to weaken over time and invasions from the Huns in the North accelerated its decline. By 550 A.D. the Empire fell. Soon after the Guptas one of the kingdoms that took over part of their empire – the Pushyabhuitis – began to expand under Harsha Vardhana. His reign began in 606 A.D. (based again on a lose confederacy) and nearly rivaled the Guptas. Harsha was an impressive military leader, an able statesman and diplomat, and a brilliant administrator. Moreover, during his reign (606 A.D. to 647 A.D.) trade expanded much like it did in the Gupta Empire with an increasing focus on the Far East and South East Asia. However, upon Harsha’s passing his kingdom fell apart and India descended to warring feudal lords and small kingdoms.

Over the next 400 or so years a number of kingdoms ruled parts of India with increasingly shifting boundaries, internecine warfare and a general decline in trade. The decline in trade was due in large part to the frequent wars within India and general on-going political instability, which made long distance land trade more risky. Also, in these conditions many *sreni* members were forced to move around thereby impeding the cohesion needed for effective functioning of the *sreni* as well as making it harder to plan out projects. This was further exacerbated by diminishing foreign trade with the dwindling Roman Empire. The Roman Empire was now a weaker trading partner and could not provide the kind of support it did to the Indian economy during Post-Mauryan times as noted in Part VII. In light of all this, the *sreni* began to shrink in size and importance. Indeed, to make matters worse the *sreni* became castes in themselves and entry hardened into their profession which deprived the *sreni* of a broad base of talent and potentially reduced innovation in it. For all intents and purposes the *sreni* were no longer a significant force.

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268 By 480 A.D. the Huns broke through the Gupta defenses in Northern India. *See Mookerji, supra note 181, at 120. The remnants of the Gupta Empire and their allies fought back and either “Indianized” or repelled the Huns by 550 A.D., but by then it was too late for the Gupta Empire. *See id.*

269 The last official ruler was Vishnugupta. *See id., at 104 – 06.

270 *See Shankar Goyal, History and Historiography of the Age of Harsha (1992); Radha Kumud Mookerji, Harsha (1926). One of the earliest sources is the play by Bana entitled *Harshacharita*. *See Harshacharita of Bana (E.B. Cowell & F.W. Thomas trnsl.) (2d ed. 1968).*

271 *See Goyal, supra note 270, at 167 – 181, 214 – 226. Indeed, many important aspects of modern Hinduism date from his era, although Harsha is reputed to have been a Buddhist. *See Kosambi, supra note 116, at 180 – 82; Bose, supra note 29, at 102.*

272 *See Goyal, supra note 270, at 182 – 226.

273 *See Das, supra note 19, at 156 – 74 (discussing trade with China and Japan). There is evidence attesting to the opulence of the empire, the large trade with the East, and the general beneficence of Harsha. *See id.; Goyal, supra note 270, at 214 – 26. A detailed account of life in India is provided in T. Watters, On Yuan Chwang’s Travels in India (1961). *See Thaplyal, supra note 17, at 143.*

274 The South Indian kingdoms have already been mentioned in Part VII, but in the North four further kingdoms merit brief attention. In the East the Pala dynasty ruled for about 300 years until it was replaced by the Senas. *See generally Akshay Kumar Maitya, The Fall of the Pala Empire (1987). Central and Northeastern India was taken over by the Pratiharas until about the mid 900s. *See generally B.N. Puri, The History of the Gaurara-Pratharas (1986). In the middle of India the Rashtrakutas established their reign for nearly 250 years and were probably the largest kingdom of this post-Harsha era. *See Hampa Nagarajaiah, A History of the Rasrakutas of Malkhed and Jainism 1-60 (discussing the monarchs and feudatories of the Rashtrakutas), 293 (providing a map of the Rashtrakuta kingdom)(2000). Finally, in Western and Northern India there were a series of Rajput kingdoms that came of age during the 400 years between Harsha and the Islamic invasions. *See K.N. Sethi, The Growth of the Paramara Power in Malwa passim (1978).*

275 *See Thaplyal, supra note 17, at 142 – 43.

276 *See id., at 143.

277 *See id., at 140 – 41.

278 Fewer people placed their deposits with *sreni* which worsened the financial position of *sreni. See id., at 143.

279 *See id., at 144 – 45.*
Around 1000 A.D. most of Northern India was embroiled in Islamic invasions that led to the establishment of the Delhi Sultanate in the early 1100s and the South was invaded around 1300 A.D.281 During and around this period there was much on-going struggle to obtain control of India by many different groups and coalitions. This, no doubt, weakened the force of the remaining sreni. Moreover, it would have been difficult to revive the sreni if the Islamic rulers relied on Middle Eastern Islamic law which did not appear to recognize private commercial organizational entities.282 Nonetheless, even before the Islamic invasions the sreni had been considerably weakened in India and did not appear to be as important players as they once were. The Ancient Era had indeed ended, but the growth of trade and organizational forms in India had been exceptional.

The evidence from this time frame indicates that the basic features of the sreni were largely the same as in Gupta times.283 ‘There is, however, a little more detail provided about the possibility of transferability of interest and also on the governance of non-economic organizational entities, such as municipal and village entities, which may provide insights on economic entities.284

It appears possible for members of a municipal entity (like a village) to sell their shares in the entity. Inscriptional evidence suggests that it was fairly common for such transactions to occur either by outright sale or by inheritance.285 It seems reasonable to suppose that if a municipal entity would permit transferability then a sreni used in business would as well because liquidity is probably quite important to someone in an economic entity.286 However, one cannot be certain and we have little basis on which to know how such a transfer might occur. Indeed, given the method of being admitted to the sreni (by vote of the members) one suspects transferring one’s interest might require the same kind of vote or approval. Moreover, the municipal entity ‘shares’ might have been tied to owning land in that area in which case these ‘shares’ are just attached to real property and transferable only with that property. We, however, have little evidence to know for sure.

However, the ability to transfer municipal shares raises interesting questions about the possible acquisition of shares of one entity by another entity or its members.

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281 See AGRAWALA, supra note 77, at 281 – 85.
282 See Timur Kuran, Why the Middle East is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation, 18 JOURNAL OF ECONOMIC PERSPECTIVES 71 (2004) [hereinafter Stagnation], Timur Kuran, The Logic of Financial Westernization in the Middle East, 56 JOURNAL OF ECONOMIC BEHAVIOR AND ORGANIZATION 593 (2005) [hereinafter Westernization]. As the Islamic invasions in India come after the period I am examining I do not comment on the exact nature of the Islamic law that was implemented in India. It is possible that the law may have been different than that from the Middle East.
283 See DAS, supra note 19, at 161 – 66.
284 The entities went by a variety of names – gana, sangha, sabha, sreni, and others too. See MAJMUDAR, supra note 17, at 97 – 105, 161 – 169.
285 See MAJMUDAR, supra note 17, at 162 – 63. Some inscriptions suggest that any person who had assembly shares (and this was not everyone in the village) may be required to vote for people who were versed in the Vedas only and must not vote in an obstructionist manner because that would result in a fine. See id., at 162 – 66.
286 It also appears possible to have less than full membership in a municipal entity and this would not entitle the holder to vote. See id., at 162. Moreover, such ownership may come about as a result of inheritance — one share bequeathed to 4 children would leave each child with only a quarter of a share.
287 Although this seems reasonable based on modern understandings of the importance of liquidity (see STEPHEN A. ROSS, RANDOLPH W. WESTERFIELD & JEFFREY JAFFE, CORPORATE FINANCE 16 (2005)), it is plausible that business people in those days may have placed a lesser value on liquidity, but it would be surprising if they placed a lesser value on liquidity than people in a municipal entity.
Inscriptional evidence indicates that villages could combine by agreement of the voting members of their assemblies.\textsuperscript{287} Although it is quite likely that this may have been done to block an invading force (like a treaty) or to provide a broader base of support during a famine, nonetheless such combinations of municipal entities were possible.\textsuperscript{288} Moreover, some evidence exists to suggest that combinations of \textit{sreni} required the approval of the monarch, which implies that such combinations could occur too.\textsuperscript{289}

What this means for the transference of interests in the \textit{sreni} is difficult to discern. The presence of such combinations suggests that it was possible for one entity to acquire interests in another, but that does not mean transferability per se – it could simply mean more members were added to a particular \textit{sreni} or municipal entity thereby effecting an “acquisition” of sorts. This could happen without one member having the right to “sell” shares to someone else because new members might be added without requiring existing members to sell or transfer their shares (e.g., a share issuance). However, there is little evidence on which we can rely to determine this. In the end, the issue of transferability may best be treated as something open to, and meriting, further investigation.

Aside from share transference the inscriptional evidence provides descriptions of how the municipal entities were run. They were operated in a similar manner to \textit{sreni} – assembly voting mattered, open discussion was important, and people felt bound by assembly decisions.\textsuperscript{290} In spite of the importance of these public debates and votes, much of the village work was run by elaborate committees dedicated to certain tasks.\textsuperscript{291} For example, there was often an annual supervision committee, garden supervision committee (the common garden around the village), and tank supervision committee (the village bath or water tank).\textsuperscript{292}

Although many questions can be raised about the governance of these committees, I focus on how committee members were selected. From this evidence it appears that the process had two steps. First, there were a number of qualifications that potential committee members needed to satisfy. Second, there was the process of how the selection of members would take place.

The qualifications evince a strong concern with independence, competence, and proper incentives. For example, those people who have not submitted accounts from prior committee assignments, and their relations, are not qualified to sit on committees.\textsuperscript{293} This combines concerns with accountability and transparency (the need to have accounts) with independence requirements (no relations of “tainted” persons are permitted to run).\textsuperscript{294}

\textsuperscript{287} See Majumdar, supra note 17, at 211 (quoting from the Tamil endorsement on the Udayendiram plates of Nandivaran (roughly 10\textsuperscript{th} Century A.D.) which states “we, (the members of) the assembly of Kanchivayil and we (the members of) the assembly of Udaya-chandra-mangalam (have agreed as follows): - we, (the inhabitants of) these two villages, having joined (and) having become one, shall prosper as one village from this (date)").

\textsuperscript{288} See Nar, supra note 177, X at 4 – 6.

\textsuperscript{289} See id.

\textsuperscript{290} See id., at 125 – 47. Moreover, many municipal entities had the power to levy taxes and regulate the price of commodities within their realm. See id., at 187.

\textsuperscript{291} See id., at 157 – 77.

\textsuperscript{292} See id., at 167 – 77.

\textsuperscript{293} See Majumdar, supra note 17, at 170 – 71.

\textsuperscript{294} See id., at 177. Those violating certain rules or engaging in inappropriate behavior were prohibited from serving on committees (as well as their relations). See id., at 171 – 73.
Moreover, those who have not served on committees for three years are specifically listed as potential candidates. This again helps to ensure some degree of independence and that the burdens (and power) of administration are shared amongst the municipality.

There are also positive qualifications. Specifically, the person running for the committee must either own a certain threshold amount of land or own a lesser amount of land but be well versed in certain scriptural knowledge. The requirement to own land ensures that those who have something at stake in the municipality (landowners) are on committees. They are more likely to pay attention to municipal concerns and exercise care than those with few assets in the municipality. At the same time, the option to permit a lesser landholder, but with special knowledge, to sit on these committees ensures that those with both expertise and some assets at stake are able to run.

In addition to these qualifications and disqualifications, the selection process appears likely to reduce corruption and fraud. The process involved placing the names of qualified candidates in a pot and then having their names drawn from that pot. The items containing the details of the candidates were referred to as pot tickets and the process from this point is described in the following translation of an inscription:

“The pot tickets shall be opened in the midst of a full meeting of the village assembly, [all] the temple priests, who happen to be in the village on the day in question, shall, without any exception [be present in the assembly]. [The] eldest [priest] shall stand up and lift an (empty) pot so as to be seen by all the people present. Any young boy who knows nothing about the matter shall hand over to the standing priest one of (the packets of) pot tickets. The content …shall be transferred to the (empty) pot and (well) shaken. From this pot one ticket shall be taken out (by the young boy?) and made over to the arbitrator. While taking charge of the ticket the arbitrator shall receive it on the palm of his hand with the five fingers open. He shall read out (the name on) the ticket thus received. The ticket read by him shall also be read out by all the priests then present at the hall. The name thus read out shall be put down (and accepted). Similarly one man shall be chosen for each of the thirty wards.”

“Of the thirty persons thus chosen, those who had previously been on the ‘garden supervision’ (committee) and on the ‘tank supervision’ (committee), and those who are advanced in learning and those who are advanced in age, shall be chosen for (the committee of) ‘annual supervision’. Of the rest, twelve shall be taken for the ‘garden supervision’ (committee), and the remaining six shall form the ‘tank supervision’ (committee). . . . The great men who are members of these

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295 See id., at 170 – 71 (noting that “those who have acquired their wealth by honest means, whose minds are pure and who have not been on (any of) these committees for the last three years shall also be chosen.”)

296 See id., at 170 (noting that “(a) He must own more than a quarter (red) of tax-paying land” (b) “He must have a house built on his own site” (c) “He must know the Mantras of the (d) “Even if he owns only one-eighth (red) of land, he shall have (his name) written on a pot ticket and put into (the pot) in case he has learnt one Veda and one of the four Vyasa, and can explain it (to others).”)

297 See ALLEN & KRAAKMAN, supra note 6, at 40 – 42 (noting an analogous argument in the partnership context).

298 See id., at 173 – 77.
three committees shall hold office for full 360 days and then retire. If any one who is on the committees is found guilty of any offense, he shall be removed (at once). …”

The attempt to make the selection process visible to the assembly and to require multiple people to read out the names is presumably designed to avoid fraud or corruption. The hierarchy of committee assignments indicates what were considered the more important assignments (e.g., annual supervision committee) and the assignment of those with the most experience to these committees.

The overall sense one gets is an attempt, however rudimentary, to obtain independence, accountability, transparency, expertise, experience and proper incentives along with attempting to reduce fraud and corruption. These are concerns prevalent even today in virtually any organizational form.

Having covered considerable territory in describing and examining the development of the sreni it may prove helpful to summarize it. Table 3 provides an overview of sreni development over time. As both the economy and the sreni grew we see an increase in the description of the features of the sreni. Moreover, as the analysis in the last few parts suggests that development seems to track, in a predictable manner, changes in the economic and political environment.

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209 See id., at 170 – 77. See also id., at 177 (discussing a village “dismissing a village accountant who had cheated them and preventing his descendants and relations from writing the accounts of the village”).
<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Early Period</th>
<th>Buddhism &amp; Jainism</th>
<th>Mauryan Empire</th>
<th>Post-Mauryan</th>
<th>Gupta Empire</th>
<th>Post-Gupta</th>
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<tbody>
<tr>
<td>Number of Professions</td>
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<td>18-27</td>
<td>30 plus</td>
<td>74</td>
<td>150</td>
<td>-</td>
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<tr>
<td>Separate Entity</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Centralized Management</td>
<td>Headman</td>
<td>Headman</td>
<td>Headman</td>
<td>Headman &amp; Officers</td>
<td>Headman &amp; Officers</td>
<td>Headman &amp; Officers</td>
</tr>
<tr>
<td>Entity Shielding or Asset Partitioning</td>
<td>-</td>
<td>-</td>
<td>Yes probably</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Transferability</td>
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<td>-</td>
<td>-</td>
<td>Perhaps</td>
<td>Perhaps</td>
<td>-</td>
</tr>
<tr>
<td>Limited Liability</td>
<td>-</td>
<td>No probably</td>
<td>No probably</td>
<td>No probably</td>
<td>No probably</td>
<td>No probably</td>
</tr>
<tr>
<td>Agent bind entity</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Elect Management?</td>
<td>-</td>
<td>Perhaps hereditary with approval</td>
<td>Mixed - hereditary &amp; voting too.</td>
<td>Yes probably</td>
<td>Yes probably</td>
<td>Yes probably</td>
</tr>
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<td>Remove management?</td>
<td>-</td>
<td>-</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Duty of Loyalty</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>Yes probably</td>
<td>Yes probably</td>
<td>Yes probably</td>
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<tr>
<td>Duty of Care</td>
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<td>-</td>
<td>-</td>
<td>Yes probably</td>
<td>Yes probably</td>
<td>Yes probably</td>
</tr>
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<td>Liability insurance</td>
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<td>-</td>
<td>-</td>
<td>-</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<td>Internal rules binding?</td>
<td>-</td>
<td>Yes: recommend</td>
<td>Yes: expectation</td>
<td>Yes: strong expectation</td>
<td>Yes: required</td>
<td>Yes: required</td>
</tr>
<tr>
<td>Reimburse legal defense?</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<tr>
<td>Formation is easy</td>
<td>-</td>
<td>Unknown</td>
<td>Yes probably</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Register with state</td>
<td>-</td>
<td>-</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>State approval?</td>
<td>-</td>
<td>-</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Incentive payments</td>
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<td>-</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Entry is easy</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>Some conditions, no caste bars</td>
<td>Some conditions, no caste bars</td>
</tr>
<tr>
<td>Sharing assets and liabilities</td>
<td>-</td>
<td>-</td>
<td>Equal or by agreement</td>
<td>Equal, by agreement, or based on capital provided</td>
<td>Equal, by agreement, or based on capital or skill provided</td>
<td>Equal, by agreement, or based on capital or skill provided</td>
</tr>
<tr>
<td>Exit is easy</td>
<td>-</td>
<td>-</td>
<td>Yes, with fines perhaps</td>
<td>Yes, with fines perhaps</td>
<td>Yes, with fines perhaps</td>
<td>Yes, with fines perhaps</td>
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<td>Board/Committee Independence</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
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<tr>
<td>Board qualifications</td>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Open debate &amp; shareholder suggestions?</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Transparency valuable?</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>Yes probably</td>
</tr>
</tbody>
</table>

**Key:**
- “unknown” means evidence exists, but is inconclusive
- “-“ means little evidence in this time
- “yes” or “probably yes” mean the evidence suggests trait was present in this time
X. SUMMARY & COMMENTARY

The political, economic and social conditions surrounding the development of the *sreni* in Ancient India reveal a number of things importance to understanding the development of organizational forms of business. Moreover, the analysis provides insights into issues of interest to corporate law scholarship today.

First, the evidence suggests the *sreni* existed as early as the 8th Century B.C., which predates the Roman proto-corporations by five centuries. This is important in terms of understanding the antiquity of the *sreni* and business organizations and because it helps to frame the analytical discussion around it.  

Second, the *sreni* developed along the theoretical lines suggested in Part II. In particular, the *sreni* grew as trade expanded (which tends to increase demand for such entities) and as the supply of the monitoring methods needed for its development arose. These methods included good physical monitoring of *sreni* members (due to localized professions) thereby potentially reducing agency costs and good accounting rules and entity shielding thereby reducing creditor information costs. Moreover, there appears to be evidence of entity shielding in India from, arguably, around the 3rd Century B.C. and most likely from the Post-Mauryan era (circa 1st Century B.C.) onwards. This provides some support for the thesis advanced by Hansmann, Kraakman & Squire on the importance of entity shielding to the development of the firm in Europe, but from a different and considerably earlier time frame. However, the evidence presented here does not cover the early development of the *sreni* (before the 3rd Century B.C.), which leaves us with little information about whether entity shielding was necessary for the early *sreni*.

Third, *sreni dharma* and the rules surrounding *sreni* seem to have developed in ways consistent with economic factors. Examples discussed in the last few pages include the increasingly detailed rules of governance (e.g., rules for aggrieved members, sharing assets and liabilities, the presence of executive officers), the mobility of *sreni*, multi-profession *sreni*, the greater legal respect accorded to *sreni dharma* and the greater legal enforcement of its terms (from recommendations to requirements) and many others. Moreover, *sreni dharma* and the rules surrounding *sreni* bear much similarity to modern corporate governance rules. This suggests that some matters of governance raise concerns that are consistent over time when organizations grow to similar levels. Moreover, not only are the concerns similar, but so also are many of the methods of addressing them. This is especially the case with *sreni* and Anglo-American corporations as both tend to have more dispersed ownership.

Although all of these points are important and the primary focus of this paper, they raise a number of other issues of interest to scholarship in corporate law and other areas. I

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30 I am not suggesting that business organizations did not develop earlier elsewhere (e.g., Mesopotamia). This paper does not explore that issue and I am not aware of detailed evidence on such entities in other early civilizations. The only sources I am aware of mention partnership-like entities in Mesopotamia and Babylon without a focus on institutional or legal perspectives. See RATNAGAR, supra note 78; Ratnagar, supra note 78.

31 Although there are no instances of controlling shareholders in *sreni*, one author suggests that large merchant *sreni* may have exercised some control over smaller artisan *sreni* (how is not entirely clear). See KIRAN KUMAR THAPLYAL, STUDIES IN ANCIENT INDIAN SEALS 241 (1962).
can only begin an exploration of these subjects in the next few paragraphs with more
detailed analyses left for future work.

For example, the consistency of *sreni dharma* (and other rules) with economic factors
and the similarity to modern rules of corporate governance has interesting, albeit ambiguous
implications, for the convergence debate (i.e., will corporate governance systems converge).
On one hand, the consistency of *sreni* governance development suggests that
path dependence is a possibility because *sreni* governance stayed on this “path” for at least
1000 years. However, given how little the various political structures interfered with
internal *sreni* governance one should be cautious in drawing strong inferences about path
dependence. After all, monarchs generally allowed *sreni* to devise their own *sreni dharma* and
then provided some state support in enforcing them. Thus, the continuity in internal
governance may largely be an artifact of the relatively consistent treatment and development
of *sreni dharma* over time. Moreover, given how the *sreni* developed features suited to an
often changing business environment one is less inclined to think path dependence is very
strong in Ancient India as that might be expected to lead to arbitrary and difficult to change
(i.e., path dependent) features.

However, it is unclear if convergence is occurring because normally the argument
behind convergence is that competition in the product and capital markets is placing
pressure on the entity to enhance its governance. We do not have sufficient evidence
regarding these features of the competitive environment and hence are not in a position to
strongly favor a convergence account. Nonetheless, it is intriguing that when left to their
own devices the *sreni* seemed to develop rules similar to the Anglo-American corporation,
which suggests that convergence has some bite. However, the *sreni* started out with a more
dispersed ownership structure so that its internal governance was probably more likely to
match the Anglo-American approach than the approaches with less dispersed ownership
structures. Overall, it may be too early to make strong conclusions about the implications
for the convergence debate – greater investigation is merited.

Another matter raised by the relative uniformity over time of *sreni dharma* and
associated laws is: how was this apparent uniformity achieved? Although we have little
evidence to base firm conclusions on, it appears that the government was not the primary
force behind uniformity. This is because most of India was rarely under a single ruler
(except during Mauryan times). Further, arguments analogous to those about state
competition for corporate charters in the modern US influencing the development of
corporate law seem unlikely to provide an explanation. This is because it is doubtful that a

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302 On convergence see Henry Hansmann & Reinier H. Kraakman, *The End of History for Corporate Law*, 89 GEO.
L.J. 439 (2001); Lucian A. Bebchuk & Mark Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, 52 STAN. L.
REV. 127 (1999); Ronald J. Gilson, *Globalizing Corporate Governance: Convergence of Form or Function*, 49 AM. J. COMP. L. 329

303 Moreover, one might argue that comparison with the Roman Empire reinforces path dependence because the Romans
did not adopt something like the *sreni* even though they had many centuries of trade with India and the *sreni*.

304 See Hansmann & Kraakman, supra note 302.

305 I use the term “apparent” because to hold a stronger view would require viewing the actual *sreni dharma* of
many *sreni*, but the *sreni dharma* do not generally seem to have survived the years.

306 There is a vast literature on this topic. See e.g., Lucian A. Bebchuk, *Federalism and the Corporation: The Desirable
sreni could set up operations in one state and import governance rules from another (as firms can in the US). Without this, the state charter competition argument is an unlikely explanation.\footnote{307}

Another explanation may be that the scholars had a hand in building uniformity. Some scholars had considerable influence on monarchs (e.g., Chanakya), but they may also have had influence on the individual sreni. Often the executive officers of the sreni were expected to be versed in the Vedas, which suggests they were often Brahmins (the scholarly and priestly caste).\footnote{308} If so, and given that Brahmins were also promulgating the law books and codes, one might expect their influence to be seen at both the individual sreni level and the law code level. If the scholars were generally united in their thinking on the sreni,\footnote{309} then one might expect uniformity to develop. In any case, it is too early to tell which of these explanations is most persuasive. Nonetheless, it is a matter worthy of further inquiry.

In addition to these issues, studying the sreni may provide insight on an issue of importance to economic development: what is the role of the state in facilitating growth.\footnote{310} In Ancient India trade grew under a variety of government structures. There were apparently peaceful loose city state structures (Indus Area Civilizations), a more centralized empire structure (the Mauryans), a less peaceful structure of multiple kingdoms (the Post-Mauryan age), and a looser empire structure with many tributaries and alliances (the Guptas).

A natural question is whether these structures are equally good at encouraging trade and growth of sreni. This, of course, phrases the question too broadly and any answer warrants caveats. First, state structure is not the only determinant of trade growth and other factors such as natural resources, technology, foreign trade, and just luck are also relevant.\footnote{311} Second, “loose empire” and “centralized empire” are broad labels that encompass many different kinds of structures. Greater attention to the institutional, economic, and political characteristics of each particular regime would be necessary in assessing the impact on trade. Nonetheless, one can provide a preview of some, not all, of the likely analyses.

Economic growth appears to be fastest during the Gupta Empire,\footnote{312} which occupied an intermediate point on the continuum between strongly centralized and strongly decentralized state structures. The Guptas provided safety along trade routes and reduced transactions costs (e.g., using the same currency and weights systems). Both of these would have benefited trade. However, as noted earlier the Guptas also provided a great deal of flexibility to the sreni in determining how to govern themselves and organize their business. This benefits trade by permitting entities to adapt efficiently to their environment. This, however, does not end the discussion because the other state structures in Ancient India had considerable economic growth too. How did that happen?

\footnote{307} Nevertheless, if sreni in one area were very profitable then other sreni elsewhere might observe this and learn from it.

\footnote{308} See Majmudar, supra note 17, at 55 (noting that the Brahmins were most likely to be versed in the Vedas).

\footnote{309} Although it is by no means clear that the scholars were united, the law books do tend to be quite similar.

\footnote{310} For a general overview and critique see Avinash Dixit, *Evaluating Recipes for Development Success*, on file with author.

\footnote{311} See generally Weber, supra note 16, at 151 – 63; Dixit, supra note 310.

\footnote{312} See Mookerji, supra note 181, at 49, 148 – 50; Thaplyal, supra note 17, at 32 – 36; Das, supra note 19, at 136 – 39, 144 – 45.
First, under virtually every state structure the *sreni* were given considerable discretion to manage their own internal affairs. Thus, this adaptive efficiency benefit was generally present.

Second, safety along trade routes and uniformity of trade measures and currency can be achieved under various state structures, but with differing costs and benefits. For example, a centralized empire can require by law or fiat uniformity in practices, currency and laws and provide some level of safety. \(^{313}\) However, uniformity via fiat may come with costs. To establish and maintain an empire over groups with heterogeneous interests will require effort (and hence unification costs), is subject to its own inefficiencies (e.g., a slow and/or corrupt bureaucracy), \(^{314}\) and uniformity is not always efficient (e.g., requiring the same clothing for school children in Alaska and Hawaii). \(^{315}\) We have a trade off between the benefits and costs of uniformity.

A similar trade off can occur in other state structures. In more decentralized state structures uniformity requires the coordinated effort of many states and their leaders and is therefore likely to be more costly (i.e., have high coordination costs). \(^{316}\) However, in comparison to a centralized empire we might expect less unification and corruption costs and that consensus or uniformity may develop in ways that are potentially efficient as the parties obtain information from each other and thereby learn more about the likely effects of various rules or decisions. Indeed, one would expect that coordination costs are probably highest in the less peaceful kingdoms, then loose city states, then the Gupta Empire, and least in the Mauryan. On the other hand, corruption, bureaucracy, and unification costs would probably go in the reverse order. \(^{317}\)

Thus, the optimal combination of costs in a particular environment is likely to vary considerably. Indeed, in the abstract, it may be too early to say which state structure is best for trade. A great deal may depend on the population being governed and the homogeneity of their interests. Much may also depend on the other factors relevant to trade. For example, it may not make sense to apply the loose alliance structure of the Guptas to Mauryan times when kingdoms were bickering with each other and there was a large and able Greek force in the neighborhood. These kinds of considerations may go some distance in explaining how trade grew in such different state structures.

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\(^{314}\) See Paulo Mauro, *Corruption and Growth*, 110 Q.J. ECON. 681, 682 – 83 (1995)(discussing corruption). Similar arguments can be made for other attributes of an empire (e.g., security along trade routes, access to markets). See Bose, * supra* note 29, at 236 (discussing features leading to growth of trade); Thaplyal, * supra* note 17, at 18.

\(^{315}\) The most efficient rules may vary between industries and regions. Cf. Romano, * supra* note 306; Behchuk, * supra* note 306.


\(^{317}\) These are, of course, general statements. A loose city state structure may have fewer overall costs than a centralized empire if the city states represent people with more homogenous interests because coordination is probably easier and corruption most likely less. See Mauro, * supra* note 314 (noting corruption is higher in more heterogeneous societies). On norm development in groups with common interests see Robert Ellickson, *Of Course and Castle: Dispute Resolution among Neighbors in Shasta County*, 38 STAN. L. REV. 623 (1985); Lisa Bernstein, *Merchant Law in a Merchant Court: Rethinking the Code’s Search for Immanent Business Norms*, 144 U. PA. L. REV. 1765 (1995).
XI. Conclusion

India is a country of considerable historical antiquity with a long and successful history of trade. For the researcher, this makes it an enviable environment in which to study the development of business organizations. The analysis in this paper suggests that Ancient India had many different forms of business organization including the sreni. Moreover, the sreni can be dated from around 800 B.C. suggesting that they existed at least five centuries before the Roman proto-corporations. Furthermore, the sreni was in continuing and expanding use until 1000 A.D. and was utilized for many different kinds of purposes including business and municipal activities.

When we examine the details of its formation, governance and regulation we find that its development corresponds well to more modern theories about the development of the firm. In particular, the sreni grew as trade expanded and as the supply of the monitoring methodologies needed for its development arose. Moreover, when the features of the sreni are compared to those of Anglo-American corporations we find a significant amount of similarity. The members of the sreni faced many similar concerns to those we face today and they found quite similar ways of addressing those concerns.

However, when we examine sreni development more closely we find a number of interesting results. The sreni grew the fastest in the state structure where there was an intermediate level of centralization and considerable deference to the sreni in managing its internal affairs. Although trade grew under other structures too, it was the relatively less centralized Gupta Empire that saw the greatest advances in trade. Of course, other factors also influenced the development of trade in Ancient India, but these results are interesting nonetheless. Moreover, the development of the sreni provides some fodder for other debates in corporate law scholarship including the convergence debate.

Overall the ability of the sreni to survive and develop in a predictable fashion through so many centuries and such differing environments in Ancient India attests to its resilience and adaptability. Indeed, much can be learned about organizational entities and the business organizations from studying the Ancient Indian sreni.