

THE ECONOMIC HISTORY OF THE CORPORATE FORM IN ANCIENT INDIA

*By: Vikramaditya S. Khanna**

Abstract

The corporation is the most popular form of business organization. Moreover, as the economies of emerging markets leap forward the popularity of the corporate form continues to grow. In light of its widespread appeal, one is naturally inclined to inquire more about the corporation and how it developed over time. Many questions can be pondered including: where did the corporate form originate; how old is it; has the corporation taken the same form everywhere or have there been local variations; and what are the pre-conditions for the development of the corporate form. All these questions are important not only for their own intrinsic value, but also because of the insights they provide about the development of the corporate sector in emerging markets and about the prospects for convergence, of one kind or another, in corporate governance. Indeed, a series of important papers by Henry Hansmann & Reinier Kraakman and other authors examine these questions both in Rome and in Medieval Europe. The aim of this paper is to explore a number of these questions by examining the economic history and development of the corporate form in Ancient India. The paper finds considerable evidence that urges us toward a significant revision of the history and development of the corporate form.

The examination reveals that business people on the Indian subcontinent utilized the corporate form from a very early period. The corporate form (e.g., the *sreni*) was being used in India from at least 800 B.C., and perhaps even earlier, and was in more or less continuous use since then until the advent of the Islamic invasions around 1000 A.D. This provides evidence for the use of the corporate form centuries before the earliest Roman proto-corporations. In fact, the use of the *sreni* in Ancient India was widespread including virtually every kind of business, political and municipal activity. Moreover, when we examine how these entities were structured, governed and regulated we find that they bear many similarities to corporations and, indeed, to modern US corporations. The familiar concerns of agency costs and incentive effects are both present and addressed in quite similar ways as are many other aspects of the law regulating business entities. Further, examining the historical development of the *sreni* indicates that the factors leading to the growth of this corporate form 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 and reduce creditor information costs). Finally, examination of the development of the *sreni* in Ancient India sheds light on the importance of state structure for the growth of trade and the corporate form as well as on prospects for some kind of convergence in corporate governance.

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I. INTRODUCTION

The corporation is the most popular form of business organization.¹ Moreover, as the economies of emerging markets leap forward the popularity of the corporate form continues to grow.² In light of its widespread appeal, one is naturally inclined to inquire more about the corporation and how it developed over time. Many questions can be pondered including: where did the corporate form originate; how old is it; has the corporation taken the same form everywhere or have there been local variations; and what are the pre-conditions for the development of the corporate form. All these questions are important not only for their own intrinsic value, but also because of the insights they provide about the development of the corporate sector in emerging markets and about the prospects for convergence, of one kind or another, in corporate governance. Indeed, a series of important papers by Henry Hansmann & Reinier Kraakman and other authors examine these questions both in Rome and in Medieval Europe.³ The aim of this paper is to explore a number of these questions by examining the economic history and development of the corporate form in Ancient India. The paper finds considerable evidence that urges us toward a significant revision of the history and development of the corporate form.

The examination reveals that business people on the Indian subcontinent utilized the corporate form from a very early period. The corporate form (e.g., the *sreni*) was being used in India from at least 800 B.C., and perhaps even earlier, and was in more or less continuous use since then until the advent of the Islamic invasions around 1000 A.D. This provides evidence for the use of the corporate form centuries before the earliest Roman proto-corporations. In fact, the use of the *sreni* in Ancient India was widespread including virtually every kind of business, political and municipal activity. Moreover, when we examine how these entities were structured, governed and regulated we find that they bear many similarities to corporations and, indeed, to modern US corporations. The familiar concerns of agency costs and incentive effects are both present and addressed in quite similar ways as are many other aspects of the law regulating business entities. Further, examining the

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¹ See ROBERT C. CLARK, *CORPORATE LAW* 1 (1986).

² See generally John W. Cioffi, *A Review Essay on Comparative Corporate Governance: The State of the Art and Emerging Research*, 48 AM. J. COMP. L. 501 (2000); Leora F. Klapper & Inessa Love, *Corporate Governance, Investor Protection and Performance in Emerging Markets*, 10 J. CORP. FIN. 703 (2004); Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert Vishny, *Law and Finance*, 106 J. POL. ECON. 1113 (1998); Stipon Nestor, *The Corporate Governance Crisis: An Opportunity for Emerging Markets Corporations?*, 21 INT'L FIN. L. REV. 11 (2002).

³ 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*, forthcoming HARV. L. REV. (2006).

historical development of the *sreni* indicates that the factors leading to the growth of this corporate form 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 and reduce creditor information costs). Moreover, specific attributes of the *sreni* grew to meet demands raised by changing business conditions. Finally, examination of the development of the *sreni* sheds light on the importance of state structure for the growth of trade and the corporate form. Ancient India has gone through times of widely decentralized political states, a strongly centralized political state, and points in between. Examining the conditions under which trade flourished, albeit to differing degrees, in these varied state structures provides important insights for understanding the growth of the corporate form then and, perhaps, even now. Moreover, it provides insights about the prospects for some kind of convergence in corporate governance.

In order to discuss the historical development of the corporate form in Ancient India I divide the paper into multiple parts. Part II briefly sketches out what a corporation is and what factors help to encourage its growth. Part III examines Ancient Indian corporate and organizational forms, their importance in those times, and how they were formed and governed. Part IV then examines the social, political and economic conditions in Ancient India that led to the growth of the *sreni*. Part V concludes.

II. WHAT IS A CORPORATION AND WHAT ENCOURAGES ITS GROWTH?

Before examining the growth of the corporate form in Ancient India it is important to define what a corporation is and what general factors aid in its development. I address both questions in the next two sections.

A. *Corporations and Contracting Entities.*

To examine whether Ancient civilizations possessed corporate entities it is important to identify the constituent elements of corporations. From there we can examine whether any entity existed in these civilizations that possessed such elements regardless of whether the entity was called a “corporation”. For this purpose I rely on the four elements that most Corporate Law Casebooks and Treatises discuss.

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.⁴ This also means that the corporation continues in existence even if its shareholders die or transfer their shares.⁵ This adds considerable stability to the corporate form over other organizational forms such as partnerships.⁶ Second, corporations possess

⁴ See ROBERT C. CLARK, CORPORATE LAW 17 – 21 (1986); WILLIAM T. ALLEN & REINIER H. KRAAKMAN, COMMENTARIES AND CASES ON THE LAW OF BUSINESS ORGANIZATION 83 – 84 (2004); WILLIAM KLEIN, J. MARK RAMSEYER & STEPHEN BAINBRIDGE, THE LAW OF BUSINESS ORGANIZATIONS 199 – 205 (5TH ED 2004).

⁵ See CLARK, *supra* note 4, at 19; ALLEN & KRAAKMAN, *supra* note 4, at 83 – 84.

⁶ See ALLEN & KRAAKMAN, *supra* note 4, at 83 – 84. The stability of the corporate form also addresses strategic concerns. For example, concerns associated with 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*,

centralized management so that not all the shareholders must approve every operational decision.⁷ 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.⁸ Third, a shareholder's interest in the corporation is essentially freely transferable.⁹ This aids in the raising of capital as passive investors know they can transfer their interest, which makes the investment liquid and hence more attractive.¹⁰ Finally, modern corporations possess limited liability. Thus, shareholders are only liable for the amount of money they have invested in the corporation.¹¹

This, of course, provides a modern definition of what a corporation is. However, for most of the history of business enterprise in Europe these four features were not present.¹² These business enterprises did not generally possess limited liability, but did usually possess the first two attributes (separate legal entity status and centralized management) and sometimes the third (transferability of interest).¹³ These features make these entities quite close to what Hansmann, Kraakman & Squire have recently termed “contracting entities” or entities which have “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”.¹⁴

In this paper if the entity possesses the features of a contracting entity it is considered a form of business organization. As we shall discover, Ancient India not only had business forms that easily met the notion of a contracting entity, but also had business forms that went considerably further with many features that are common to more recent organizational forms such as corporations.

B. *Factors Leading to the Growth of Corporate and Contracting Entities.*

The corporate form will presumably develop once there is both demand for it and supply of the legal and practical tools needed to make it operational. On the demand side,

110 YALE L.J. 387 (2000); Henry Hansmann, Reinier Kraakman, & Richard Squire, *Law & The Rise of the Firm*, forthcoming HARV. L. REV. (2006) at 10 – 13 [*hereinafter* Hansmann, et al.]. Moreover, the separate legal status of the corporate entity (and its ability to own property separately from its owners) may assist in asset partitioning and thereby reduce creditor information costs. See Hansmann, et al., *supra*, at 2 – 6.

⁷ See CLARK, *supra* note 4, at 21 – 24; ALLEN & KRAAKMAN, *supra* note 4, at 95 – 109; KLEIN, RAMSEYER & BAINBRIDGE, *supra* note 4, at 372. This is, of course, valuable because it reduces collective action concerns on operational matters and may also help to devolve management of the enterprise to people who possess more experience and expertise than the average shareholder. See CLARK, *supra*, at 23 – 24.

⁸ See CLARK, *supra* note 4, at 21 – 22; ALLEN & KRAAKMAN, *supra* note 4, at 97 – 103; KLEIN, RAMSEYER & BAINBRIDGE, *supra* note 4, at 712 – 13.

⁹ See CLARK, *supra* note 4, at 10 – 15; ALLEN & KRAAKMAN, *supra* note 4, at 94 – 95; KLEIN, RAMSEYER & BAINBRIDGE, *supra* note 4, at 695 – 715.

¹⁰ See FRANK H. EASTERBROOK & DANIEL R. FISCHER, THE ECONOMIC STRUCTURE OF CORPORATE LAW 40 – 44, 1991; Henry Hansmann & Reinier Kraakman, *Toward Unlimited Shareholder Liability for Torts*, 100 YALE L.J. 1879 (1991).

¹¹ See EASTERBROOK & FISCHER, *supra* note 10, at 40 – 62; Hansmann & Kraakman, *supra* note 10, *passim* (arguing that limited liability for corporate torts may not be desirable).

¹² See Hansmann, et al., *supra* note 6, at 5 – 7, 18 – 28. All four features were more prevalent in the 19th Century, but the corporate form (as contracting entity) existed in the U.K. earlier. See e.g. Hansmann, et al., *supra* note 6, at 5 – 7, 35 – 38, 43 – 46; 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 an attribute more suited to raising large amounts of capital from dispersed shareholders for large scale industries – something that became more prevalent only recently. See CLARK, *supra* note 4, at 2 – 4. For discussion on organizational structure (e.g., multi-divisional firms) see generally Oliver E. Williamson, *The Modern Corporation: Origins, Evolution, Attributes*, 19 J. ECON. LIT. 1537 (1981).

¹³ See Hansmann, et al., *supra* note 6, at 35 – 39, 45 – 48.

¹⁴ Hansmann, et al., *supra* note 6, at 2.

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 both fund the collective efforts to meet the increase in trade and to finance the use of the newer technologies.¹⁵ Legal organizational forms, such as the modern corporation, helped facilitate this increased demand for capital.¹⁶

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.¹⁷ 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.¹⁸ 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).¹⁹ Further, as trade increases the gains from specialization, and the sustainability of it, are likely to increase.²⁰

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).²¹ This would often require collective effort in raising and contributing capital because the amount may be too much for any one party to provide.²² Thus, increasing trade and changing technology influenced the need for collective efforts and thereby influenced 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. Absent some of these conditions it would have been more difficult and taken longer for the corporate form to develop.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 indeed any contracting entity) is that it partitions the assets of the corporation from that of its owners – a matter

¹⁵ See CLARK, *supra* note 4, at 1 – 4; Hansmann, et al, *supra* note 6, at 35 – 39, 45 – 48.

¹⁶ See CLARK, *supra* note 4, at 13 – 15.

¹⁷ See Avner Grief, *Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders' Coalition*, 83 AM. ECO. REV. 525, 526 – 28 (1993). For general discussion on trade and travel see MAX WEBER, GENERAL ECONOMIC HISTORY (FRANK H. KNIGHT TRNSL.) 155 – 79 (1961); THAPLYAL, *infra* note 18, at 13, 17 – 18.

¹⁸ For discussion in the Indian context see RAMESH CHANDRA MAJUMDAR, CORPORATE LIFE IN ANCIENT INDIA 13 (1922); KIRAN KUMAR THAPLYAL, 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 17, at 526 – 28 (discussing the “institutional” system of the Maghribi traders).

¹⁹ See Meir Kohn, *Business Organization in Pre-Industrial Europe* 1 – 2, 7 - 9 (Draft 2003); WEBER, *supra* note 17, at 110 – 122, 134 – 35, 170 – 75.

²⁰ See WEBER, *supra* note 17, at 101 – 110. In the Indian context see THAPLYAL, *supra* note 18, at 57 – 64; SANTOSH KUMAR DAS, THE ECONOMIC HISTORY OF ANCIENT INDIA 77 – 80 (1980 reprint). For discussion in the international context see EDWARD E. LEAMER SOURCES OF INTERNATIONAL COMPARATIVE ADVANTAGE (1984).

²¹ See CLARK, *supra* note 4, at 2 – 4 (citing to A. CHANDLER, THE VISIBLE HAND (1977)).

²² See CLARK, *supra* note 4, at 2 – 3; ALLEN & KRAAKMAN, *supra* note 4, at 91 – 94.

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 6, at 1 – 2, 5 – 7, 17 – 23.

critical to creditors who transact with the corporation.²⁴ Thus, when a creditor transacts with the corporation it knows which assets (those of the corporation) stand behind the transaction.²⁵ 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.²⁶ Knowing this is important because, for example, it helps creditors to 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 asset partitioning was not possible.²⁷

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.²⁸ If this monitoring is not practical then it will be 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.²⁹ This becomes easier as accounting systems become more refined and as bankruptcy proceedings become more sophisticated.³⁰

Another critical feature of the corporate form is that it often brings 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 present (or cannot be devised quickly) then the corporate form will grow more slowly.³¹ 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.³² Fiduciary duty doctrine, some securities regulation, and reputational mechanisms serve to address these concerns.³³ 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.³⁴ The monitoring methodologies could include geographic proximity so that one party can directly observe the other, simple gossip, methods of verifying the production, delivery, and receipt

²⁴ See Hansmann, et al., *supra* note 6, at 2 – 4, 5 – 10; Kohn, *supra* note 19.

²⁵ See Hansmann, et al., *supra* note 6, at 8 – 10.

²⁶ See *id.*

²⁷ See *id.* Hansmann, et al identify a number of other advantages of asset partitioning such as reducing the administrative costs of bankruptcy, protecting going concern value, investment diversification, and promoting transferability. See *id.*, at 10 – 13.

²⁸ See *id.*, at 19 – 25. Of course, 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).

²⁹ See Hansmann, et al., *supra* note 6, at 19 – 28.

³⁰ See *id.*, at 29 – 35.

³¹ See La Porta, et al, *supra* note 2.

³² See *id.*; Cioffi, *supra* note 2; Gibson, *supra* note 2; Klapper & Love, *supra* note 2; Nestor, *supra* note 2. See also ALLEN & KRAAKMAN, *supra* note 4, at 10 – 12.

³³ On fiduciary duties see EASTERBROOK & FISCHER, *supra* note 10, at 90 – 108; ALLEN & KRAAKMAN, *supra* note 4, at 239 – 348. On reputation see Grief, *supra* note 18; Koen, *supra* note 19. For broader discussion of reputation see Benjamin Klein & Keith B. Leffler, *The Role of Market Forces in Assuring Contractual Performance*, 89 J. POL. ECON. 615 (1981); Carl Shapiro, *Premiums for High Quality Products as Return to Reputation*, 98 Q. J. ECON. 659 (1983); Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms and Institutions*, 99 MICH. L. REV. 1724 (2001).

³⁴ This is implicit in the reputational literature (if no one knows that a firm is producing low quality then the firm’s reputation will not suffer). Moreover, if the victim of a fiduciary duty breach is not aware of the breach then a suit to enforce it is unlikely. Indeed, the lower probability of detection may be one reason why the penalties for breach of fiduciary duty often have a punitive flavor to them (to enhance deterrence when the chance of detection is low). See ALLEN & KRAAKMAN, *supra* note 4, at 30 – 38.

of goods and services, and the reliance on third party intermediaries.³⁵ Without some of these monitoring methodologies the legal and reputational mechanisms would carry little bite in cabining agency costs.

Thus, one would expect the corporate form's development to be more likely when the demand for production and trade is increasing and when methodologies for monitoring the behavior of owners and managers by other owners and by creditors are present. Such situations enhance the value of organizational forms and also help to contain their agency and creditor information costs. Of course, there are other factors that are also important to the development of the corporate form (e.g., property and contract law),³⁶ but for our purposes it is sufficient to begin with the three identified above. With this background in mind we can begin discussing the forms of business organization in Ancient India.

III. THE ANCIENT INDIAN FORMS OF BUSINESS ORGANIZATION

Trade has played a consistently important part of Indian history. It is, thus, not surprising that Ancient India possessed a variety of different organizational forms to facilitate trade.

A. Precursors to the Corporate Form in Ancient India

Along with the family-run business and individually owned business enterprises Ancient India possessed a number of other forms of engaging in business or collective activity, including the *gana*, *pani*, *puga*, *vrata*, *samgha*, *nigama*, and *sreni*.³⁷ For purposes of this paper I shall focus primarily on the *sreni* as that is the organization for which we have the most available information and the one that seems to have persisted throughout much of the period under review. However, before examining the *sreni* it is important to briefly describe the other entities.³⁸

More generally, the *gana* and *samgha* appear to refer to political and religious entities.³⁹ The *puga* and *vrata* to entities with members that often had economic motivations, but were

³⁵ See Hansmann, et al., *supra* note 6, at 31. On reputational mechanisms see Klein & Leffler, *supra* note 33; Shapiro, *supra* note 33; Grief, *supra* note 17; Robert Ellickson, *Of Coase and Cattle: 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)[*hereinafter* Merchant]; Bernstein, *supra* note 33; Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115 (1992)[*hereinafter* Opting Out].

³⁶ 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). For discussion of property in Ancient India see *supra* note 28. I do not intend the text to contain an exhaustive list of all the things that help or retard the growth of organizational forms like the corporation. Rather this list is designed to be indicative of some of the more important things.

³⁷ See MAJMUDAR, *supra* note 18, at 13 – 17, 44, 45, 138, 221, 222; THAPLYAL, *supra* note 18, at 6 – 12, 160 – 165.

³⁸ Although these were different kinds of organizational forms, it was not uncommon that one term might be used to refer to an entity that was more commonly associated with another term. See THAPLYAL, *supra* note 18, at 11, 164 – 65. Moreover, a particular organization may have kept its old name, but developed into a different kind of organizational form. See *id.*, at 165. In light of this, I will focus on the term most commonly associated with a particular kind of organizational form and provide details accordingly.

³⁹ See *id.*, at 160 – 61, 164 – 65. The *gana* may initially have referred only to business people, but later it more often refers to political and religious bodies. See MAJMUDAR, *supra* note 18, at 12 – 13; THAPLYAL, *supra* note 18, at 160 – 61. The *samgha* is generally viewed as referring to political organizations though it might sometimes be used to refer to educational and religious ones (e.g., groups of Buddhist monks). See MAJMUDAR, *supra* note 18, at 9, 221; THAPLYAL, *supra* note 18, at 164 – 65.

also residents of an entire town or village devoted to a profession.⁴⁰ *Nigama* and *sreni* refer most often to economic organizations of merchants, craftspeople and artisans, and perhaps even para-military entities.⁴¹ Finally, the *pani* is often interpreted as representing a group of merchants traveling in a caravan to trade their wares.⁴² Of these the *sreni*, *nigama* and *pani* are the ones most frequently engaged in economic activities. Before examining the *sreni* in detail it is important to describe the features of some of the other economic entities.

There is evidence to suggest that traders would often organize into a partnership form for the purposes of engaging in longer distance travel and trade over sea and land.⁴³ Usually these would be entered into by two or more people and they would appoint a leader.⁴⁴ The entity would be bound by the activity of the partners and the entity appeared to have the ability to own assets separately from its owners.⁴⁵ These two features provide the entities with the imprimatur of a contracting entity.

There were also fairly detailed rules developed over the years for the division of assets and liabilities. The rules for sharing assets and liabilities could be determined by agreement or, failing that, by the laws existing at that time that would divide assets and liabilities equally or sometimes by the relative contributions (skill, labor and capital) invested in the entity by members.⁴⁶ The latter was more common in partnerships amongst craft people.⁴⁷

There also appear to have been obligations that mirrored the duty of care and duty of loyalty that are such a common feature of today's fiduciary duties.⁴⁸ For a cause of action based on a partner negligently causing harm to the partnership the partners sat in judgment on their co-partner and decided whether such negligence in fact occurred.⁴⁹ If the partner was found negligent he had to make good the losses.⁵⁰ This bears some similarity to today's duty of care. Moreover, if the allegation was fraud then the accused partner would face some kind of ordeal or oath.⁵¹ If the partner failed then he would have to make good the

⁴⁰ See MAJMUDAR, *supra* note 18, at 9, 138, 142, 222; THAPLYAL, *supra* note 18, at 162 – 64.

⁴¹ See THAPLYAL, *supra* note 18, at 10 – 12 (discussing the *nigama* and *sreni* and noting that the *nigama* was often considered similar to a guild or city and larger than the *sreni*). Around the Gupta Empire the *nigama* may have had control over *sreni* in a region. See THAPLYAL, *supra* note 18, at 11.

⁴² See MAJMUDAR, *supra* note 18, at 14. The dating of the *pani* varies from as late as 1500 B.C. and perhaps as early as 4000 B.C. to 3500 B.C. See Part IV.A.

⁴³ See *id.*

⁴⁴ See P.N. AGRAWALA, A COMPREHENSIVE BUSINESS HISTORY OF INDIA 259 (2004). See MAJMUDAR, *supra* note 18, at 71 – 77 (he refers to these as joint stock companies, but their features more closely track those of partnerships).

⁴⁵ See MAJMUDAR, *supra* note 18, at 71 – 77.

⁴⁶ See VYAVAHARA MAYUKHA OR HINDU LAW, INCLUDING SMRITIES OF YAJNAVALKYA 230 (verses 186 – 92 of Chapter 2), 239 (verses 259 – 60 of Chapter 2) (VISHWANATH NARAYAN MANDLIK TRANS.)(1982) [*hereinafter* YAJ]. Cites to the above source will be as follows: YAJ, *supra*, II, at 186 – 92, which represents *Yajnavalkya*, Chapter II verses 186 to 192. See also BRIHASPATISMRI, XIV 3 – 4, THE MINOR LAW BOOKS (JULIUS JOLLY ED. & TRANS.) IN SACRED BOOKS OF THE EAST VOL. 33 (1965)[*hereinafter* BRIH]; NARADASMRI, III 2 – 5, THE MINOR LAW BOOKS (JULIUS JOLLY ED. & TRANS.) IN SACRED BOOKS OF THE EAST VOL. 33 (1965) [*hereinafter* NAR]; KATYAYANASMRI, verses 668 – 69, 675 - 77 (PANDURANGA VAMANA KANE ED. & TRANS.)(1933) [*hereinafter* KAT].

⁴⁷ See BRIH, *supra* note 46, at 27 – 32 (discussing how to divide profits in different spheres); KAT, *supra* note 46, verses 624 – 27, 630 (discussing division of partnership assets and debts), 632 – 37 (discussing division of profits of an undertaking). For further discussion see MAJMUDAR, *supra* note 18, at 71 – 77.

⁴⁸ See CLARK, *supra* note 4, at 799. See also ALLEN & KRAAKMAN, *supra* note 4, at 39 – 79.

⁴⁹ See BRIH, *supra* note 46, at 6; YAJ, *supra* note 46, II, at 260; NAR, *supra* note 46, at 5.

⁵⁰ See BRIH, *supra* note 46, at 9; YAJ, *supra* note 46, II, at 260; NAR, *supra* note 46, at 5.

⁵¹ See BRIH, *supra* note 46, at 7; YAJ, *supra* note 46, II, at 13 – 15, 265, 268 – 69.

losses to the partnership, forfeit his profits and be removed from the partnership.⁵² This bears some similarity (except for the method of proof) to today's duty of loyalty.

These early partnerships also regulated other matters. First, the interest a partner had in a partnership could be bequeathed to his children.⁵³ Second, the various written sources provide guidance and, in some respects, rules about who should enter partnerships. The general pattern was that "learned" people with similar socio-economic status and financial wherewithal were encouraged to enter these partnerships.⁵⁴ Part of the explanation for this is that it makes monitoring of behavior easier and less costly when the partners are relatively similar, have roughly equivalent assets, and understand each other.⁵⁵ Further, requiring partners to have assets means that they have something at stake in the partnership and this should induce them to exercise care in partnership matters.⁵⁶ For example, a partner in a trading caravan with no goods to sell is likely to exercise less care and diligence than a partner with goods at stake.⁵⁷ The Ancient Indians were clearly cognizant of some of the incentives that might inhabit this organizational form.

The partnership form, however, was only a precursor to some of the larger and more prevalent forms of business organization. It is to those that we now turn.

B. *Economic Entities in Ancient India* – *Sreni*

Although there are a number of different terms that can be used to describe the economic entities in Ancient India the most common is the *sreni*. As a general matter, a *sreni* is a legal entity composed of a collection of people who were normally engaged in a similar trade, but who do not necessarily belong to the same caste.⁵⁸

The *sreni* shares some similarities with the guilds of medieval Europe, but the *sreni* was also more complex and had quite detailed rules of internal organization. For example, a *sreni* need not be dedicated to a single profession and members could practice different trades.⁵⁹ Further, the *sreni* was mobile and has been known to move from one location to another without the threat of outside military force.⁶⁰ Moreover, the *sreni* was used in

⁵² See YAJ, *supra* note 46, II, at 260, 268 – 69.

⁵³ See MAJMUDAR, *supra* note 18, at 70 – 74.

⁵⁴ This is seen when *Brihaspati* says: "Trade of other occupations should not be carried on by prudent men jointly with incompetent or lazy persons, or with such as are afflicted by an illness, ill-fated, or destitute. A man should carry on business jointly with persons of noble parentage, clever, active, intelligent, familiar with coins, skilled in revenue and expenditure, honest, and enterprising." BRIH, *supra* note 46, at 1 – 2.

⁵⁵ See ALLEN & KRAAKMAN, *supra* note 4, at 40 – 42.

⁵⁶ See *id.*

⁵⁷ Cf. *id.*

⁵⁸ See MAJMUDAR, *supra* note 18, at 17; THAPLYAL, *supra* note 18, at 8.

⁵⁹ See MAJMUDAR, *supra* note 18, 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).

For greater discussion of European guilds see Alfred Kieser, *Organizational, Institutional, and Societal Evolution: Medieval Craft Guilds and the Genesis of Formal Organizations*, 34 ADMINISTRATIVE SCIENCE QUARTERLY 540 (1989).

⁶⁰ See THAPLYAL, *supra* note 18, at 180 – 194. There could possibly be more than one *sreni* engaged in the same occupation in the same town (see *id.* at 40). However, some sources generally encouraged the monarch to keep only one *sreni* devoted to an occupation in one region. See R.P. KANGLE, *CHANAKYA'S ARTHASASTRA*, PART II, BOOK 2, CHAPTER 1, VERSE 32, at 58 (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 (2000).

municipal and political activity as well as economic activity. Thus, to gain a better understanding of this entity the next few sections examine the basic attributes of the *sreni*, its internal governance, the kinds of business it was used in, and its importance in political life in Ancient India.

1. *Separate Legal Entity & General Prevalence*

Although the *sreni* existed in Ancient India for many years,⁶¹ and was used in many different contexts, there are some features that remained quite consistent. In particular, the *sreni* was a separate legal entity. There are a number of sources attesting to its ability to hold property separately from its owners, construct its own rules for governing the behavior of its members, and for it to contract, sue and be sued in its own name.⁶² Indeed, some Ancient sources have rules for suits between two or more *sreni* and some sources make reference to a government official (*Bhandagarika*) who worked as an arbitrator for disputes amongst *sreni* from at least the 6th century B.C. onwards.⁶³ Moreover, it was quite clear that changes in *sreni* membership or location did not change its obligations to other parties.⁶⁴ With this separate legal status one expects that asset partitioning was possible thereby encouraging the growth of the *sreni* by making it a more attractive contracting party.⁶⁵

In addition to this, one of the interesting features of the *sreni* is its prevalence in Ancient Indian society.⁶⁶ Sources identify between 18 to 150 *sreni* at various times in Ancient India covering both trading and craft activities.⁶⁷ This level of specialization of occupations is indicative of a developed economy in which the *sreni* played a critical role. Indeed, the *sreni* was used for a variety of professions ranging from carpenters, ivory workers, and bamboo workers to money-lenders, barbers, jewelers, and weavers.⁶⁸ Moreover, some of these professions were further sub-divided into even more finely grained categories.⁶⁹

2. *Structure*

Although the *sreni* was utilized in many different occupations, its basic internal structure was quite consistent. The first component of the *sreni* was the general assembly of

⁶¹ See *infra* Part IV.A. It is plausible that the *sreni* existed as early as 3000 B.C. See Part IV.A.

⁶² See YAJ, *supra* note 46, II, at 186 – 92; THE LAWS OF MANU VIII at 5, (GEORG BUHLER ED. & TRANS.) IN SACRED BOOKS OF THE EAST VOL. 25 (1886)[*hereinafter* MANU]; R.P. KANGLE, CHANAKYA'S ARTHASASTRA, PART II, BOOK 3, CHAPTER 1, Verse 15, at 192 (1972, reprint 1988)[*hereinafter* this is cited as 3.1.15]. See ARTHASASTRA, *supra*, at 3.7.40 (discussing inheritance); 3.14.1 - .38 (discussing partnership); 4.1.1 - .65 (discussing artisans); 4.2.1 - .36 (discussing traders).

⁶³ See THE JATAKA OR STORIES OF THE BUDDHA'S FORMER BIRTHS IV, 37 (W.H.D. ROUSE TRANS.)(1901)[*hereinafter* JATAKA IV]. The institution continued thereafter. See MAJMUDAR, *supra* note 18, at 23.

⁶⁴ See RADHA KUMUD MOOKERJI, LOCAL GOVERNMENT IN ANCIENT INDIA 119 – 120 (1958).

⁶⁵ To further reinforce the independent status of the *sreni* it appears that the *sreni* could normally only affect members when the issue related to the business of the *sreni*. See MAJMUDAR, *supra* note 18, at 62. Although one expects the views of the *sreni* would have held great sway for a member given the longer term nature of the relationship, there was little legal basis for the *sreni* to affect members in non-*sreni* matters. But see THAPLYAL, *supra* note 18, at 50 (suggesting that the headman of the *sreni* could have a say in property disputes between spouses).

⁶⁶ See THAPLYAL, *supra* note 18, at 57 – 64; MAJMUDAR, *supra* note 18, at 18 – 19.

⁶⁷ See MAJMUDAR, *supra* note 18, at 18 – 19 (noting the 18 (and perhaps 27) *sreni* during Buddhist times); THAPLYAL, *supra* note 18, at 32 n.109 (citing to Karmarkar)(noting over 150 professions). There appear to have been other *sreni* as well that covered groups engaged in agriculture and arms. See ARTHASASTRA, *supra* note 62, at 11.1.4 - .5 (discussing the *sreni* from Kamboja, Surastra, and Licchivika)

⁶⁸ See MAJMUDAR, *supra* note 18, at 18 – 19.

⁶⁹ See BOSE, *supra* note 28, at 245 – 46 (noting that arrow making was considered separate from bow making and bow string making).

its members and some *sreni* could have over 1000 members.⁷⁰ There were apparently no upper limits on the number of members.⁷¹

With such a large number of members one might expect that group action would be difficult without a smaller group being given more day-to-day operational and managerial powers. The *sreni* indeed had a considerable degree of centralized management and there were two sets of key players. The first key player was the headman of the *sreni* (sometimes called a *Jethbaka* or *Sreshthi*) who was often experienced, skilled, intelligent, and sometimes already quite wealthy.⁷² The headman was also critical because he represented the interests of the *sreni* in the king's court and in many official business matters.⁷³ 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*.⁷⁴ The headman also wielded significant power within the *sreni* because he exercised the adjudicative powers of the *sreni* with respect to breaches of the *sreni* rules that bound all members.⁷⁵ For all this, it was not uncommon for the headman to receive a hefty salary.⁷⁶

There is some uncertainty, however, regarding whether the headman was elected or not. Some sources indicate an election to the office of headman, yet others suggest that on the death of one headman the position may pass down to his son or other relations.⁷⁷ Although this presents some support for a hereditary position, there are reasons to doubt that this was the case. For example, it is clear that a headman could be removed by the general assembly.⁷⁸ In such a situation one would expect that the next headman would not be chosen by the removed headman. Rather an election seems more likely. Indeed, it would appear that an election was the norm and that if the position passed down to the headman's son it probably did so with some kind of acquiescence from the *sreni* members.

Given 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 chintakab*) who also had the power to bind the *sreni* on *sreni* related business.⁷⁹ The executive officers were generally elected by the assembly and the written sources provide a list of qualifications for the officers.⁸⁰ In most instances they are expected to be well versed

⁷⁰ 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. See THAPLYAL, *supra* note 18, at 39 – 40.

⁷¹ See THAPLYAL, *supra* note 18, at 39. A few inscriptions suggest more than one *sreni* engaged in the same occupation in the same place, which some treat as branches of *sreni* (*prasreni*). See *id.*, at 40 n. 21 (referencing L. Gopal).

⁷² See JATAKA IV, *supra* note 63, at 147 – 48, 161; THE JATAKA 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 70, at 281. Although most *sreni* had only one headman it was possible for there to be more than one headman of a *sreni*. See JATAKA IV, *supra* note 63, at 157.

⁷³ See MOOKERJI, *supra* note 64, at 48 – 49; JATAKA I, *supra* note 72, at 114; MAHAVASTU III, at 405 (J. JONES ED & TRANS.)(1956).

⁷⁴ See MAJMUDAR, *supra* note 18, at 58.

⁷⁵ See BRIH, *supra* note 46, XVII at 17 – 18

⁷⁶ See ARTHASASTRA, *supra* note 62, at 5.3.1 - .11 (noting the pay of *sreni-mukhyas*).

⁷⁷ See JATAKA IV, *supra* note 63, at 136. For discussion of other relations who might “inherit” the position see THAPLYAL, *supra* note 18, at 46.

⁷⁸ See BRIH, *supra* note 46, XVII at 20; YAJ, *supra* note 46, II, at 186 – 87.

⁷⁹ See BRIH, *supra* note 46, XVII at 9 – 10; YAJ, *supra* note 46, II, at 186 – 87. Some *sreni* appeared to have more executive officers ranging up to 12 for elephant drivers *sreni*. See THAPLYAL, *supra* note 18, at 51.

⁸⁰ See MAJMUDAR, *supra* note 18, at 40 – 43. It may have been the case that the officers were often nominated by the headman and then voted on by the general assembly. See *id.*

in the *Vedas* (the first Hindu scriptures), not greedy, of noble ancestry, and proficient in their craft.⁸¹ Some sources also provide negative qualifications (e.g., not too old or too young).⁸²

In light of the above, it appears that the *sreni* possessed centralized management where the headman and executive officers had considerable power,⁸³ but were elected by the general assembly and were subject to removal by the assembly. In the next section I discuss in greater detail how the internal relations between the *sreni* assembly and the headman and officers were governed.⁸⁴

3. Internal Governance

Given the three-tiers of the *sreni* one might expect some method of governing the relations between these tiers and even amongst members of the often vast general assembly. Fortunately, the internal governance of the *sreni* is something on which we have written materials. The first thing to note is that the customs, traditions and usages of the *sreni* (very frequently put down in writing) generally had the force of law and were upheld by the monarch even if they had punitive elements, absent them being against royal interest or the scriptures.⁸⁵ These rules, called *sreni dharma*, could cover a number of topics including production practices, prices, quality controls and so forth.⁸⁶ Moreover, many ancient scholars encouraged (and some required) that the *sreni dharma* be written down in a document (often called the *sthitipatra*)⁸⁷ and that it be registered with the state for use in later disputes.⁸⁸

The *sreni dharma* was usually the result of discussion and debate within the general assembly.⁸⁹ Indeed, the members of the general assembly had the right to free speech within limits.⁹⁰ Thus, anyone who “interrupted a speaker during his speech and said something absurd” or “opposed what was reasonable” could be punished.⁹¹ The object was to maintain a fairly democratic stance within the *sreni*.

⁸¹ See BRIH, *supra* note 46, XVII at 9 – 10. Some scholars suggest that knowledge of the *Vedas* often limited the executive officers to Brahmins as they were most likely to be learned in the *Vedas*. See MAJUDAR, *supra* note 18, at 55.

⁸² See BRIH, *supra* note 46, XVII at 8.

⁸³ Although the headman and the officers held considerable authority, it is noteworthy that individual members could bind the *sreni* if they were authorized to do so by the general assembly. See BRIH, *supra* note 46, XIV at 5. An interesting aspect of this is that if a *sreni* member, unauthorized by the assembly, causes loss to the *sreni* then that member must compensate the other members for that loss. See *id.*, at 9. This implies that it might be possible for a *sreni* member to make a contract on behalf of the *sreni*, without authorization, that would bind the *sreni* to a third party such that the *sreni* could suffer loss to this third party for the failure to fulfill the unauthorized obligation. This suggests a kind of vicarious liability in contract that merits further investigation.

⁸⁴ There were sometimes others who worked with the *sreni*. The *sreni* could hire non-*sreni* workers to complete projects. See ROMILA THAPAR, ASOKA AND THE DECLINE OF THE MAURYAS 73 (2000) (discussing these workers (*karmakaras* and *bhrtakas*) and noting that they were usually paid wages and sometimes a bonus for work that was well performed). As these workers were not involved in internal governance I do not discuss them further.

⁸⁵ See GAUTAMA DHARMASTR, XI at 21 – 22 (G. BUHLER ED. & TRANS.) IN THE SACRED LAWS OF THE ARYAS, SACRED BOOKS OF THE EAST VOL. 2 (1965); ARTHASASTRA, *supra* note 62, at 2.7.2, 2.7.6, 3.7.40; YAJ, *supra* note 46, II, at 186 – 92; BRIH, *supra* note 46, II at 26 – 28, XVII at 5; KAT, *supra* note 46, at verses 225, 254.

⁸⁶ See THAPLYAL, *supra* note 18, at 72.

⁸⁷ See BRIH, *supra* note 46, VIII at 9, 26; KAT *supra* note 46, at verse 254.

⁸⁸ See ARTHASASTRA, *supra* note 62, at 2.7.2, 2.7.6.

⁸⁹ See THAPLYAL, *supra* note 18, at 73 n. 121.

⁹⁰ See KAT, *supra* note 46, at verse 671.

⁹¹ See *id.*

Once these rules were devised their 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*.⁹² Thus, the headman or the executive officers could impose a penalty on a *sreni* member for violation of the *sreni dharma*.⁹³

A member dissatisfied with the result had, it appears, two methods of redress. First, if the member thought this penalty to be actuated by malice toward him by the officers or the headman then an appeal could be brought to the king.⁹⁴ If the king found the imposition of the penalty to be outside *sreni dharma* and motivated by ill will towards the member then the punishment could be repealed.⁹⁵ This suggests that a simple misapplication of the *sreni dharma* by the headman or officers might not be enough to repeal a penalty – there would need to be some ill will.

Another method of redress for the aggrieved member might be to go to the *sreni* assembly and request them to punish the headman or officer. It is quite clear that the assembly could punish or remove the headman or officers, without needing the king's approval, for a number of things including violation of the *sreni dharma* and destruction of *sreni* property.⁹⁶ Of course, if the headman or officer refused to follow the *sreni* 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.⁹⁷ The king's power could extend to confiscating all the property of the headman and even banishment.⁹⁸

From this it appears that even though the headman and officers had considerable power within the *sreni*, their power was not unfettered. Indeed, one can see some similarities to 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. 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.⁹⁹

⁹² See BRIH, *supra* note 46, XVII at 17 – 18.

⁹³ See *id.* According in Majmudar, the *sreni* could only regulate matters as related to its business affected by members, not to the general aspects of members' lives. See MAJMUDAR, *supra* note 18, at 62. But see THAPLYAL, *supra* note 18, at 50 (suggesting that the headman of the *sreni* could have a say in property disputes between spouses).

⁹⁴ See *id.*, at 20.

⁹⁵ See *id.*

⁹⁶ See ARTHASASTRA, *supra* note 62, at 11.1.6 - .7; KAT, *supra* note 46, at verse 672; VIRAMITRODAYA, at 428. The king need only be notified of the removal of the headman in such cases. See KAT, *supra* note 46, at verse 672.

⁹⁷ See BRIH, *supra* note 46, XVII at 20; VIRAMITRODAYA, at 429.

⁹⁸ See BRIH, *supra* note 46, XVII at 16; VIRAMITRODAYA, at 429.

⁹⁹ See CLARK, *supra* note 4, at 126; ALLEN & KRAAKMAN, *supra* note 4, at 240 – 60; KLEIN, RAMSEYER & BAINBRIDGE, *supra* note 4, at 316 – 67. Some degree of liability insulation might make sense given the size of the penalties for the head or executive officers (e.g., banishment). Cf. also Bernard S. Black, Brian Cheffins & Michael Klausner, *Outside Director Liability*, STANFORD LAW SCHOOL JOHN M. OLIN PROGRAM IN LAW & ECONOMICS WORKING PAPER NO. 250 (2003) at 63.

Second, the assembly had the power to remove management much like modern shareholders do in the US. Although this appeared to require some cause (e.g., breach of *sreni dharma*) rather than just the choice of the members,¹⁰⁰ 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. Thus, attempts to entrench oneself in office against the preferences of the general assembly would have been difficult.¹⁰¹

Third, the treatment of duty of loyalty (conflict of interest) situations is not entirely clear. To get a better sense of this I refer to a few pieces of evidence. First, it is clear that embezzling from the *sreni* was considered an offense.¹⁰² Moreover, 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*.¹⁰³ This suggests that the *sreni* was aware of conflicts of interest and severely penalized certain kinds of fraud. Second, an inscription from South India describes who can occupy important positions in *sreni* that fulfill a municipal role.¹⁰⁴ From those inscriptions, discussed later in the paper, it appears that there is considerable thought given to restraining conflicts of interest by prohibiting those with a conflict from serving in positions of importance.¹⁰⁵ This is similar to the independence requirement in modern boards.¹⁰⁶ One could view some of the qualifications for headmen and officers in the economic *sreni* as serving a similar function, but not in as detailed a manner as the municipal *sreni*.¹⁰⁷

Based on this one might surmise that an economic *sreni* that was aware of conflict of interests, the value of independence, and also severely punished embezzlement and other misbehavior is likely to regulate duty of loyalty situations quite closely. Although the sources do not often list the details of the *sreni dharma* covering such a situation, it seems a reasonable supposition that there would have been some regulation of conflict of interest situations.

Fourth, the method of enforcing *sreni dharma* bears some comment. When a matter was raised in front of the *sreni* assembly it would be discussed unless the matter was absurd or simply unreasonable in which case the member raising the issue would bear a penalty.¹⁰⁸ This acts as a constraint on frivolous usage of the assembly to address governance issues. However, unless the member is raising an absurd or unreasonable matter no one can block

¹⁰⁰ See CLARK, *supra* note 4, at 105 – 06; ALLEN & KRAAKMAN, *supra* note 4, at 174 – 76; KLEIN, ET AL., *supra* note 4, at 713 (discussing how shareholders can vote out the board for any reason at the annual general meeting).

¹⁰¹ This seems analogous to Delaware courts preventing management from entrenching itself against the desires of shareholders by a variety of defensive or entrenching tactics. There is some strength to the analogy, but one should be careful as it is not clear if there was anything like a hostile takeover in Ancient India – it is doubtful that such a thing existed given how members were admitted into the *sreni* see Part III.B.4.

¹⁰² See YAJ, *supra* note 46, II at 187. Borrowing funds on behalf of the *sreni* and using it for personal purposes was also an offense. See KAT, *supra* note 46, at verse 674.

¹⁰³ See YAJ, *supra* note 46, II at 190. The *Mahabharata* suggests *sreni dharma* violations are very serious and it may not be possible to obtain expiation for them. See THE MAHABHARATA OF KRISHNA-DWAIPAYANA VYASA (PRATAP CHANDRA ROY TRNSL.) XII at 37.14 [*hereinafter* MAHABHARATA]. The numeral XII refers to the chapter (the *parva*) of the *Mahabharata* rather than the volume of the translation in which the chapter is found. The XII *parva* is the *santi-parva*.

¹⁰⁴ See MAJUMDAR, *supra* note 18, at 170 – 77 (translating and quoting this inscription from Uttaramullur).

¹⁰⁵ See *id.*

¹⁰⁶ See NYSE LISTED COMPANY MANUAL, Sections 303A.1 Independent Directors, 303A.2 Independence Tests, available at www.nyse.com.

¹⁰⁷ See YAJ, *supra* note 46, II at 191; BRIH, *supra* note 46, XVII at 8 – 9.

¹⁰⁸ See KAT, *supra* note 46, at verse 671.

his speech – this provides, within reason, a fairly simple method of raising grievances to the general assembly.

Similarly, when a matter is taken to the king it is usually only when the officers or headman acted with ill will that the king will examine the issue. This serves to both constrain frivolous suits and to provide insulation to management for simple mistakes of judgment. Absent such insulation management may be reluctant to enforce *sreni dharma*. This is because management receives only some of the benefit from the enforcement of *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.¹⁰⁹

4. Formation

From the above analysis it seems that the *sreni* had quite detailed and developed rules of governance that share some similarities with modern corporate governance. In some respects analogous problems were addressed in analogous ways. Although governance rules were quite detailed, it appears that the formation of a *sreni* was a straightforward exercise.

First, the members needed to establish a *sreni* with some basic elements of its structure (including its *sreni dharma*) and then have it approved by the monarch.¹¹⁰ Second, once the approval was obtained some sources suggest that the *sreni* needed to register with the state and deposit its *sreni dharma* with the state for use in later dispute resolution.¹¹¹ Of course, the formalities of setting up the entity are only the first step. The real work comes in building up the membership and keeping the *sreni* active and growing.

To get a better sense of how the *sreni* membership developed it is important to describe how members were admitted to the *sreni*, how they could leave, and what rights and obligations they bore upon both entry and exit. Let us begin with the process for entering the *sreni*, which was usually specified by *sreni dharma*. First, the prospective member would need to build mutual confidence with pre-existing members.¹¹² There were multiple ways in which this could be accomplished including undergoing a particular kind of “ordeal” (*kosha*), which may not be physically challenging, but had random elements to it,¹¹³ or agreeing to the *sreni dharma* (*lekha-kriya*),¹¹⁴ or having a person of high standing (perhaps an arbitrator) vouch for a new member and act as guarantor (*madhyastha*).¹¹⁵

¹⁰⁹ See ALLEN & KRAAKMAN, *supra* note 4, at 240 – 42, 248 – 53.

¹¹⁰ See SUKRANITI, at 305(B.K. SARKAR TRNSL.) (1975). Although not stated too explicitly, it appears that the monarch could refuse to approve a *sreni*. One might surmise this from the fact that the monarch could refuse to approve combinations of *sreni* – presumably the grounds for doing this are similar to the grounds for refusing to approve the creation of a *sreni* in the first place. See NAR, *supra* note 46, X at 4 – 6.

¹¹¹ See ARTHASASTRA, *supra* note 62, at 2.7.2.

¹¹² See BRIH, *supra* note 46, XVII at 7.

¹¹³ See *id.*; NAR, *supra* note 46, I at 327 – 31.

¹¹⁴ See BRIH, *supra* note 46, XVII at 7, 11 – 12.

¹¹⁵ See *id.*, at 7.

Second, once mutual confidence was established some sources suggest that the admission of a new member was put to a vote of the *sreni* assembly.¹¹⁶ If admitted, the new member would often be required to make some payment into the *sreni* general treasury.¹¹⁷ Also, upon admission the member would immediately share all the assets and liabilities with all other *sreni* members.¹¹⁸ Some sources suggest that the assets and liabilities were to be shared equally,¹¹⁹ while others suggest that the sharing should be on the basis of contribution to the general treasury or perhaps based on capital provided and skill.¹²⁰ It might appear that initially equal division was the norm, and as *sreni* grew and became an established part of society the more detailed methods of division became more common.

In addition to this, for some *sreni*, especially the craft based ones, there needed to be a method of training people in the skills required to work effectively in the *sreni*. There was an intricate system of apprenticeship that permitted for this kind of training.¹²¹ Undoubtedly, much of the training would have taken place from father to son, and indeed many professions were largely hereditary,¹²² but this was not the exclusive method for gaining the skills needed to be an effective member of the *sreni*.

The apprenticeship appeared to be a contract between teacher and student regarding training in a profession in quite intricate detail.¹²³ For our purposes it is sufficient that the length of the contract could be for a number of years (e.g., twelve years) and usually required the student to live with the teacher in the *gurukula* system of education.¹²⁴ Once the period of apprenticeship was completed the student was then capable of engaging in the occupation.¹²⁵ Although not perfect, the apprenticeship served the function of keeping a steady flow of people into the professions.¹²⁶ Thus, once formed and staffed (through a variety of ways) the *sreni* was operational.

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 approval of the assembly.¹²⁷ Upon exit, the member would no longer have any claim to the assets or liabilities of the *sreni*.¹²⁸ 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.¹²⁹ Moreover, if a member was removed from the *sreni*

¹¹⁶ See VIRAMITRODAYA, at 432.

¹¹⁷ See KAT, *supra* note 46, at verse 626.

¹¹⁸ See *id.*, at verse 675 – 76.

¹¹⁹ See *id.*, at verse 675.

¹²⁰ See YAJ, *supra* note 46, II at 259; BRIH, *supra* note 46, XIV at 3 – 5, 27 – 32.

¹²¹ See NAR, *supra* note 46, V at 3, 12, 15 – 21; YAJ, *supra* note 46, II, at 184.

¹²² See THAPLYAL, *supra* note 18, at 55 – 57; BOSE, *supra* note 28, at 235.

¹²³ See NAR, *supra* note 46, V at 3.

¹²⁴ See BRIH, *supra* note 46, XVI at 6; A.S. ALTEKAR, EDUCATION IN ANCIENT INDIA 190 – 96 (5TH ED., 1957)(describing the *gurukula* style of education in Ancient India).

¹²⁵ See NAR, *supra* note 46, V at 20 – 21.

¹²⁶ See THAPLYAL, *supra* note 18, at 82 – 83.

¹²⁷ See MAJMUDAR, *supra* note 18, at 58.

¹²⁸ See KAT, *supra* note 46, at verses 675 – 76.

¹²⁹ See ARTHASASTRA, *supra* note 60, at 3.14.1 - .3. This seems analogous to a partner leaving a partnership when liabilities earned during his tenure have yet to be paid. A partner generally carries this liability or obligation with her. See ALLEN & KRAAKMAN, *supra* note 4, at 50 – 54; UNIFORM PARTNERSHIP ACT, section 36 (1914). The system of fining described in the text (in *sreni*) seems to address the same concern as the partnership rule in modern times. We are concerned about partners using their reputation to extract contracts and credit from people and then leaving the

(for, say, the violation of *sreni dharma*) then the consequences were generally more severe. Such an unceremonious removal would have made it difficult for a person to enter another *sreni* given the reputational consequences of his removal.¹³⁰

The exit of a member, whether voluntary or not, raises the issue of transferring one's interest in the *sreni*. Little is known about this aspect of the economic *sreni* so one is left to supposition. However, it appears that in the municipal *sreni* it was possible for one member to sell his share of the *sreni* to someone else.¹³¹ Indeed, there are quite detailed rules describing the powers and obligations (especially voting rights) attached to these shares in managing municipal matters.¹³² In light of this, it seems reasonable to suppose that if a municipal *sreni* would permit transference of interest then an economic *sreni* would as well because liquidity is likely to be a more important factor for someone in an economic *sreni* than someone who has a share in a municipal *sreni*.¹³³ However, one cannot be certain and moreover we have little basis on which to know how such a transfer might occur in an economic *sreni*. The matter may best be treated as something open to, and meriting, further investigation.

One final point about entering and exiting the *sreni* is worth making. In Ancient India the caste system (or the *varna* or *jati* system) was quite important.¹³⁴ What makes the *sreni* so unique is that it permitted people from different castes to enter it and practice the same profession *and* also permitted people to leave the *sreni* of their own volition and enter different *sreni* if they wanted. The degree of social 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.¹³⁵

5. *The Accumulation, Use, and Division of Funds.*

Once a *sreni* is formed and operational the next question becomes how does one capitalize it and how are those funds used. The funds and assets of the *sreni* came from a

partnership, with little assets, to fulfill those liabilities. See ALLEN & KRAAKMAN, *supra* note 4, at 50 – 54. This is what might be termed a “bait-and-switch” concern. Similarly, in the context of the *sreni* if someone contracts with the *sreni* assuming there would be 300 members working on the project for two months then if some people left the *sreni* that might well change the time frame for completion of the project or the likely quality of the end product. Some sanction may be needed to assuage these concerns.

¹³⁰ See THAPLYAL, *supra* note 18, at 78.

¹³¹ See MAJMUDAR, *supra* note 18, at 162 – 63.

¹³² See MAJMUDAR, *supra* note 18, at 162 – 64.

¹³³ 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 the business people in those days may have placed a lesser value on liquidity. What would be surprising is if people in a primarily non-economic entity (such as a municipal *sreni*) placed a higher value on liquidity compared to people in a primarily economic entity.

¹³⁴ This is clear from many sources. See e.g., SUVIRA JAISWAL, *CASTE: ORIGIN, FUNCTION, AND DIMENSIONS OF CHANGE* (1998); RAJENDRA PANDEY, *THE CASTE SYSTEM IN INDIA, MYTH AND REALITY* (1986); ARVIND DASS & SITA DEULKAR, EDs., *CASTE SYSTEM: A HOLISTIC VIEW*, VOLS. 1-4 (2002).

¹³⁵ See ROMILA THAPAR, *ANCIENT INDIAN SOCIAL HISTORY: SOME INTERPRETATIONS* 129-130, 133 (1996). See generally JAISWAL, *supra* note 134; PANDEY, *supra* note 134; DASS & DEULKAR, *supra* note 134. The rigidity of the caste system developed over time and was not apparently part of the early history of the *varna* system. See Ram Sharan Sharma, *Role of Property, Family and Caste in the Origin of the State in Ancient India*, in *ESSAYS*, *infra* note 264, at 4. Also the *sreni* became more and more caste based over time (especially as positions in *sreni* became more hereditary), but it seems quite clear that at least for some sizeable period of time the caste system operated along with the *sreni* that seemed much less caste based. See THAPAR, *supra*; THAPLYAL, *supra* note 18, at 140 – 48.

number of sources. However, regardless of the source they were all treated as belonging to the entire *sreni* rather than specific members.¹³⁶ Indeed, significant penalties attached to members who received something for the whole *sreni* and did not give it to the *sreni*.¹³⁷

One source of assets were the individual contributions (cash or kind) made by members to join the *sreni* or hold *sreni* “stock”.¹³⁸ Another source, and a fairly significant one, was gifts given to various members of the *sreni* by the monarch for a variety of reasons.¹³⁹ These gifts belonged to the *sreni* and would have been quite substantial.¹⁴⁰ Yet another source would have been profits from the various projects the *sreni* completed.¹⁴¹ A related source of assets would be the profits earned on the banking-like activities of the *sreni*. Although these are discussed in more detail in section 6, it is sufficient to note that the *sreni* provided these services for members and later non-members, including royalty, and that this was a significant source of assets and profits.¹⁴² Finally, the *sreni* assets also included the penalties recovered from *sreni* members when they violated *sreni dharma*.¹⁴³ This underscores both that *sreni dharma* was enforced and that there were ways to distinguish individual *sreni* members’ assets from those of the *sreni* itself.¹⁴⁴

Although the *sreni* would accumulate assets from a number of sources, it also had a number of expenses that would deplete those assets. In particular, the cost of producing goods for sale (for craft *sreni*) or purchasing goods for later resale (for merchant *sreni*) would have been an important cost.¹⁴⁵ Add to this the cost associated with transporting goods, protecting goods during travel (e.g., hiring guards), various miscellaneous items (e.g., protecting the *sreni* treasury and keeping some funds to placate difficult monarchs), and the expenses associated with running a *sreni*.¹⁴⁶

However, there were other noteworthy costs and expenses. First, the *sreni* generally kept some amount of funds to defend their members against legal action.¹⁴⁷ Some sources provide examples of *sreni* arranging bail for *sreni* members.¹⁴⁸ This bears some resemblance to modern corporations providing resources for the legal defense of executives via the indemnification of legal costs or liability insurance.¹⁴⁹

Second, *sreni* funds could be expended to provide additional incentives to its members. There are instances of a *sreni* rewarding members who protected *sreni* property against robbers and thieves on trade caravans.¹⁵⁰ One might view this as an early form of

¹³⁶ See KAT, *supra* note 46, at verse 677; BRIH, *supra* note 46, XVII at 24.

¹³⁷ See YAJ, *supra* note 46, II at 190; BRIH, *supra* note 46, XVII at 22.

¹³⁸ See KAT, *supra* note 46, at verses 625 – 26.

¹³⁹ See *id.*, at 677; BRIH, *supra* note 46, XVII at 24.

¹⁴⁰ See *id.*

¹⁴¹ See THAPLYAL, *supra* note 18, at 70.

¹⁴² See *id.*

¹⁴³ See *id.*, at 70.

¹⁴⁴ If it were not possible to distinguish *sreni* assets from members’ assets then it would be very difficult to recognize penalties for violations of *sreni dharma* as a *separate* source of income.

¹⁴⁵ See NAR, *supra* note 46, III at 4.

¹⁴⁶ See *id.* See also BRIH, *supra* note 46, XVII at 5 – 6.

¹⁴⁷ See THAPLYAL, *supra* note 18, at 72 (citing to an instance in the *Dasakumara-charita*)

¹⁴⁸ See *id.*

¹⁴⁹ See CLARK, *supra* note 4, at 664 – 74; ALLEN & KRAAKMAN, *supra* note 4, at 243 – 48; KLEIN, RAMSEYER & BAINBRIDGE, *supra* note 4, at 525 – 38.

¹⁵⁰ See BRIH, *supra* note 46, XIV, at 10.

incentive payment to induce extra effort from the *sreni* members.¹⁵¹ Additionally, 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.¹⁵²

An interesting feature of this later incentive device is its asymmetry – if the activity generated losses the member bore all of them, but if the activity was profitable he received his share as a *sreni* member and an additional one-tenth of the profits. In other words, he bore all the losses and received only some portion of the gain. What this suggests is that the *sreni* provided some incentive for innovation, but required the *sreni* member to believe that the profits would be very large compared to the losses or that the chances of profit were very high.¹⁵³ In other words, it required the member to think the expected profits (of which he would get only a portion) were high enough to justify taking the risk of bearing all the losses when he could not convince other *sreni* members of the value of the activity. Given that even today most innovative activity does not produce marketable products such an asymmetric incentive system does not seem unreasonable.¹⁵⁴

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. One approach was equal sharing,¹⁵⁵ but other did exist. For example, some suggested that the *sreni dharma* would govern on how sharing would occur, or, failing that, sharing should be based on the proportion of capital contributed by each member.¹⁵⁶ Some further suggested division based on the contribution of skill and technical knowledge.¹⁵⁷ One suspects that as time progressed and as *sreni* grew that the formulas for sharing probably grew more intricate.

Indeed, some of the later sources suggest a quite detailed sharing structure that varied by the type of activity amongst other things. Thus, some sources suggest that in a craft *sreni* the sharing might go by seniority and skill so that the ratio for sharing could be 4:3:2:1 for the head of a program, the master craftsman, a fully trained person and an apprentice, respectively.¹⁵⁸ In another context the head working together with another could receive twice the share.¹⁵⁹ The variety of different sharing formulas with a larger share for

¹⁵¹ See YALE D. TAUBER & DONALD R. LEVY, EXECUTIVE COMPENSATION 37 (2002).

¹⁵² See BRIH, *supra* note 46, XIV, at 9 – 10; YAJ, *supra* note 46, II at 260.

¹⁵³ Let us assume that there is a *sreni* member who wants to undertake some innovative activity. Further, the member represents 1% of the *sreni*, is risk neutral, is unable to obtain *sreni* approval for the project, and the activity could generate a loss of 100 or a profit of 100. Thus, if it generated a loss of 100 then the member would bear the entire 100. If, however, the activity generated a profit of 100 then the member receives 1 (his percentage share of 100) plus 10 (reward of one-tenth the profits) or 11 for his efforts. If the *sreni* member thought there was an equal chance of this activity resulting in a profit or loss he would not undertake it as that would provide him with an expected *loss* of 44.5. The expected profit (or loss) is calculated as follows. $50\%(-100) + 50\%(1\%(100) + 10\%(100)) = -50 + 5.5$. or -44.5 (a loss of 44.5). I have assumed that the payoff is known (and occurs) soon enough that there is no need to discount. To make this project worthwhile the member would need to believe profits would be very high, assuming all else equal, or that the chance of profit is very high, assuming all else equal.

¹⁵⁴ There might be some reputational advantage to “being right about innovative products” in future dealings, but for reasons of brevity I do not address that argument here.

¹⁵⁵ See KAT, *supra* note 46, at verse 675.

¹⁵⁶ See NAR, *supra* note 46, III at 2 – 5; YAJ, *supra* note 46, II at 259; BRIH, *supra* note 46, XIV at 3 – 4.

¹⁵⁷ See MAJMUDAR, *supra* note 18, at 78.

¹⁵⁸ See BRIH, *supra* note 46, XIV at 32; KAT, *supra* note 46, at verses 632 – 36.

¹⁵⁹ See BRIH, *supra* note 46, XIV at 29. Further, in the context of warrior *sreni*, sent by a king to cause general chaos in another region, one-sixth of the spoils would go to the king and the rest was to be shared evenly. See *id.*, at 31.

the more senior, perhaps supervising, person indicates considerable thought on how to gear incentives and that these incentives would vary based on context.

6. Other Roles of the *Sreni*

As the foregoing discussion suggests the *sreni* was actively involved in encouraging the professions of its members. This involved many different activities ranging from training of members and regulation of terms of trade to protection of members and maintaining local markets.¹⁶⁰ However, *sreni* were also involved in other aspects of society and in this section I briefly discuss those activities.

One role of the *sreni* quite closely related to its regular trade or craft purposes was to act as a bank for its members and later non-members.¹⁶¹ There is considerable evidence that *sreni*, at least by 300 B.C., if not earlier, were providing the equivalent of a letter of credit and indeed probably used such services themselves.¹⁶² It is clear that over time *sreni* developed an excellent reputation for reliability and stability.¹⁶³ This can be seen from the fact that people, including monarchs and high officials, would make deposits (usually perpetual endowments) with *sreni* and the interest on that would be used towards primarily charitable and religious purposes.¹⁶⁴ Additionally, *sreni* would provide loans to people for a variety of projects and charge interest on these loans.¹⁶⁵ The rates of interest on loans could vary and the gap between the amount received as loan interest and the amount paid out to meet charitable obligations of the deposits would leave the *sreni* with significant profits.¹⁶⁶ Indeed, the reputation of the *sreni* was often so great that they would mint coins used in commercial exchange.¹⁶⁷ The value of even rudimentary banking, credit, and currency services must have provided considerable support to the growth of trade and the economy more generally.¹⁶⁸

However, *sreni* were active in other aspects of life besides trade. Many *sreni* would engage in acts to support charity and religious institutions.¹⁶⁹ It was quite common for the *sreni* to use some of their profits toward building or maintaining a public garden, tank, assembly hall, or religious edifice as well as providing support to people during natural disasters and to those who are ill, destitute or otherwise economically disadvantaged.¹⁷⁰

¹⁶⁰ See THAPLYAL, *supra* note 18, at 84 – 85.

¹⁶¹ See *id.*, at 87 – 96.

¹⁶² See ARTHASASTRA, *supra* note 60, at 3.11 & 3.12 (discussing the law of non-payment of debt and of deposits). For further discussion of this see DAS, *supra* note 20, at 173 – 76.

¹⁶³ See THAPLYAL, *supra* note 18, at 94.

¹⁶⁴ See *id.*, at 91 – 95.

¹⁶⁵ See *id.*, at 94.

¹⁶⁶ See *id.*,

¹⁶⁷ See *id.*, at 89 – 90.

¹⁶⁸ See *id.*, at 16 (discussing importance of coins as currency), 87 – 96 (discussing banking-like activities of the *sreni*).

¹⁶⁹ See BRIH, *supra* note 46, XVII, at 11 – 12, 22 – 23.

¹⁷⁰ See *id.* Thaplyal suggests that the *sreni* may also have served to insure the poor against calamities. See THAPLYAL, *supra* note 18, at 86. The word “insure” seems a little out of place here. Normally insurance refers to the paying of a premium to compensate the insured in the event an activity covered by the insurance causes loss to the insured. There is no suggestion that the poor ever paid any kind of premium to the *sreni*. Rather this seems to be more acts of generosity that in modern times go as charity or good public relations. See *infra text accompanying note 184*.

Although such acts may have been motivated primarily by a sense of duty to society, they would also have been excellent public relations.¹⁷¹

Yet another very interesting feature of the *sreni* was that it could, and did, take on adjudicative roles. For example, we have already seen that it could make decisions with respect to whether its members had violated *sreni dharma*.¹⁷² However, perhaps more interesting, is that the *sreni* could also resolve some disputes that did not involve its members.

Some sources indicate that the *sreni* could be part of the king's court in deciding certain disputes.¹⁷³ In particular, disputes between trading communities that reached the king's court could be handed over by the king to a *sreni* (i.e., its headman or executive officers) for decision.¹⁷⁴

In addition, the *sreni* could hear smaller claims that primarily involved economic disputes.¹⁷⁵ A decision made by *sreni* in this smaller claims context could be appealed potentially all the way to the king's court, but if the highest court upheld the judgment of guilt then the guilty party would pay a bigger penalty and if the highest court overturned the decision then a fine was imposed on the officer of the lower courts.¹⁷⁶ This helped 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.¹⁷⁷

In addition to these judicial, charitable and banking functions, in some areas the *sreni* also served administrative functions (like municipalities) for villages and towns. I discuss this role of the *sreni* in the next section.¹⁷⁸

C. Political and Municipal Entities in Ancient India

Not only was the corporate form used for business enterprises in Ancient India, but also for political and social purposes and went by a variety of names – *gana*, *samgha*, *sabha*,

¹⁷¹ See THAPLYAL, *supra* note 18, at 87. One more aspect of these charitable and religious activities was that *sreni* management could not simply spend *sreni* resources on whatever they liked. The management could, of course, bind the *sreni*, but the activities could not be contrary to the *sreni dharma* of this *sreni*. See YAJ, *supra* note 46, II at 186. This seems quite close to the *ultra vires* doctrine. See CLARK, *supra* note 4, at 675 – 76 (discussing the *ultra vires* doctrine).

¹⁷² See BRIH, *supra* note 46, XVII at 17 – 18. Moreover, it appears that the *sreni* head could also resolve disputes between spouses where one spouse was a member of the *sreni*. See THAPLYAL, *supra* note 18, at 50.

¹⁷³ See THAPLYAL, *supra* note 18, at 97 – 98 (discussing stories mentioned in the *Vasudevabindi* and *Mrichbhakatikam*).

¹⁷⁴ See *id.*

¹⁷⁵ See MAJMUDAR, *supra* note 18, at 62 – 65. However, the *sreni* could not adjudicate criminal matters (that was the sole province of the king). See MAJMUDAR, *supra* note 18, at 64.

¹⁷⁶ See THAPLYAL, *supra* note 18, at 101 – 02.

¹⁷⁷ See *id.*, at 102. See Steven Shavell, *The Appeals Process as a Means of Error Correction*, 24 J. LEGAL STUD. 379, 381 (1995). The penalties on officials would have 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 negative stigma imposed on prosecutors (and concomitant negative career repercussions) when they fail to obtain convictions, which leads them to prosecute only strong cases).

Finally, the *sreni* courts were subject to procedural rules similar to other courts and they tended to be set up in the locale of the dispute. See BRIH, *supra* note 46, II – VI (discussing various aspects of procedure); KAT, *supra* note 46, at verses 96 – 410 (describing various aspects of legal procedure).

¹⁷⁸ The *sreni* clearly paid taxes to the monarch and this was a significant source of funds for the monarch. See MAJMUDAR, *supra* note 18, at 27.

sreni, and others too.¹⁷⁹ Again, as these terms frequently overlapped, I will focus on the features of these entities. For ease of comparison I often refer to them as municipal *sreni* even though *sabha*, *samgha* and *gana* may have been more commonly used.

1. *Political Nature of State*

The municipal *sreni* engaged in a variety of different activities depending on the political nature of the state in which they existed. In Ancient India there appear to have been three kinds of states.

a. *Vairajya – the kingless state.*

Both Ancient Indian and Ancient Greek writings (following Alexander's invasions into India) note that there were kingless states in India.¹⁸⁰ These republics were essentially states or villages that were ruled by a family, extended family, or group, but not by kingship.¹⁸¹ However, unlike the Roman republic these states had more decentralized forms of governance where the administrative functions of the state appear to have been divided into smaller administrative units with fairly strong protections for citizens.¹⁸² The administrative units were staffed by members of the polity organized into some kind of committee structure to run the municipal area and maintain order in society.¹⁸³ These entities would have a headman who would be assisted by a council of two to five people much like the economic *sreni*.¹⁸⁴

b. *The elected king states.*

There is also evidence of kingdoms (large and small) having either elections for kings or approving a king suggested by others.¹⁸⁵ Moreover, there is evidence of quite competitive campaigning to obtain the votes of those entitled to vote.¹⁸⁶ Although not entirely clear, it

¹⁷⁹ See MAJMUDAR, *supra* note 18, at 97 – 105, 161 – 169.

¹⁸⁰ See *id.*, at 215 – 221, 246 – 49 (discussing the Greek source Megasthenes). Indeed, even earlier Indian writings suggest the presence of republics. See *id.*, at 216 (discussing the *R̥g Veda* which dates from somewhere between 4500 B.C. to 1500 B.C.); 217 – 221 (for later Vedic sources); 223 – 32 (discussing Buddhist sources and the running of cities by administrative units). The Ancient Indian city (kingdom) of Vaisali, from the Buddhist period (circa 500 B.C.) is often considered a proto-type Athenian democracy. See *id.*, at 227 – 30.

¹⁸¹ See *id.*, at 236 – 49.

¹⁸² See *id.*, at 230 – 34 (describing these administrative units in Vaisali). See also *id.*, at 233 – 34 (discussing how in the kingless state of the Lichchavis criminal penalties were meted out). The description of criminal penalties suggests a defendant could not be found guilty unless seven (7) separate decision making bodies thought that person should not be acquitted. See *id.* This means that if the probability of a false conviction in each decision making body was 50% (roughly the preponderance standard) and if each body made decisions independent of the others (and not influenced by them) then the probability of a false conviction is only 0.7% or less than 1% (this is 0.5 raised to the 7th power). Even if the outcomes in the bodies were dependent (say decision making bodies grew more accurate as the case progressed) then the overall chance of false conviction would be even smaller.

¹⁸³ See *id.*, at 229 – 34.

¹⁸⁴ See *id.* at 245.

¹⁸⁵ See *id.*, at 97 – 110, 112 (discussing writings of Chinese visitors who traveled through India as late as 600 A.D. and found that an Indian King, in this case Harsha Vardhana, could be elected or approved by the citizenry).

¹⁸⁶ See MAJMUDAR, *supra* note 18, at 97 – 113 (quoting passages from the *Vedas*). It appears that not everyone was entitled to vote. See *id.*, at 133 – 35.

appears that the term of the kingship was for life and often candidates might be members of the same extended family.¹⁸⁷

Such states were governed by the king with his council of ministers (*mantriparishad*), which could be quite large and was consulted on a regular basis.¹⁸⁸ However, much of the municipal and operational activities were conducted by the smaller units (usually villages or municipal *sreni*) which again had a village headman (often nominated by the king) who would be assisted by a council of two to five people.¹⁸⁹

One of the primary differences with the *vairajya* is that here the entity was subordinate to the king and engaged in fewer activities than in the *vairajya*.¹⁹⁰ For example, one would not expect the entity here to be as actively involved in defense of the state as in the *vairajya*.

c. *The simple monarchies.*

There are, of course, many simply monarchies where the eldest son (or chosen heir) of the king becomes ruler after the king's passing, abdication, or retirement.¹⁹¹ Often much of the work of the municipal area was handled by entities like the municipal *sreni* and again in a committee format similar in many respects to that in the elected king states.¹⁹²

2. *Municipal or Village Corporation.*

All three kinds of states relied on smaller administrative units (e.g., villages or municipal entities) for varying degrees of municipal activities.¹⁹³ The village or municipal entities were run much like the economic *sreni* – assembly votes counted a great deal, open discussion was important and critical and people felt themselves to be bound by assembly decisions.¹⁹⁴ In spite of the importance of these public debates and votes, much of the work of the village was run by elaborate committees dedicated to certain tasks.¹⁹⁵ For example, it was quite common for there to be an annual supervision committee, the garden supervision committee (the common garden around the village), and the tank supervision committee (the village bath, temple, or water tank).¹⁹⁶

Although many questions can be raised about the governance of these committees, I do not discuss them in great depth because they are quite similar to the governance of the

¹⁸⁷ See *id.*; J.P. SHARMA, *REPUBLICS IN ANCIENT INDIA CIRCA 1500 B.C. – 500 B.C.* (E.J. BRILL TRNSL. 1968); R.C. MAJUMDAR (ED), *THE CLASSICAL ACCOUNTS OF INDIA* (1960) (discussing non-Indian accounts of life in Ancient India); A.K. MAJUMDAR, *CONCISE HISTORY OF ANCIENT INDIA: POLITICAL THEORY, ADMINISTRATION, AND ECONOMIC LIFE*, VOL. II, Ch. 7 (1980).

¹⁸⁸ See MAJUMDAR, *supra* note 18, at 133 – 35. The group was very important as there is evidence that absent members of the council would be contacted and consulted by letter. See *id.*, at 126 – 28.

¹⁸⁹ See *id.*, at 130 – 35.

¹⁹⁰ See *id.*, at 134 – 45.

¹⁹¹ See *id.*, at 97 – 105.

¹⁹² See *id.*, at 146 – 77.

¹⁹³ Moreover, many municipal entities had the power to levy taxes and regulate the price of commodities within their realm. See *id.*, at 187.

¹⁹⁴ See *id.*, at 125 – 47.

¹⁹⁵ See *id.*, at 157 – 177.

¹⁹⁶ See *id.*, at 167 – 77. The village would also be held liable for the debts of employees. See *id.*, at 177 – 78.

economic *sreni*. Instead, I will focus on the parts of the municipal entity that provide additional evidence on how the economic *sreni* may have functioned. In particular, two aspects of the municipal entities merit discussion. First, how villages or entities can merge and more generally how shares in a village can be transferred. Second, how committee members were selected.

As mentioned earlier it was possible for members of a municipal entity (like a village) to sell their shares in the entity. Inscriptional evidence suggests that it was indeed fairly common for such transactions to occur either by outright sale or by inheritance.¹⁹⁷ However, these sales were not without conditions. Some inscriptions suggest that any person who had shares of the assembly (and this did not include everyone in the village)¹⁹⁸ 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.¹⁹⁹

The ability to transfer shares raises interesting questions about the possible acquisition of shares of an entity by another entity or its members (i.e., a corporate acquisition). Some inscriptional evidence indicates that villages could certainly combine by agreement of the voting members of their assemblies.²⁰⁰ Although it is quite likely that this may have been done to block an invading force (and hence be viewed as a treaty) or to provide a broader base of support during a famine, nonetheless it appears that such combinations of entities were possible at the municipal level at least. Moreover, some evidence exists to suggest that combination of economic *sreni* required the approval of the monarch, which implies that such combinations could occur.²⁰¹

Aside from share transference the inscriptional evidence provides highly valuable and detailed descriptions of 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 would take place.

The qualifications required of committee members 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.²⁰² This combines concerns with accountability and transparency (the

¹⁹⁷ See *id.*, at 161 – 62.

¹⁹⁸ See *id.*, at 162 – 66.

¹⁹⁹ It appears that it was possible to have less than full membership in a municipal entity, but that this would not entitle the holder to vote. See *id.*, at 162. This suggests it is possible to own a share of the entity (i.e., its net assets or profits) but not be entitled to vote it. It is hard to understand how this would be something anyone would purchase, but inscriptional evidence suggests that this was indeed purchased. See *id.* 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. More investigation is needed to come to a stronger conclusion.

²⁰⁰ See *id.*, at 211 (quoting from the Tamil endorsement on the Udayendiram plates of Nandivarman (roughly 10th 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)”).

²⁰¹ See NAR, *supra* note 46, X at 4 – 6.

²⁰² See MAJUMDAR, *supra* note 18, at 170 – 71. Pot-tickets are basically packets placed into a pot for purposes of selection to a committee, much like writing your name on a piece of paper and placing it in a hat to be drawn out (presumably at random) by someone else. See *infra text accompanying note 210*.

need to have accounts) with independence requirements (no relations of “tainted” persons are permitted to run).²⁰³ Also, those who have violated certain rules or have engaged in inappropriate behavior would be prohibited from serving on committees as might their relations.²⁰⁴ Finally, those who have not served on committees for three years are specifically listed as potential candidates²⁰⁵ – this again helps to ensure some degree of independence and that the burdens (and power) of administration are shared amongst the municipality.

In addition to these disqualifications we have positive qualifications. Specifically, that 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.²⁰⁶ The requirement to own some land ensures that those who have something at stake in the municipality (landowners) are on committees. These parties are more likely to pay attention to municipal concerns and exercise care than those with few assets in the municipality.²⁰⁷ 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 stand for the committee. The qualification of having experience with business and following appropriate rules of behavior probably served a similar function.

In addition to these qualifications and disqualifications, the selection process was designed to reduce the likelihood of corruption and fraud. The general process of selection involved placing the names of qualified candidates in a pot and then having their names drawn from that pot.²⁰⁸ The items containing the details of the candidates were referred to as pot tickets.²⁰⁹ The process of selection 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

²⁰³ *See id.*, at 177.

²⁰⁴ *See id.*, at 171 – 73.

²⁰⁵ *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.”)

²⁰⁶ *See id.*, at 170 (noting that “(a) He must own more than a quarter (veli) of tax-paying land” (b) “He must have a house built on his own site” (c) “He must know the Mantrabrahmana (i.e.) he must know it himself and be able to teach (it to others).” (d) “Even if he owns only one-eighth (veli) 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 Bhashyas, and can explain it (to others).”)

²⁰⁷ This is analogous to the argument that people with assets at stake should be in a partnership. *See* ALLEN & KRAAKMAN, *supra* note 4, at 40 – 42.

²⁰⁸ *See* MAJMUDAR, *supra* note 18, at 173 – 77.

²⁰⁹ *See id.*

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 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). . . . Thus, from this year onwards as long as the moon and sun endure committees shall always be appointed by ‘pot tickets’ alone. To this effect was the royal order received”²¹⁰

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 in the process. 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 the likelihood of fraud and corruption. These are concerns prevalent even today in virtually any organizational form.

Having covered considerable territory in describing the organizational forms in Ancient India it might prove illustrative to provide a summary of their traits as compared to modern US corporations. Before doing so a few words on why I compare the *sreni* to US corporations rather than other entities. First, comparing the *sreni* to entities in its own time frame in other places is difficult because the *sreni* predates the earliest Roman proto-corporations by centuries and the *sreni* is considerably more complex and detailed than the Roman entities.²¹¹ We could, instead, compare the *sreni* to Medieval European guilds to which the *sreni* bears more than a passing resemblance.²¹² However, the *sreni* are, in some respects, even more complex than the Medieval guilds (e.g., in terms of mobility, ease of entry and exit, permitting multi-profession *sreni*, and so forth). Thus, certain features of the *sreni* do not have analogs in Roman or Medieval entities, but do have them in more modern US corporations. Of course, US corporations possess many features that the *sreni* do not, but comparing US corporations with the *sreni* provides a useful place to begin discussion.

²¹⁰ 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”).

²¹¹ See Hansmann & Kraakman, *supra* note 6, at 25 – 28 (discussing the *societates publicanorum* and how it was a “proto-joint stock corporation” that was bonded with outside assets or was operating with a state monopoly). It appears that these entities may have had full entity status by the first century B.C. See *id.*, at 26 n. 63 (referring to ULRIKE MALMENDIER, *SOCIETATES PUBLICANORUM: STAATLICHE WIRTSCHAFTSAKTIVITÄTEN IN DEN HÄNDEN PRIVATER UNTERNEHMER* 252 – 55 (2002)).

²¹² For greater discussion of Medieval European guilds see Sylvia L. Thrupp, *The Guilds*, in THE CAMBRIDGE ECONOMIC HISTORY OF EUROPE, VOL. 3, 230 – 80 (1963). Thaplyal also notes the similarity with guilds. See THAPLYAL, *supra* note 18.

Indeed, in spite of the fact that US corporations and *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.

TABLE 1
COMPARING US AND ANCIENT INDIAN ORGANIZATIONAL FORMS

<i>Characteristics</i>	<i>Organizational Form</i>	
	<i>Modern US Corporation</i>	<i>Ancient Indian Sreni</i>
Separate Entity	Yes	Yes
Centralized Management	Yes	Yes
Transferability of Interest	Yes	Probably Yes
Limited Liability	Yes (though recently)	Probably Not ²¹³
Agent has power to bind entity?	Yes	Yes ²¹⁴
Management elected?	Yes	Yes (though at times appears hereditary)
Can management be removed?	Yes	Yes
Duty of Loyalty	Yes	Probably Yes
Duty of Care	Yes	Yes
Liability insulation	Yes	Yes (less detailed than US)
Screens on shareholder suits and internal enforcement activity	Yes	Yes (less detailed than US)
Internal rules have binding effect	Yes	Yes
Some reimbursement for legal defense	Yes	Yes
Formation is easy	Yes	Yes
Register with state	Yes	Yes
State approval needed	Yes (though weak)	Yes
Use of incentive payments	Yes	Yes (less detailed than US)
Entry is easy	Yes	Some conditions, but no caste bars. ²¹⁵
Sharing of assets and liabilities	Terms of agreement	Terms of agreement and additional rules
Exit is easy	Yes	Yes, but with obligations potentially
Board/Committee Independence	Yes	Probably Yes
Other board qualifications	Yes	Yes (less detailed than US)
Voting Regulation	Yes	Yes (less detailed than US)
Open debate in meetings & shareholder resolutions	Yes, with some limits	Yes, with some limits (but less than in the US)
Transparency is valuable and disclosure is encouraged	Yes	Probably Yes (less detailed than US)

²¹³ There is little reason to believe that the *sreni* members bore joint and several liability for all *sreni* obligations yet each member's liability was not limited to the initial investment amount. Perhaps a kind of pro rata liability may have been more likely.

²¹⁴ The headman and officers of the *sreni* could bind the *sreni* in contractual matters. Sometimes other members could bind the *sreni*, but only with the approval of the *sreni*.

²¹⁵ Upon entry some payment of capital could be expected. See KAT, *supra* note 46, at verse 626.

Although the *sreni* and US corporations share many similarities, there are also many differences. The amount and detail of regulation governing US corporations is considerably greater (e.g., US voting regulation,²¹⁶ disclosure, liability screens and insulation are very detailed) and there are other differences between the *sreni* and US corporations not listed in Table 1 due to space, and other, considerations (e.g., there is no evidence of securities class action litigation in Ancient India). However, the point of Table 1 is not that we can compare all attributes of the US corporation 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, the evidence suggests that the Ancient Indians had given considerable thought to agency costs and incentive effects in the *sreni*. Such a sophisticated and developed organizational structure raises a number of important issues: 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*. The next part addresses these issues.

IV. THE DEVELOPMENT OF THE CORPORATE FORM IN ANCIENT INDIA

To better understand the development of the corporate form in Ancient India it is important to examine the political and economic history of India and what parts of it led to the development of the corporate form. Through this examination I intend to focus on a number of matters. First, how did the demand for the corporate form and the supply of its terms interact to help in the formation of the *sreni*. In particular, how did trade grow in Ancient India and what were the monitoring methodologies 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 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 the corporate form compared to alternate state structures seen in Ancient India? Moreover, what are the prospects for convergence of governance norms in these different kinds of state structures?

Before beginning this inquiry a few words are in order. Most of the sources on Ancient Indian history can be divided into two time frames: before the 7th Century B.C. and then after the 7th Century B.C. The writings after the 7th Century B.C. are fairly reliable and provide good descriptions of the political, economic and social contexts of the time as well as descriptions of organizational forms.²¹⁷ However, writings before the 7th Century B.C. provide some potential challenges to the researcher.

²¹⁶ For discussion of proxy rules see CLARK, *supra* note 4, at 357 – 400; ALLEN & KRAAKMAN, *supra* note 4, at 171 – 238.

²¹⁷ Moreover, we often have roughly contemporary writings (e.g., Chinese and Greek) as well as excavations that provide further support to these writings. See J.W. McCRINDLE, ANCIENT INDIA AS DESCRIBED BY MEGASTHENES AND ARRIAN 1- 181 (discussing Megasthenes' *Indica*)(REVISED ED. R.C. MAJMUDAR, 1960). For the writings of Chinese scholars see H.A. GILES, TRAVELS OF FA-HSIEN (1923); T. WATTERS, ON YUAN CHWANG'S TRAVELS IN INDIA (1961). Yuan Chwang is sometimes referred to as Hsuan Tsang. See HWUI LI, LIFE OF HSUAN TSANG (S. BEAL TRNSL.)(1911). The writings of Megasthenes are from around the time of Alexander (circa 300 B.C.), Fa-hsien from the 4th Century A.D. (the Gupta

First, it is well known that Ancient India, especially prior to the 7th Century B.C., generally relied on an oral tradition for disseminating knowledge and information.²¹⁸ Thus, certain sources were likely to have been composed at one point in time and then placed into writing considerably later. This makes dating the practices described in the earliest sources more difficult. Moreover, there are quite significant differences in the dating of the earliest Indian writings,²¹⁹ because of divergent theories about the initial development of civilization in India.²²⁰ Second, the writing on the seals found at various excavated sites has not yet been

Empire) and Yuan Chwang/Hsuan Tsang from the 7th Century A.D. Excavation evidence will be detailed in the next few sections.

²¹⁸ See S.P. Gupta, *infra* note 219, at 279; MOOKERJI, *infra* note 341, at 137 (discussing how in the Gupta Empire, circa 400 A.D., the oral tradition still held strong). Oral learning has an impact on the distribution of information. If someone with knowledge does not wish to provide it to you then you must find another person who has knowledge who is willing. Absent that and given little writing you have no access to knowledge except to divine it on your own. This may have served to deny certain people or castes information and knowledge.

²¹⁹ Authors suggesting a later dating, often relying on the Aryan Invasion theory (*infra* note 220), include R.E.M. WHEELER, THE INDUS CIVILIZATION 68 – 74, 128 – 130 (1968); JOHN MARSHALL, MOHENJODARO AND THE INDUS CIVILIZATION (1931); FRIEDRICH MAX MUELLER, INDIA, WHAT CAN IT TEACH US? 102, 181, 193 (1847) (dating of the *Rig Veda*). Authors who suggest alternatives to the Aryan Invasion theory and potentially a different dating for the *Rig Veda* include G.F. Dales, *Mythical Massacre at Mohenjodaro*, 16 EXPEDITION 37 (1964); S.P. Gupta, *The Indus-Sarasvati Civilization: Beginnings and Developments*, in THE DAWN OF INDIAN CIVILIZATION (UP TO C. 600 B.C.) 269 – 375 (G.C. PANDE, ED, 1999); JONATHAN MARK KENOYER, ANCIENT CITIES OF THE INDUS VALLEY CIVILIZATION 162, 174 (1998); Jim G. Shaffer, *The Indo-Aryan Invasions: Cultural Myth and Archaeological Reality*, in J. R. LUKAK'S PEOPLE OF SOUTH ASIA 88 (1984); BHAGWAN SINGH, THE VEDIC HARAPPANS 55 – 63 (1995); GEORG FEUERSTEIN, SUBHASH KAK & DAVID FRAWLEY, IN SEARCH OF THE CRADLE OF CIVILIZATION (1999); B. P. RADHAKRISHNAN & S. S. MERH, EDS., VEDIC SARASVATI — EVOLUTIONARY HISTORY OF A LOST RIVER OF NORTHWESTERN INDIA (1999). This list of authors do not all share the same views on the initial settlement of India. See discussion *infra* note 220.

²²⁰ Early Indologists hypothesized that the *Vedas*, of which the *Rig Veda* is the earliest part, were written by the Aryans (a term used in the *Vedas*) who invaded India from Central Asia around 2000 B.C. to 1500 B.C. See MUELLER, *supra* note 219, at 81 – 86; WHEELER, *supra* note 219, at 131 – 32. The basis for the Aryan invasion theory comes from linguistic similarities between Sanskrit and the Indo-European languages. See MUELLER, *supra* note 219, at 107, 114, 153 – 55; WHEELER, *supra* note 219, at 132. The later discoveries of Mohenjo Daro and Harappa (which went into decline around 2000 B.C. to 1500 B.C.) led the early Indologists to hypothesize that Mohenjo Daro and Harappa represented the Dravidian (non-Aryan) civilizations that were conquered by invading Aryans. This provided an explanation for the decline of Mohenjo Daro and Harappa plus an arrival date for the Aryans (about 2000 B.C.) and a date for the *Rig Veda* – roughly 1500 B.C. See WHEELER, *supra* note 219.

In recent times, this theory has come under attack and two different theories of the settlement of India have been put forward – Aryan migration (not invasion) into India and, second, that the Aryans are from India originally. Both theories may suggest an older dating for the *Rig Veda*, and other early Indian writings, than the Aryan invasion theory.

Let us start with the Aryan migration theory. See KENOYER, *supra* note 219, at 162, 174; Romila Thapar, *Hindutva and History*, 17 FRONTLINE 15 – 16 (Oct. 13, 2000). The first point made by several scholars is that there is virtually no genetic or other evidence of an invasion in the Harappa and Mohenjo Daro sites, rather the evidence is that of an abandonment of the sites. 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 (1995); Dales, *supra* note 219, at 38; RAYMOND ALLCHIN & BRIDGET ALLCHIN, ORIGINS OF A CIVILIZATION – THE PREHISTORY AND EARLY ARCHAEOLOGY OF SOUTH ASIA 206 – 222 (1997). Further, the genetic evidence suggests some change in the genetic make up around 4500 B.C. not 1500 B.C. See Kennedy, *supra*; Toomas Kivisild, *The Genetic Heritage of the Earliest Settlers Persists Both in Indian Tribal and Caste Populations*, at http://hpgl.stanford.edu/publications/AJHG_2003_v72_p313-332.pdf; Richard Cordaux, Robert Aunger, Gillian Bentley, Ivane Nasidze, S.M. Sirajuddin & Mark Stoneking, *Independent Origins of Indian Caste and Tribal Paternal Lineages*, 14 CURRENT BIOLOGY 231 – 35 (2004). But see M Bamshad & Toomas Kivisild, et al, *Genetic Evidence on the origins of the Indian Caste populations*, 75 VIRUS RESEARCH 95 – 106 (2001). This has led people to suggest that there was no Aryan invasion, but rather a gradual migration starting much earlier than had been suggested (around 4500 B.C.) In addition, recent satellite imagery has found a large dry river bed running parallel to the Indus river with many sites located along it (in fact, even more than along the Indus). See Gupta, *supra* note 219, at 271 – 72, 277 – 80. This river appeared to dry up, probably due to tectonic activity, somewhere between 3000 B.C. to 1900 B.C. See *id.*, at 271 – 72, 277 – 80, 315 – 16. This provides an alternative explanation for the demise of the Indus Valley sites – one of the major rivers dried up and people simply left and moved either west towards Mesopotamia or east towards the Ganges. See *id.*, at 315 – 16, 327 – 28, 346 – 47. Thus, the Aryan migration theory offers an earlier date for the arrival of the Aryans (e.g., 4500 B.C. to 4000 B.C.) and a “non-invasion explanation” for the demise of the Indus sites (a dried up river) around the time the sites appear

deciphered, and thus cannot provide much assistance to us in determining the date of the earliest Indian sources like the *Rig Veda*.²²¹

In light of this, for sources from the 7th Century B.C. onwards I shall treat the time line as being fairly close to accurate. For sources that probably pre-date the 7th Century B.C. I shall focus on dates and time frames for which there is general agreement and mention other more controversial dates where they may arise. To the extent that the excavations at various sites can provide additional insights they will also be mentioned. With this in mind let us begin our journey through the History of Ancient India.

Civilization on the Indian Subcontinent dates back many millennia. To make the analysis more manageable I divide Ancient Indian History into the periods in Table 2. This allows us to focus on certain time periods that tended to share many things in common. One could, of course, present the time line in different ways, but Table 2 is simply a method of providing a starting point for discussion. It does not preclude alternative divisions of Ancient Indian history.

to have been abandoned (2000 B.C.) As for dating the *Rig Veda*, and other early Indian writings, the migration theory does not appear to provide firm dates. It is possible that the earliest sources were written earlier than 1500 B.C. given that the Aryans, under the migration theory, arrived into India around 4500 B.C. However, when exactly the earliest sources were written is not yet resolved.

This leaves us with the last theory – the Aryans were from India originally. See Gupta, *supra* note 219, at 275 – 79, 339 – 44; Shaffer, *supra* note 219, at 88; SINGH, *supra* note 219, at 58 – 63; FEUERSTEIN, KAK & FRAWLEY, *supra* note 219, at 153 – 61. This theory, which is considerably more controversial than the migration theory, draws on several sources. First, is the recently discovered dry river bed noted above. Some researchers argue this is the legendary Saraswati River from the Ancient Indian texts, although this is by no means generally accepted. See *id.*; MOHAMMAD RAFIQUE MUGHAL, ANCIENT CHOLISTAN – ARCHAEOLOGY AND ARCHITECTURE 20, 23, 163 (1997). This is potentially important because the Saraswati is referred to many times in the *Rig Veda*, but the river running parallel to the Indus (i.e., the Saraswati under this theory) dried up somewhere between 3000 B.C. to 1900 B.C. See Gupta, *supra* note 219, at 271 – 72, 277 – 80, 315 – 16. Given that the *Rig Veda* describes the Saraswati as a large river then it may well be referring to the Saraswati sometime before 3000 B.C., implying that the *Rig Veda* predates 3000 B.C. See *id.*; Subhash Kak, *The Mahabharata and the Sindhu-Saraswati Tradition* (2000)[hereinafter *Sindhu-Saranati*]. Next, there are references in the *Rig Veda* that some authors argue describes the Indus area (assuming the dry river is the Saraswati), which leads some to suggest that the Aryans were the Indus area inhabitants. See Gupta, *supra* note 219, at 315 – 16, 346 – 47; R.S. Bisht, *Harrappans and the Rgveda: Points of Convergence, in THE DAWN OF INDIAN CIVILIZATION (UP TO C. 600 B.C.)* 393 – 442 (G.C. PANDE, ED, 1999). Other sources include astronomical references from the *Rig Veda* and other Ancient texts suggesting, arguably, their writing to be closer to 4000 B.C. to 3700 B.C. See FEUERSTEIN, KAK & FRAWLEY, *supra* note 219, at 244 – 48; BAL GANGADHAR TILAK, THE ORION, OR RESEARCHES INTO THE ANTIQUITY OF THE VEDAS (1893)(who suggested that the *Rig Veda* had references to astronomical events in the 6th or 7th Millenia B.C.). Noted scholars, however, have responded to the “Aryans-are-from-India” theory with considerable skepticism and reject this theory for reasons laid out in the following papers. See Steven Farmer & Michael Witzel, *Horseplay in Harappa: The Indus Valley Decipherment Hoax*, 17 FRONTLINE 4 - 14 (Oct. 13, 2000); Romila Thapar, *Hindutva and History: Why do Hindutva ideologues keep flogging a dead horse?*, 17 FRONTLINE 15 – 16 (Oct. 13, 2000); Asko Parpola, *Of Rajaram's "Horses", "decipherment" and civilisational issues*, 17 FRONTLINE 124 – 25 (Nov. 24, 2000); Steven Farmer & Michael Witzel, *New Evidence on the 'Piltown Horse' Hoax*, 17 FRONTLINE 126 – 29 (Nov. 24, 2000).

For our purposes the debate is important in terms of trying to date the earliest written materials. The invasion theory provides the most recent dates (1500 B.C. to 1000 B.C.), the migration theory could provide varying dates (1500 B.C. to even earlier potentially), and the Aryans-are-from-India theory provides older dates (4000 B.C. to 3000 B.C.) Under any view the written materials are of considerable antiquity and hence the entities described within them would be as well.

²²¹ See Gupta, *supra* note 219, at 329 – 330 (noting that the Indus seals are still undeciphered).

TABLE 2
ANCIENT INDIAN HISTORY TIMELINE

<i>Period</i>	<i>Years Covered Approximately</i>
A. Earliest Civilizations	7500 B.C. to 700 B.C.
1. Earliest Sites – Mehrgarh	7500 B.C. to 4000 B.C.
2. The Indus Area Civilizations	4000 B.C. to 1900 B.C.
3. Indo-Gangetic Civilizations	1900 B.C. to 700 B.C.
B. The Rise of Buddhism & Jainism	700 B.C. to 320 B.C.
C. The Mauryan Dynasty	320 B.C. to 185 B.C.
D. Post-Mauryan Kingdoms in North and South India	200 B.C. to 1300 A.D.
E. The Gupta Dynasty & India’s “Golden Age”	250 A.D. to 550 A.D.
F. Harsha Vardhana & The Rajput Kingdoms	600 A.D. to 1100 A.D. ²²²

A. 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 make references to organizational forms. The *Rig Veda* makes reference to the *pani* (akin to a partnership amongst traders for trade caravans) and the *Mahabharata* to the *sreni*.²²³ There is, however, little detail provided about how the *sreni* was organized except to mention the position of the headman (*sreshthi*).²²⁴ In addition, the exact dating of these early writings is a matter of some debate as noted earlier. Thus, if one uses the oldest, and more controversial, dating for the *Mahabharata* then the *sreni* may have been known as early as 3100 B.C., but otherwise most accept that the *sreni* was known by no later than roughly 800 B.C.²²⁵ However, regardless of which date is preferred, the *sreni* is of considerable antiquity and, under either dating, would predate the Roman proto-corporations by centuries.²²⁶

²²² In this paper I do not discuss the corporate form in India after the 11th Century A.D. I address corporate organization in India after the 11th Century in Vikramaditya S. Khanna, *The Economic History of the Corporate Form in Medieval India*, Draft 2005 and then in Vikramaditya S. Khanna, *The Economic History of the Corporate Form in Modern India*, Draft 2005.

²²³ See MAHABHARATA, *supra* note 103, at XII 37.14, XII 59.49, XII 138.63; MAJMUDAR, *supra* note 18, at 14 (discussing the *pani* in the *Rig Veda*).

²²⁴ See MAHABHARATA, *supra* note 103, at XII 59.49, XII 138.63; HARI PADA CHAKRABORTI, VEDIC INDIA: POLITICAL AND LEGAL INSTITUTIONS IN VEDIC LITERATURE 327 – 28 (1981). See also CHAKRABORTI, *supra*, at 319 – 26 (discussing Vedic rules on contract and payment of debts). There is some debate amongst commentators about whether the *Rig Vedic* times were sufficiently advanced to support the amount of trade necessary for the *sreni*. See THAPLYAL, *supra* note 18, at 20 – 24 (discussing the debate on this point); DAS, *supra* note 18, at 20 – 39 (arguing that Vedic society was advanced enough for the development of *sreni*); Gupta, *supra* note 219, at 329 – 339 (same).

²²⁵ See Kak, *Sindhu-Sarasvati*, *supra* note 220 (arguing that the *Mahabharata* may date from 3100 B.C.) The 800 B.C. date is based on references in the *Brihadaranyaka Upanishad*, *infra* note 256. Scholars do seem to have some agreement on the dating of this *Upanishad*. See THAPLYAL, *supra* note 18, at 20 – 24; MAJMUDAR, *supra* note 18, at 14. It is, of course, possible that the *sreni* in the earliest writings meant something different than what it came to mean in the later more detailed writings. However, the excavational evidence I discuss in the next few paragraphs suggests that the *sreni* in the earliest writings may well have referred to the kinds of economic entities described in greater detail in later works.

²²⁶ See Hansmann & Kraakman, *supra* note 6, at 25 – 28 (noting that the *societates publicanorum* started around the 4th Century B.C. and probably obtained full entity status by the first century B.C.)

Although this time period does not provide much further written material on the *sreni*, it does provide significant excavational evidence on Ancient India. I will briefly discuss this evidence because it provides the context and building blocks for later economic development. Moreover, much of the later economic development in the Indian Subcontinent bears many similarities to the evidence discussed in the next few paragraphs.

1. *Earliest Sites - Mehrgarh*

Current archaeological thinking suggests that the earliest settlements in the Indian Subcontinent date back to roughly 8000 B.C. to 7000 B.C.²²⁷ Excavations at Mehrgarh (near Quetta, Pakistan) and neighboring sites²²⁸ provide evidence of a fertile region and inhabitants engaged in farming, herding and keeping animals,²²⁹ and various crafts,²³⁰ as well as inhabitants who possessed dentistry skills.²³¹ There is little evidence of advanced trade in Mehrgarh, but in sites from around 5000 B.C. there is some evidence of longer distance trade and the use of the kiln in making pottery.²³² There is, however, little further evidence of how trade functioned in those times.²³³

2. *The Indus Area Civilizations*

The next important civilizations in Ancient India 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).²³⁴ These civilizations date from roughly 4000 B.C. and flourished for centuries going into decline around 1900 B.C. to 1500 B.C.²³⁵ Excavations suggest a resource rich, fertile and heavily populated area that was considerably larger than its

²²⁷ See Jean-Francois Jarriage, *Excavations at Mehrgarh*, in HARAPPAN CIVILIZATION ED GREGORY L. PROSSEHL, 79 (1993); KENOYER, *supra* note 219, at 33, 35, 36 – 39 ; Jean Francoise Jarriage & Richard H. Meadow, *The Antecedents of the Civilization in the Indus Valley*, JOURNAL AMERICAN SCIENTIST, August 1980, 122 – 133.

²²⁸ See *id.*; KENOYER, *supra* note 219, at 35; Gupta, *supra* note 219, at 283 – 85. There are suggestions that the Mergharh site was around 168 acres large (bigger than any contemporaneous site in the world) and with approximately 30,000 people living there which would have been considered large in those times. See FEUERSTEIN, KAK & FRAWLEY, *supra* note 219, at 146 – 48.

²²⁹ See KENOYER, *supra* note 219, at 37 – 38. For more detailed discussion see Jonathan Mark Kenoyer, *Trade and Technology of the Indus Valley: new insights from Harappa, Pakistan*, 29 WORLD ARCHAEOLOGY 262 (1997).

²³⁰ See Kenoyer, *supra* note 229, at 266 – 74.

²³¹ The buried remains of some individuals appeared to have drillings in their teeth consistent with drilling to fill cavities and address tooth decay. See http://news.bbc.co.uk/hi/english/health/newsid_1272000/1272010.stm (BBC News story).

²³² See Gupta, *supra* note 219, at 285 – 94 (discussing the sites of Nausharo and Gumla and longer distance trade as well as the use of kiln). An interesting point is that the burial chambers now exhibited less burying of valuables with the dead than at Mehrgarh. See Gupta, *supra* note 219, at 284 (discussing Mehrgarh); Jagat Pati Joshi, *Religious and Burial Practices of Harappans: Indian Evidence*, in THE DAWN OF INDIAN CIVILIZATION UPTO C. 600 B.C. (G.C. PANDE, ED.) 377 – 91 (1999)(discussing the Indus Valley burial practices). A shift occurred that led these civilizations to keep valuables in society rather than burying them with the dead. See Joshi, *supra*.

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.

²³³ There is also little available written evidence. The oldest Indian writing – the *Rig Veda* – may, at the earliest, date from around 4500 B.C. which is at the tail end of the time under consideration. However, some consider evidence of large storage facilities as indicative of some kind of corporate life, although the exact form of it is difficult to ascertain. See Gupta, *supra* note 219, at 283 – 84.

²³⁴ See KENOYER, *supra* note 219, at 49 – 68.

²³⁵ See B.B. Lal, *Decline and Legacy of the Phase of Indus Civilization*, in THE DAWN OF INDIAN CIVILIZATION UPTO C. 600 B.C. (G.C. PANDE, ED.) 443 – 64 (1999).

contemporaries (e.g., Egypt and Mesopotamia).²³⁶ The Indus area civilizations were highly developed with advanced city planning and water management systems far ahead of contemporary civilizations.²³⁷ Moreover, residents of the Indus area were actively engaged in trade with each other and with civilizations to the west (both by land and by sea).²³⁸

Figure 1 – Map of Early World Civilizations²³⁹

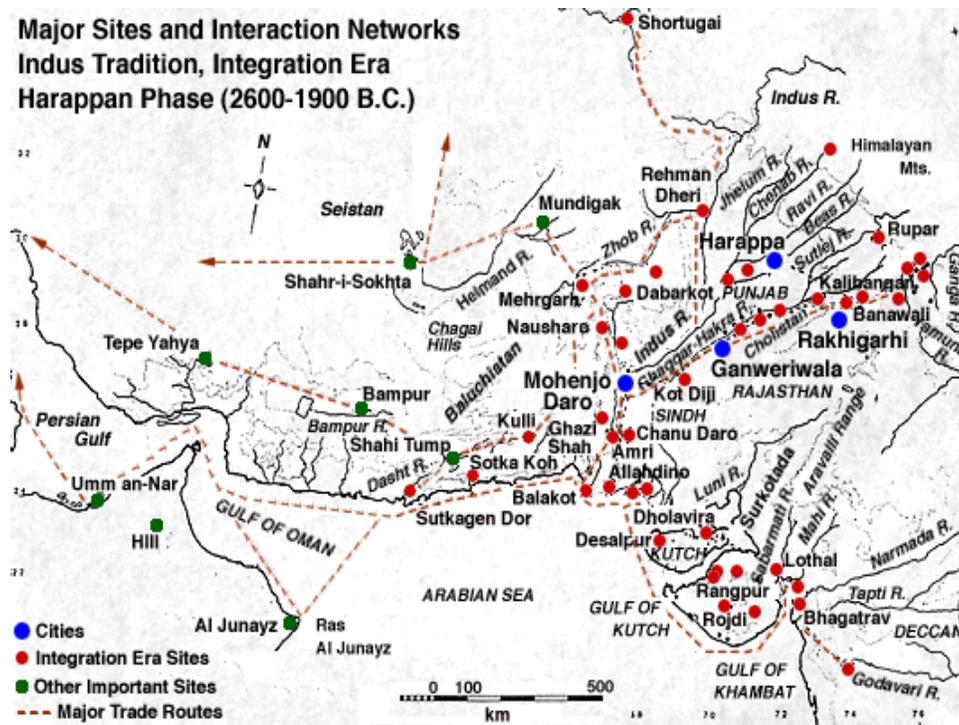


²³⁶ See KENOYER, *supra* note 219, at 49 – 50; Gupta, *supra* note 219, at 270 – 73, 313 – 27. The civilizations in the Indus Valley and surrounding areas ranged from 1.8 Million square kilometers to 2.5 Million square kilometers (i.e., two to four times the size of Egypt or Mesopotamia). See KENOYER, *supra* note 219, at 17; Gupta, *supra* note 219, at 270 – 73.

²³⁷ See KENOYER, *supra* note 219, at 50; Gupta, *supra* note 219, at 272 – 75, 306 – 27 (indicating some variety in city planning). Roads were usually built on a grid and the outside perimeter of the city was built with fortified walls. See *id.* Residences were often built on platforms apparently to survive river floods that would occur on a relatively frequent basis. See *id.* Moreover, the cities had an excellent water management system and some cities had a large number of inhabitants. See KENOYER, *supra* note 219, at 50; Gupta, *supra* note 219, at 353 – 57. Also, some sites exhibited the use of copper and other metals in the daily lives of the citizens. See Vibha Tripathi, *Early Iron Technology and Its Socio-Economic Impact*, in *THE DAWN OF INDIAN CIVILIZATION UPTO C. 600 B.C.* (G.C. PANDE, ED.) 377 – 91 (1999).

²³⁸ See KENOYER, *supra* note 219, 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 KENOYER, *supra* note 219, at 81 – 105; Gupta, *supra* note 219, at 329 – 339. See also 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); Gupta *supra* note 219, at 329 – 339; KENOYER, *supra* note 219, at 81 – 105, 127 – 73. There is evidence of wealth being an important matter in socioeconomic terms 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). Some sites appear to suggest dockyards as well. See AGRAWALA, *supra* note 44, at 265 (discussing the Lothal site).

²³⁹ <http://www.harappa.com/indus2/oldworld.html>.

Figure 2 – Detailed Map of Indus Valley Sites²⁴⁰

Most of the research into these sites suggests a number of factors contributed to the active trade environment. In addition to the resource rich environment, 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 for regular and luxury goods.²⁴¹ Second, although these civilizations were not under the rule of a single monarch²⁴² they appeared to live in relative peace with each other,²⁴³ relied on common weights and measurements,²⁴⁴ and had similar city plans with separate areas of the city dedicated to certain professions.²⁴⁵ This degree of uniformity is surprising given the absence of a single monarch and some have suggested that it resulted from a focus on trade and religion.²⁴⁶

²⁴⁰ <http://www.harappa.com/indus/map1.html>.

²⁴¹ See THAPLYAL, *supra* note 18, at 17. The demand for products was high in the cities relative to the rural areas and this would have benefited trade. *See id.*

²⁴² See KENOYER, *supra* note 219, at 99 – 101. It appears that these civilizations may have been organized like the city states in Renaissance Italy. *See id.* There are no large centralized structures attesting to great kings and emperors or ritual centers (which we witness in other civilizations). *See id.*

²⁴³ See KENOYER, *supra* note 219, at 15, 42, 81 – 82. The fortified walls are seen as being too low to prevent invaders, but probably high (and deep) enough to block floods and wild animals. *See id.*, at 41 – 42; Gupta, *supra* note 219, at 313 – 16. Moreover, there is little evidence in most sites of armed conflict or massacres of any kind. *See Kennedy, supra* note 220, at 49, 54, 60; Dales, *supra* note 219, at 38.

²⁴⁴ See KENOYER, *supra* note 219, at 26, 81, 99, 178, 182.

²⁴⁵ See KENOYER, *supra* note 219, at 69 – 81; Gupta, *supra* note 219, at 314 – 15.

²⁴⁶ See KENOYER, *supra* note 219, at 69 – 81. It is also possible that there were some kinds of alliances at this time that encouraged trade or that the various business people agreed on certain basics to encourage trade (perhaps like the

Indeed, all the factors listed above would benefit trade. The relative peace in the region makes travel safer for traders and opens up new markets for trade.²⁴⁷ The uniformity of weights and measures, unique at that time in world history,²⁴⁸ benefits trade by reducing the transactions costs of engaging in trade.²⁴⁹ The localization of craft and industry to certain parts of the city might enhance group cohesion, increase productivity and make training of new recruits/employees somewhat easier. In light of all these factors, 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 and probably rising. This often enhances the demand for organizational forms.

On the supply side one can examine what kinds of monitoring methodologies 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 have provided the monitoring methodology necessary to make the duties described in Parts II and III.B.3 enforceable and to reduce agency costs.²⁵⁰ Moreover, enhancing group cohesion would help to encourage the growth of *sreni dharma* within the *sreni* (assuming they existed at that time).

Moreover, excavations have found many seals which, although undeciphered,²⁵¹ are considered by some scholars as ways to identify property.²⁵² If so, these seals could potentially be one way for people to mark their property and thereby enhance the chances of monitoring the movement of assets between owners and entities and reduce creditor information costs. However, not enough is known about the seals and the other business practices at that time to say anything conclusive.

In any case it does appear that some of the basic pre-conditions for the development of organizational forms were present – increasing trade and some methods of monitoring agents and perhaps even the movement of assets. This does not mean, of course, that the *sreni* or other organizational forms necessarily existed in these civilizations, but it does suggest that the pre-conditions for their growth were probably present.

European nations forming the European Union have been doing over the last 30 years or so). A final resolution is probably likely only when the Indus script is deciphered.

²⁴⁷ See *id.*, at 18. The elaborate trade routes detailed in KENOYER, *supra* note 219, at 81 – 105 attest to a fairly high level of safety. See *id.*, at 89 – 94 (discussing transportation through the Indus civilization).

²⁴⁸ See KENOYER, *supra* note 219, at 26, 81, 99, 178, 182; V.B. Mainkar, *Metrology in the Indus Civilization, in* FRONTIERS OF THE INDUS CIVILIZATION (B.B. LAL & S.P. GUPTA, EDs.) 141 – 51 (1984); Gupta, *supra* note 219, at 311, 322, 362.

²⁴⁹ This commonality is analogous to the efforts of the European Union in creating a single currency (the Euro) to facilitate trade by reducing the transactions costs associated with transnational trade.

²⁵⁰ See Bernstein, *Opting Out, supra* note 35; David Charny, *Nonlegal Sanctions in Commercial Relationships*, 104 HARV. L. REV. 373 (1990).

²⁵¹ See KENOYER, *supra* note 219, at 69 – 81, 83 – 90; ASKO PARPOLA, DECIPHERING THE INDUS SCRIPT 248 – 54 (1994).

²⁵² See KENOYER, *supra* note 219, at 83 – 90; AGRAWALA, *supra* note 44, at 256; Gupta, *supra* note 219, at 329 – 330. Some authors suggest that the seals were used in an intricate “agent” system of doing business. See Shashi Asthana, *Indus-Mesopotamian Trade: Nature of Trade and Structural Analysis of the Operative System, in* ESSAYS IN INDIAN PROTOHISTORY 31 – 47 (EDS D.P. AGRAWAL & DILIP K. CHAKRABARTI) (1979).

3. Indo-Gangetic Civilizations

Following the decline of the Indus area sites (near 1900 B.C. to 1500 B.C.),²⁵³ there was a nearly contemporaneous rise in the eastern civilizations centered primarily on the banks of the Ganges River which bore many similarities to the Indus area sites.²⁵⁴ These Indo-Gangetic kingdoms grew very quickly and became quite wealthy as the region is well watered, lush and green, and bountiful in natural resources.²⁵⁵ It is quite clear that the *sreni* would have existed during this time for two reasons. First, if one uses the most recent dating for the earliest written materials (1500 B.C. to 1000 B.C.) then by 1000 B.C. to 800 B.C. the *sreni* and the *pani* were known to the Indians.²⁵⁶ Moreover, the monitoring methodologies and general growth in trade in the Indo-Gangetic kingdoms further contribute to the notion that the prerequisites for the corporate form were in place by about 1000 B.C. It was also during this time that Hinduism was the dominant religion and the caste system was clearly in place, although it may not have been as rigid as it later became.²⁵⁷

B. The Rise of Buddhism & Jainism.

The dawn of the 7th Century B.C. was an important period in Ancient Indian history. Around this time two great religions – Buddhism and Jainism – were founded.²⁵⁸ Both religions found a number of adherents in India with Buddhism becoming very popular and changing the landscape in many ways for nearly 1000 years.²⁵⁹

Apart from the religious and political significance of Buddhism and Jainism, trade was significantly impacted during this time. Both religions did not stress caste divisions and thus permitted easier interchange amongst groups in society and this further helped to expand trade, innovation, and production.²⁶⁰ In addition, there was significant urbanization

²⁵³ See Lal, *supra* note 235, at 443 – 64; KENOYER, *supra* note 219, at 173 – 86.

²⁵⁴ See KENOYER, *supra* note 219, at 173 – 85; Lal, *supra* note 235; 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 many aspects of the Indus civilizations were carried over to the Gangetic ones. See Lal, *supra* note 235, at 457 – 62; ALLCHIN & ALLCHIN, *supra* note 220, at 223 – 261. This period appeared to be one of considerable growth in these Kingdoms as is clear from writings dating from 800 B.C. which indicate that the Gangetic Kingdoms were very successful and quite rich. See DAS, *supra* note 20, at 39 – 83; AGRAWALA, *supra* note 44, at 274 – 76.

²⁵⁵ See DAS, *supra* note 20, at 39 – 83; AGRAWALA, *supra* note 44, at 266 (noting the abundance of raw materials in this area), 274 – 75, 276 (discussing the frequent crops in India, often harvests occurring 2 to 3 times a year). A number of sectors grew in this region: agriculture, mining, metallurgy, blacksmithing, iron working, ivory carving, and many others (e.g., trade in Horses, Elephants, luxury items, textiles). See DAS, *supra* note 20, at 39 – 83; AGRAWALA, *supra* note 44, at 273 – 76. India was also the primary source of diamonds during that time and many precious gems. See AGRAWALA, *supra* note 44, at 260, 271; ALLCHIN & ALLCHIN, *supra* note 220, at 226 – 29; BOSE, *supra* note 28, at 236 – 37, 270 – 71. Furthermore, the level of specialization and detail in trade was very high. For example, arrow making was considered a separate group from bow making and bow string making. See BOSE, *supra* note 28, at 246, 277 – 80; DAS, *supra* note 20, at 39 – 83.

²⁵⁶ See BRIHADARANYAKA UPANISHAD WITH SANKARA'S COMMENTARY 1.411-.12 (1953); MAJMUDAR, *supra* note 18, at 14.

²⁵⁷ See Ram Sharan Sharma, *Role of Property, Family and Caste in the Origin of the State in Ancient India*, in ESSAYS, *infra* note 264, at 4.

²⁵⁸ Roughly in the 6th Century B.C. Siddhartha Gautama, who later became Buddha, and Mahavira, founder of the Jain faith, were born. See THAPLYAL, *supra* note 18, at 24 – 27.

²⁵⁹ See T.W. RHYS DAVIDS, BUDDHIST INDIA (1959); ADHYA, *infra* note 314, at 84 – 85; THAPAR, *supra* note 84, at 25 – 33, 130 – 33. Probably the most famous convert in India was the Emperor Ashoka. See D.R. Bhandarkar, *Asoka and his Successors*, in A COMPREHENSIVE HISTORY OF INDIA II, 30 – 43 (EDS K.A. NILAKANTA SASTRI)(1956).

²⁶⁰ See BOSE, *supra* note 28, at 62 – 63, 78; Tripathi, *supra* note 237, at 497; THAPLYAL, *supra* note 18, at 18 – 20. It is worth noting that the caste system in Ancient India was not as rigid as it later became. See Sharma, in ESSAYS, *infra* note

(as in the Indus area) and the use of coins as currency was quite common thereby making transactions easier.²⁶¹ Moreover, the greater use of iron in this time would have helped in constructing tools to enhance the development of agriculture (e.g., iron ploughs, axes), crafts, and improve transportation and storage.²⁶² All these factors would have contributed to the rise in trade and the demand for collective efforts and organizational forms.

In addition, the professions continued, as in the Indus area, to be localized in parts of towns and cities, thereby enabling monitoring of group members.²⁶³ Further, it is fairly clear that by this stage accountants were a recognized profession which would have helped in policing the boundary between entity and owner assets.²⁶⁴ All the basics were then in place for the corporate entity.

Indeed, we have considerable written sources attesting to the presence and importance of the *sreni* by this time in Indian history.²⁶⁵ These sources suggest that the *sreni* were numerous, in varied fields, and indeed could be mobile from one place to another.²⁶⁶ The *sreni* were clearly important in society as they were often invited for official state functions.²⁶⁷ They were also actively involved in trading, production (crafts), and rudimentary banking services by this time.²⁶⁸ Their importance is further highlighted by the fact that the *Bhandagarika* (an arbitrator for inter-*sreni* disputes) became established at this time as a government official.²⁶⁹

However, besides references to the importance of the *sreni* in society we have only a few tidbits of information on how it was organized and governed. We know that by this stage *sreni* had headmen and that the *sreni* were sometimes composed of a large number of members.²⁷⁰ Although headmen are mentioned, there is little mention of executive officers which is surprising given that some *sreni* were quite large. We do, however, see references to the *sreni* laying down their *sreni dharma* and the law books containing recommendations to the

264, at 4. Also, note that Buddhism did not encourage animal sacrifices which would have benefited the economy by not expending animal resources in such activities. See BOSE, *supra* note 28, at 101 – 03. In spite of all this, one should not be under the impression that evidence of economic growth is available only in the Buddhist literature. There is evidence of active trade even in the non-Buddhist literature. See Agrawala, *infra* note 264.

²⁶¹ See THAPLYAL, *supra* note 18, at 16; AGRAWALA, *supra* note 44, at 273 (noting the presence of metallic currency in Buddhist times). It also seems that credit transactions occurred at this time and would have benefited trade. See AGRAWALA, *supra* note 44, at 273. For greater discussion of the importance of iron see Tripathi, *supra* note 237.

²⁶² See THAPLYAL, *supra* note 18, at 15 – 16.

²⁶³ See *id.*, at 15, 57 – 60; DAS, *supra* note 20, at 68.

²⁶⁴ See AGRAWALA, *supra* note 44, at 268 (discussing the presence of books and accounts as early as the 8th century B.C.); DAS, *supra* note 20, at 55 – 83; BANKEY LAL SHARMA, ECONOMIC IDEAS IN ANCIENT INDIA BEFORE KAUTILYA 75 – 100 (1987) (discussing the elaborate taxation system before the Mauryan empire which seems only possible if some rudimentary level of accounting had developed); Vasudeva S. Agrawala, *Trade and Commerce From Panini's Astadhyayi*, in ESSAYS IN ANCIENT INDIAN ECONOMIC HISTORY (BRAJADULAL CHATTOPADHYAYA ED.) 149 – 59 (1987) (noting mentions of capital and profit which seems indicative of some degree of accounting) (*hereinafter* ESSAYS).

²⁶⁵ By this time the oral tradition became less dominant and the newer religions generally encouraged writing. See THAPLYAL, *supra* note 18, at 17. Thus, we witnessed the proliferation of written materials that most scholars date from somewhere between the 7th Century B.C. to the 4th Century B.C. See *id.*, at 2 – 6 (discussing the sources in this time frame including the *Jataka Stories* (circa 7th to 6th Century B.C.) for Buddhist perspectives and the *Dharmasutras* (5th Century B.C.) from the non-Buddhist perspectives). See *id.*, at 24 – 27; DAS, *supra* note 20, at 60 – 68; SHARMA, *supra* note 264, at 137 – 39.

²⁶⁶ See MAJMUDAR, *supra* note 18, at 18 – 19; DAS, *supra* note 20, at 60 – 68; SHARMA, *supra* note 264, at 137 – 39.

²⁶⁷ See DAS, *supra* note 20, at 67 – 69; MAJMUDAR, *supra* note 18, at 18 – 23.

²⁶⁸ See MAJMUDAR, *supra* note 18, at 18 – 19. JATAKA IV, *supra* note 63, at 37.

²⁶⁹ See JATAKA IV, *supra* note 63, at 37.

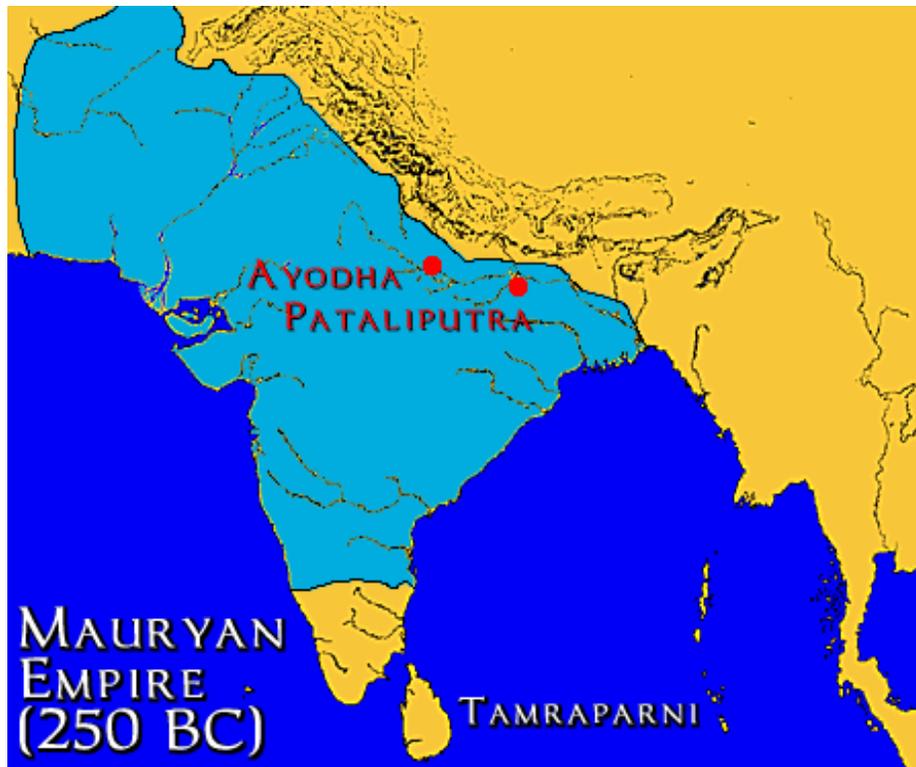
²⁷⁰ See *text accompanying* notes 70 to 72.

king that he should enforce these rules.²⁷¹ This suggests that the governance of the *sreni* is something that people had spent time thinking about by this stage. This is to be expected given the increasing importance and size of the *sreni*. We do not have, however, references to what was contained in the *sreni dharmas* of the time. This makes assessing the functioning of these entities more difficult. Nonetheless, we can say with confidence that the *sreni* had grown in number and importance by this stage, played a critical role in society, and that the writers of the time were cognizant of the notion of governance in these entities.

C. The Mauryan Dynasty

Although the economic environment in India was growing rapidly, many things were about to change. The incursions of Alexander the Great into Northwestern India started the process of significant change in India.²⁷² Many in India were concerned about the potential for Alexander to invade other parts of India. Even after his death a large portion of his army stayed in the area and the threat of a Greek invasion loomed over India.²⁷³ Against this background came the birth of what many regard as the first great Indian empire – the Mauryan Empire – which held sway from about 320 B.C. until 185 B.C. (see Figure 3).

Figure 3 – Map of Mauryan India²⁷⁴



²⁷¹ See GAUTAMA DHARMASTRUTIA XI, *supra* note 85, at 23.

²⁷² See RADHA KUMUD MOOKERJI, CHANDRAGUPTA MAURYA AND HIS TIMES 22 – 36, 44 – 46, 219 (1966); ROMILA THAPAR, ASOKA AND THE DECLINE OF THE MAURYS 13 – 19 (1997).

²⁷³ See THAPAR, *supra* note 272, 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.

²⁷⁴ [http://ancienthistory.about.com/gi/dynamic/offsite.htm?site=http://www.wsu.edu:8080/%257Edee/ANCI](http://ancienthistory.about.com/gi/dynamic/offsite.htm?site=http://www.wsu.edu:8080/%257Edee/ANCI%20NDIA/MAURYMAP.HTM)
[NDIA/MAURYMAP.HTM](http://www.wsu.edu:8080/%257Edee/ANCI%20NDIA/MAURYMAP.HTM) ©1996, Richard Hooker.

The primary emperors were Chandragupta Maurya (after whom the dynasty is named), Bindusara, and Ashoka.²⁷⁵ 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. Although the empire existed for only about 135 years, its development brought changes to India that would reverberate for many years to come.

The first major change was that it 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 roads and maintaining them throughout India.²⁷⁶ The improved infrastructure combined with increased security, greater uniformity in measurements, and increasing usage of coins as currency would enhance trade.²⁷⁷

The second major change was the publication and implementation of the *Arthashastra* around 300 B.C. to 275 B.C. The *Arthashastra* (the knowledge or science of material gain) is one of the most important ancient texts on economics, politics and administration.²⁷⁸ The authorship of the *Arthashastra* is usually attributed to the legendary Chanakya.²⁷⁹ Chanakya was the chief adviser and minister who helped Chandragupta Maurya obtain the Magadha Kingdom (a very powerful kingdom in Ancient India) and then, through his stratagems, unified the Northern Indian kingdoms into a force to repel the Greeks.²⁸⁰

The *Arthashastra* is a treatise on how to maintain and expand power, obtain material gain, and administer an empire.²⁸¹ Not only is it a book about theory, but also implementation. It contains many clear and detailed rules regarding the governing of an empire to ensure its success and longevity. To be sure, it is at times ruthless and brutal, but

²⁷⁵ See THAPAR, *supra* note 272, at 13 – 16; MOOKERJI, *supra* note 272, at 165 – 82.

²⁷⁶ See MOOKERJI, *supra* note 272, at 204 – 10; THAPAR, *supra* note 272, at 82 – 85; THAPLYAL, *supra* note 18, at 27 – 28. In fact, there appear to have been a number of different kinds of roads and during the time of Ashoka some roads were designed with rest stops for the weary traveler. See MOOKERJI, *supra* note 272, at 209 – 10 (identifying about 15 types of roads); THAPAR, *supra* note 272, at 82 – 85; THAPLYAL, *supra* note 18, at 27 – 28.

²⁷⁷ 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).

²⁷⁸ There are a number of translations of the *Arthashastra*. I am relying on R.P. KANGLE, THE KAUTILYA ARTHASASTRA, PART II, AN ENGLISH TRANSLATION WITH CRITICAL AND EXPLANATORY NOTES (1972) [hereinafter ARTHASASTRA] and for commentary R.P. KANGLE, THE KAUTILYA ARTHASASTRA, PART III, A STUDY [IN ENGLISH] (1972). Another excellent translation is L.N. RANGARAJAN (ED.), KAUTILYA: THE ARTHASASTRA (1992).

²⁷⁹ See KANGLE, ARTHASASTRA, PART III, *supra* note 278, at 59 – 115. Chanakya (also known as Kautilya and Vishnugupta) is both one of the most revered and reviled characters in Indian history. He is revered for his uncanny political acumen and sheer brilliance, but reviled for some of the policies he suggested and implemented. See MUDRA-RAKSHASA (PT. RANJIT SHARMA TRNSL.)(1944); BHALCHANDRA DATTARAYA KHER, CHANAKYA: A BIOGRAPHICAL NOVEL (1992); MOOKERJI, *supra* note 272, at 18 – 19, 33 – 38. He frequently recommended the use of spies, prostitutes and assassins to obtain the desired ends. See KANGLE, ARTHASASTRA, *supra* note 278, at 1.11 - .12; 2.27; 11.1.1 - .56. In addition to the *Arthashastra*, Chanakya also wrote *Chanakyaniti*. See ETHICS OF CHANAKYA: CHANAKYANEETI (T.Y. RAMESH TRNSL.)(1997).

²⁸⁰ See MOOKERJI, *supra* note 272, at 1 – 46; SHARMA, *supra* note 279; KHER, *supra* note 279.

²⁸¹ Following the departure of Seleucus, the Greeks left behind an Ambassador – Megasthenes – who wrote an important book on India entitled “Indica”. See MCCRINDLE, *supra* note 217, at 1 – 181; MOOKERJI, *supra* note 272, at 183 – 96 (discussing Megasthenes’ observations on social conditions in India at that time). Many aspects of life were regulated and some writings estimate that the army had over 600,000 men. See THAPAR, *supra* note 272, at 119 – 20.

it was the basis for the administration of the Mauryan Empire and indeed many later (and smaller) empires in India.²⁸² Its influence can hardly be overstated.

In the *Arthashastra* the central authority plays a critical role in many aspects of life and most importantly in economics and politics. Although there was an active private sector, it is clear that the state occupied a large role in commercial (and other) activity.²⁸³ The degree of regulation was quite high and few areas of life were more regulated than *sreni* activity. Chanakya appeared quite suspicious of the *sreni*.²⁸⁴ He was generally concerned with any entity that had many members, good resources and a strong sense of group loyalty as the *sreni* did.²⁸⁵ He probably viewed them as potential threats to the cohesion of the empire and hence entities that needed to be watched carefully.²⁸⁶ However, he was cognizant of the importance of economic prosperity to maintaining the support of the citizenry – a matter of paramount importance to the emperor.²⁸⁷ 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. Indeed, one suspects this concern is one of the reasons why the Roman Empire – which had extensive trade with India – did not appear to adopt corporate forms for purely private commerce.²⁸⁸ The Romans may well have been concerned about just this sort of alternative entity which may attract the public's loyalty away from the Empire.

In light of this, the regulation of the *sreni* was quite detailed.²⁸⁹ There were administrative officials whose task it was to superintend the various industries and professions represented by the *sreni*.²⁹⁰ This was done through regular administrative processes, but also through the use of spies and assassins.²⁹¹ The level of regulation could be quite minute and encompassed regulating the price of products or services, quality control,

²⁸² See *infra* discussion Part IV.F.

²⁸³ See MOOKERJI, *supra* note 272, at 102 (discussing nationalization of industries); 203 – 05 (discussing the private sector). Mauryan India was also engaged in large scale commodity production as suggested in D.D. Kosambi, *The State and Commodity Production in the Magadban State (500 to 200 B.C.)*, in THE CULTURE AND CIVILIZATION OF ANCIENT INDIA IN HISTORICAL OUTLINE 152 – 57 (1982).

²⁸⁴ See KANGLE, ARTHASASTRA, PART II, *supra* note 278, at 4.1 - .2 (referring to artisans and merchants as “thorns”).

²⁸⁵ See *id.*, at 4.1 - .2; 11.1.1 - .56 (discussing methods of dealing with oligarchies).

²⁸⁶ For Chanakya the unity of the Indian states was absolutely critical in order to keep invaders (such as the Greeks) out of India and anything that impeded this unity would have been looked upon with suspicion. See KANGLE, ARTHASASTRA, PART III, *supra* note 278, at 244 – 65 (discussing defense and internal affairs); PART II, *supra* note 278, at 7.1.1 - 7.4.22 (discussing aspects of foreign policy).

²⁸⁷ See KANGLE, ARTHASASTRA, PART III, *supra* note 278, at 166 – 93 (discussing the state economy). This is also seen in how much trade was encouraged and regulated. See MOOKERJI, *supra* note 272, at 197 – 225. It is clear that trade was important at this time. Chanakya encouraged foreign trade and it was carefully planned. See AGRAWALA, *supra* note 44, at 267.

²⁸⁸ See Hansmann & Kraakman, *supra* note 6, at 25 – 28 (discussing the *societates publicanorum* 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 INSTITORES, 200 B.C. – A.D. 250, at 325 – 30, 342 – 46 (1994).

²⁸⁹ For a more general discussion of the role of the government in the economy around this time also see D.D. Kosambi, *The State and Commodity Production in the Magadban State (500 to 200 B.C.)* in THE CULTURE AND CIVILIZATION OF ANCIENT INDIA IN HISTORICAL OUTLINE (1982).

²⁹⁰ See KANGLE, ARTHASASTRA, PART II, *supra* note 278, at 2.5 – 2.36. The detail associated with the superintendents is quite remarkable in that 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 272, at 89 – 123. See KANGLE, ARTHASASTRA, PART III, *supra* note 278, at 166 – 214 (discussing state economy and state administration).

²⁹¹ See KANGLE, ARTHASASTRA, *supra* note 278, at 2.7.9 - .10; 2.9.12; 2.9.25; 4.5.1 - .18; 5.1.45; 11.1.6 - .14.

weights and measurements, and even the pay for the *sreni* headmen (*sreni-mukhyas*).²⁹² Taxes were collected and the use of fairly detailed accounting rules required.²⁹³ Moreover, there were simple and clear rules about debt obligations and when a debt would cease to be enforceable.²⁹⁴ In spite of this fairly heavy regulation, the *Arthashastra* expected the monarch to generally apply *sreni dharma* to internal *sreni* matters, encouraged *sreni* to be active participants in the credit markets providing loans (sometimes to the monarch) and receiving deposits, as well as providing concessions to *sreni* in suits involving other *sreni*.²⁹⁵ Moreover, even with such detailed regulation, it is clear that there were markets for commodities as the *Arthashastra* prohibits traders from operating in a group to effectively corner a market.²⁹⁶ Thus, the *Arthashastra* 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.

There is considerable evidence that domestic and foreign trade grew significantly during the Mauryan Empire administered according to the *Arthashastra*.²⁹⁷ There were many *sreni* during this time and the *Arthashastra* expected the king to respect *sreni dharma* (and indeed to record it for use in later disputes).²⁹⁸ This suggests that *sreni* had become significant enough that kings paid heed to *sreni dharma* formulated by the *sreni*, which in turn implies that rules of governance need not be exclusively mandated from the state, but could also be devised voluntarily by the entity. This is surprising given the more centralized nature of the Mauryan Empire. In addition to this, there is discussion of *sreni* members being able to remove the headman.²⁹⁹ This provided the *sreni* members with redress against an agent (the head) who was violating the terms of their arrangement. Also, not only were internal matters respected, but also *sreni* were involved in litigation and the institution of the *Bhandagarika* (arbitrator of inter-*sreni* disputes) continued to be of importance.³⁰⁰

In light of this, one can state that the *sreni* were a large and growing sector of Indian life during the Mauryan Empire and that many of the basic traits of the *sreni* are seen by this time. Moreover, the background environment 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 debt satisfaction proceedings (monitoring the

²⁹² See KANGLE, ARTHASASTRA, *supra* note 278, 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).

²⁹³ For some discussion of taxes and levies see KANGLE, ARTHASASTRA, *supra* note 278, PART III, at 173 – 83. There are a number of articles on Accounting related to the *Arthashastra*. See Balbir S. Sihag, *Kautilya on the Scope and Methodology of Accounting, Organizational Design and the Role of Ethics in Ancient India*, 31 THE ACCOUNTING HISTORIANS JOURNAL 125 – 148 (2004); ANJAN K. BHATTACHARYYA, MODERN ACCOUNTING CONCEPTS IN KAUTILYA'S ARTHASASTRA (1988); Richard Mattessich, *Review and Extension of Bhattacharyya's Modern Accounting Concepts in Kautilya's Arthashastra*, 8 ACCOUNTING, BUSINESS AND FINANCIAL HISTORY 191 – 209 (1998); RICHARD MATTESSICH, THE BEGINNINGS OF ACCOUNTING AND ACCOUNTING HISTORY – ACCOUNTING PRACTICE IN THE MIDDLE EAST (8000 B.C. TO 2000 B.C.) AND ACCOUNTING THOUGHT IN INDIA (300 B.C. AND THE MIDDLE AGES) (2000).

²⁹⁴ See KANGLE, ARTHASASTRA, *supra* note 278, at 3.11.1 - 50. There is little discussion of how a bankruptcy proceeding operates until about 100 years after the decline of the Mauryans. See DAS, *supra* note 20, at 132 (noting that “[a]mong the instruments of credit we find references to debt sheets in the *Milindapanha* where the bankrupt makes a public statement of his assets and liabilities”).

²⁹⁵ See KANGLE, ARTHASASTRA, *supra* note 278, at 2.7.2, 2.7.6, 3.11 - .12, 4.1., 5.2.46 - 48.

²⁹⁶ See *id.*, at 4.2.18 - .19. Cornering a market presumes the existence of a market of some kind.

²⁹⁷ See THAPAR, *supra* note 87.

²⁹⁸ See *id.*; KANGLE, ARTHASASTRA, *supra* note 278, at 2.7.2, 2.7.6, 3.7.40.

²⁹⁹ See KANGLE, ARTHASASTRA, *supra* note 278, at 2.7.2, 11.1.6 - .7.

³⁰⁰ See MAJMUDAR, *supra* note 18, at 23.

movement of assets between owners and *sreni*) would have been quite a good environment in which *sreni*-like structures could grow and develop.

The Mauryan Empire and the *Arthashastra*, however, are not the only developments of importance during this time. Buddhism received significant support during the Mauryan Empire when Ashoka adopted the Buddhist faith.³⁰¹ As mentioned earlier, the rise of Buddhism probably encouraged trade because it had fewer restrictions on people from different groups and castes interacting with each other.³⁰² What made it interesting in this context was that Ashoka continued to administer the empire largely according to the dictates of the *Arthashastra*.³⁰³

At first glance, one might find the mix of Buddhism (which generally preached non-violence, renouncement of material ends, and attainment of *nirvana*) and the *Arthashastra* (which generally preached the acquisition and consolidation of power and material ends with a dollop of assassination and subterfuge) a rather odd mix. However, it is by no means clear that Buddhism and the *Arthashastra* are diametrically opposed on every matter.

First, the *Arthashastra* is not a text on religion and as such it is not attempting to be an alternate religion to Buddhism.³⁰⁴ Second, the Buddhist monks had a somewhat more centralized method of organizing their religion than Hinduism and hence the centralization associated with the *Arthashastra* may not have been entirely at odds with Buddhism.³⁰⁵

Further, the evidence we have suggests that Ashoka found an interesting fusion of the principles elaborated in Buddhism and the *Arthashastra*. After adopting Buddhism, Ashoka supposedly renounced war and the conquest of smaller states providing them with some degree of greater sovereignty in their own affairs.³⁰⁶

Although consistent with Buddhism, this need not be inconsistent with the *Arthashastra*. Ashoka implemented these policies after most of India had been conquered and at this time maintaining rigid control might breed uprising rather than support.³⁰⁷ Moreover, maintaining control and continuing to fight wars over such a large territory was bound to

³⁰¹ Ashoka spread Buddhism all the way to Afghanistan and encouraged peoples in places as far flung as Egypt, Southeast Asia, and China to adopt the faith. See THAPAR, *supra* note 272, at 137 – 81. He also erected a number of pillars throughout India that provided his rules. See MOOKERJI, *supra* note 272, at 236 – 45. Many of these pillars exist to this day.

³⁰² See THAPLYAL, *supra* note 18, at 18 – 20. The Buddhist faith, unlike early Hinduism, discourages animal sacrifices (which Ashoka prohibited once he became Buddhist) thereby reducing the use of animal resources that sacrifices would engender. See THAPLYAL, *supra* note 18, at 18 – 20; BOSE, *supra* note 28, at 101 – 03. Moreover, Buddhism seemed more supportive of the *vaishya* (roughly, mercantile) caste compared to Hinduism. See DAS, *supra* note 20, at 92 – 107

³⁰³ See MOOKERJI, *supra* note 272, at 236 – 45 (comparing the *Arthashastra* with Ashoka's Edicts).

³⁰⁴ It should be noted that certain parts of the *Arthashastra* were clearly meant to be enforced in a Hindu context (e.g., different penalties for different castes for the same behavior). See KANGLE, ARTHASASTRA, *supra* note 278, at 4.11.13; 4.12.1 - .40; 4.13.1; 4.13.32. Moreover, Chanakya was a highly learned Brahmin of the Hindu faith which suggests that he may have had the Hindu faith in mind when writing the *Arthashastra*. However, it is not clear if Chanakya meant the *Arthashastra* to reinforce caste divisions or to simply use them to regulate the environment.

³⁰⁵ See MAJMUDAR, *supra* note 18, at 296 – 310 (discussing the detailed regulation of the Buddhist organization, but still noting that the centralization would become weakened over time). Centralization is a matter of degree – Buddhism was *more* centralized than Hinduism, which is quite decentralized. For greater discussion of the interaction between Ashoka and Buddhism see THAPAR, *supra* note 272, at 305 – 10.

³⁰⁶ See THAPAR, *supra* note 272, at 166. See also *id.*, at 205 (discussing how Ashoka's reign probably benefited trade).

³⁰⁷ Thapar notes that the use of a new religion to solidify control was not uncommon in the world at those times. See *id.*, at 144 – 47.

have drained the empire's resources – something the *Arthashastra* would probably consider an anathema.³⁰⁸ After all, once you have acquired large tracts of territory it might prove advantageous to avoid expending resources on conflict in those territories and rather obtain additional resources from them (via tax collections and tributes).³⁰⁹ Tax collections would increase as the economy grew and the measures adopted appeared to do just that. Viewed in this manner, Ashoka's behavior does not appear to be that opposed to the *Arthashastra* which was written largely during a time when the empire was smaller and faced many immediate threats to its existence. I do not mean to suggest that Ashoka's adoption of Buddhism was not motivated, at least in part, by a religious epiphany, but it is worth noting that the *Arthashastra* and Buddhism are not as opposed as they may appear on first glance.

However, even with this, there continued to be considerable centralization, excellent intelligence systems, and the superintendents of industries continued to exist.³¹⁰ Ashoka also utilized the fairly efficient toll and taxes system proscribed by the *Arthashastra* and encouraged trade in a variety of ways.³¹¹

This system of administration led to one of the greatest growth periods in Indian history and the increasing use and development of the *sreni*. This, however, was not long lived. After Ashoka the Mauryan Empire fell into decline, for a number of reasons, and within 50 years of his passing the empire had fractured into many smaller kingdoms.³¹²

D. *Post-Mauryan Kingdoms in North and South India*

For expositional ease I divide the developments following the decline of the Mauryan Empire into those in North India and those in South India. After the Mauryans, North and South of India were not under the same monarch for nearly 1600 years.³¹³

In the North the first dynasty to replace the Mauryan was the Sunga, which ruled over a smaller empire centered around Pataliputra for about a century.³¹⁴ They were replaced by some short lived kingdoms until 30 B.C.³¹⁵ 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

³⁰⁸ See KANGLE, ARTHASASTRA, Part II, *supra* note 278, at 2.1.1 – 2.36.47 (discussing regulation of basic economy); Part III, at 189; K.A. Nilakanta Sastri & P.C. Bagchi, *Government, Society and Art of the Mauryan Empire*, in A COMPREHENSIVE HISTORY OF INDIA II, 61 (ED K.A. NILAKANTA SASTRI)(1957).

³⁰⁹ See *id.*; THAPAR, *supra* note 272, at 202 – 05.

³¹⁰ See THAPAR, *supra* note 272, at 202 – 05.

³¹¹ For example, he planted trees along the trade routes to provide travelers with places to rest and receive shade. See THAPAR, *supra* note 272, at 70, 81.

³¹² Ashoka was succeeded by a series of short lived kings ending with Brihadrata who was assassinated in 185 B.C. See THAPAR, *supra* note 272, at 197 – 213 (discussing reasons for the decline of the Mauryans).

³¹³ North and South India were not unified again until the Mughal empire in Medieval India around the 15th and 16th Centuries.

³¹⁴ See GOBINDA LAL ADHYA, EARLY INDIAN ECONOMICS, STUDIES IN THE ECONOMIC LIFE OF NORTHERN AND WESTERN INDIA C. 200 B.C. – 300 A.D. 11 – 13 (1966); 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]. Pusyamitra Sunga was the commander-in-chief of the Mauryan Emperor's Guard, who assassinated the last Mauryan emperor, and also a Brahmin who apparently tried to suppress Buddhism, which had been encouraged during the reign of Ashoka. See Jagannath, *supra*.

³¹⁵ The Sunga dynasty was followed by the Kanvas who ruled in Magadha for about 45 years. See ADHYA, *supra* note 314, at 13.

A.D.³¹⁶ Trade flourished in both the Indo-Greek era as well as during the reign of the Kushanas, along the “Silk Road”, with Central Asia, China and Rome.³¹⁷ 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.³¹⁸

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.³¹⁹ Trade was very active, especially with Rome, as is evidenced by the large number of Roman coins found in this area.³²⁰ Directly north of the Pandyas was the Andhra Kingdom (called the Satavahana dynasty) founded in 40 B.C. and lasting until the third century A.D, which appeared to follow the strong central state model of the Mauryans.³²¹ 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.³²² There is considerable evidence of very active trade during both the Satavahana and Chalukya dynasties.³²³ 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.³²⁴ The Cholas ruled until the 13th century A.D. when the Islamic invasions also claimed their kingdom.³²⁵

This reads like a story about a region in a constant state of flux with many different kingdoms 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

³¹⁶ See *id.*, at 11 – 17; J.N. Banerjea, *The Bactrian Greeks in India*, in COMPREHENSIVE HISTORY, *supra* note 314, II, at 138 – 85; J.N. Banerjea, *The Scythians and Parthians in India*, in COMPREHENSIVE HISTORY, *supra* note 314, II, at 186 – 221; J.N. Banerjea & Jagannath, *The Rise and Fall of the Kushana Power*, in COMPREHENSIVE HISTORY, *supra* note 314, II, at 222 – 62; DAS, *supra* note 20, at 107 – 34.

³¹⁷ See ADHYA, *supra* note 314, at 11 – 17; DAS, *supra* note 20, at 107 – 34; P.C. Bagchi, *Cultural and Colonial Expansion: Central Asia, China & the Far East*, in COMPREHENSIVE HISTORY, *supra* note 314, II, at 764 – 76; Kamesar Prasad, *Urban Occupations and Crafts in the Kusana Period*, in ESSAYS, *supra* note 264, at 111 – 120.

³¹⁸ See ADHYA, *supra* note 314, at 18 – 19.

³¹⁹ The dynasty ended in the 1300s when the Delhi Sultanate succeeded in invading the Pandya capital of Madurai. For greater discussion of the Pandya dynasty 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 *passim* (1972).

³²⁰ See DAS, *supra* note 20, at 122. Moreover, it appears that these Indians were fond of Roman wine. See HIMANSHU PRABHA RAY, MONASTERY AND GUILD – COMMERCE UNDER THE SATAVAHANAS 130 – 35 (1986).

³²¹ See ADHYA, *supra* note 314, at 20 – 24. The invasions of the Shakas (Scythians) helped to accelerate the downfall of this dynasty. See K. Gopalachari, *The Satavahana Empire*, in COMPREHENSIVE HISTORY, *supra* note 314, II, at 293 – 327. Some seem to suggest that the Satavahanas may have started their rule as early as 200 B.C. See Gopalachari, *supra*.

³²² See Gopalachari, in COMPREHENSIVE HISTORY, *supra* note 314, II, at 293 – 327. The gap in their rule was largely because of the Rashtrakuta dynasty that ruled the region from 750 A.D. to 970 A.D. For further discussion of the Chalukyas see KRISHNA MURARI, THE ÇĀLUKYAS OF KALYĀNI, FROM CIRCA 973 A.D. TO 1200 A.D. 367 – 371 (discussing the genealogy of the dynasty) (1977).

³²³ See DAS, *supra* note 20, at 107 – 34; Gopalachari, *supra* note 321 (discussing the Satavahanas); MURARI, *supra* note 322, at 283 – 310 (discussing the economy and trade in Chalukyan times); Vivekananda Jha, *Leather Workers in Ancient and Early Medieval India*, in ESSAYS, *supra* note 264, at 122 – 23; RAY, *supra* note 320, at 90 – 167.

³²⁴ For further discussion of the Pallavas see C. MINAKSHI, ADMINISTRATION AND SOCIAL LIFE UNDER THE PALLAVAS (1997); AIYANGAR, *supra* note 319, at 490 – 591 (discussing the Pallavas).

³²⁵ For further discussion of the Cholas see S. SWAMINATHAN, THE EARLY CHÓLAS HISTORY, ART, AND CULTURE (1998); PEARLS THRICE THREE HUNDRED: EUOLOGIES OF THE PÁNDEYA, ÇOLA, AND ÇERA PRINCES (TRSL BY A.V. SUBRAMANIAN) (1993); AIYANGAR, *supra* note 319, at 592 - 734.

highly profitable trade with Rome, Egypt, South East Asia, and China.³²⁶ 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.³²⁷ Thus, safety along the 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.³²⁸ 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.³²⁹ Indeed, it may have been that the growth in foreign sea trade more than compensated for the instability, at times, in domestic land trade.³³⁰ Finally, it is possible that the wars did not lead to the upheaval of villages and destruction of the productive aspects of the economy because the rulers of the time rarely used to disturb these areas except to collect taxes.³³¹

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 as under the Mauryans and could adapt more quickly to their environment.³³² In this post-Mauryan era the newly unshackled *sreni* grew quickly and established their sway over much of India.³³³ Moreover, kings were quite keen to have the favor of the *sreni*, no doubt to help stabilize or cement their control over a region.³³⁴ This was an environment particularly well suited to the growth of the *sreni* and indeed there were many more *sreni* during this time than during the Mauryan Empire and they began to take a more active role in other aspects of Indian life (e.g., judicial, religious, banking and administrative), which would have been difficult to imagine in Mauryan times.³³⁵

³²⁶ See DAS, *supra* note 20, at 107 – 34; ADHYA, *supra* note 314, at 113 – 151 (discussing trade with Rome), 152 – 76 (discussing trade with China and South East Asia). The trade with Rome was so substantial that Roman Senators are known to have complained about the volume and variety of trade with India and to sometimes have enacted laws restricting it. See DAS, *supra* note 20, at 121 – 22 (citing Pliny), 127. Moreover, the details regarding the trade routes to India known by the Romans indicates the importance of trade with India. See *id.*, at 129 – 30.

³²⁷ See DAS, *supra* note 20, at 128 – 29. Agrawala also suggests that the land routes were less safe after the Mauryans especially as traders would have had to pay many tolls on the roads to different rulers. See AGRAWALA, *supra* note 44, at 267. This may yet be another reason why sea trade became more popular. See *id.*

³²⁸ See ADHYA, *supra* note 314, at 124 – 28 (describing the importance of understanding the monsoon trade winds pattern for the growth of trade between Rome and Ancient India).

³²⁹ See DAS, *supra* note 20, at 107 – 34; ADHYA, *supra* note 314, at 113 – 151. Another feature that may well 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 44, at 269.

³³⁰ There is no easy way to measure the amount of foreign trade compared to domestic trade in the Post-Mauryan and Mauryan times. What is clear is that trade with Rome would have expanded much more after the Mauryans because that is when the Roman Empire was at its peak. See DAS, *supra* note 20, at 107 – 34; ADHYA, *supra* note 314, at 113 – 151. Moreover, although the Mauryans did have trade with South East Asia and China it is clear that after the Mauryans there was even more trade with these countries. See DAS, *supra* note 20, at 107 – 34; ADHYA, *supra* note 314, at 152 – 76 (discussing trade with China and South East Asia).

³³¹ See DAS, *supra* note 20, at 156 – 57.

³³² See THAPLYAL, *supra* note 18, at 28 – 29.

³³³ See DAS, *supra* note 20, at 111 – 13; 131 – 33; ADHYA, *supra* note 314, at 82 – 94.

³³⁴ See DAS, *supra* note 20, at 131 – 32; ADHYA, *supra* note 314, at 86.

³³⁵ See ADHYA, *supra* note 314, at 82 (referring to the *Mahavastu* and the *Milindapanha* with the latter suggesting over 74 types of professions which is much more than in earlier eras). For discussion of the various roles of the *sreni* see

The increasing importance of the *sreni* would have led to greater discussion about its internal governance and of the rules governing its interactions with others.³³⁶ We witness this in a number of ways. First, we have even more clear references to the kings being expected to maintain *sreni dharma*.³³⁷ This reflected a gentle shift from a recommendation to uphold *sreni dharma* (during Buddhist times) to an expectation to do so, which underscores the increasing importance of the *sreni*.

Second, we see the first discussions about the presence and qualifications of executive officers, the penalties for embezzlement, and fines on *sreni* members for keeping *sreni* property.³³⁸ These suggest that the *sreni* had become so large by this stage that one could not simply rely on the *sreni* head to run the entity without the assistance of some executive team. Moreover, it would be difficult for the *sreni*, or its 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* being able to apprehend and sanction a wayward member 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) would be needed to maintain deterrence, and legal sanctions and enforcement can serve these roles.³³⁹ Second, as *sreni* became wealthier the gain to the member from engaging in misbehavior would increase – more assets in the *sreni* implies more to be gained by the deviant member from obtaining those assets. This may also call for resort to larger sanctions and tighter enforcement – something that outside legal enforcement could provide.

Overall, this period witnessed significant developments in the *sreni* along with extensive economic growth, but without the presence of a strong centralized empire that appeared to assist economic growth in the Mauryan period. The presence of significant economic growth in two quite opposite political structures might seem surprising, but it only scratches the surface when examining the many different political structures in which economic growth prospered in Ancient India.

supra Part III.B.6. The numerical and political growth of the *sreni* is not surprising as the *Arthashastra* would probably have not permitted *sreni* to reach a size large enough to pose any threat to the empire.

³³⁶ Cf. V.S. Khanna, *Corporate Criminal Liability: What Purpose Does it Serve?*, 109 HARV. L. REV. 1477, 1481, 1485 – 86 (discussing the growth of corporate criminal liability (and corporate regulation) as corporations became more important in society).

³³⁷ See YAJ, *supra* note 46, at 186 – 92; DAS, *supra* note 20, at 131. Although not directly relevant to the *sreni*, there is evidence that by this time there was some kind of bankruptcy procedure in place. See DAS, *supra* note 20, at 132 (noting that “[a]mong the instruments of credit we find references to debt sheets in the *Milindapanha* where the bankrupt makes a public statement of his assets and liabilities”). The presence of a bankruptcy system is one of the factors that may help to supply the conditions for the growth of organizational entities. See Hansmann, et al, *supra* note 6, at 31 – 35.

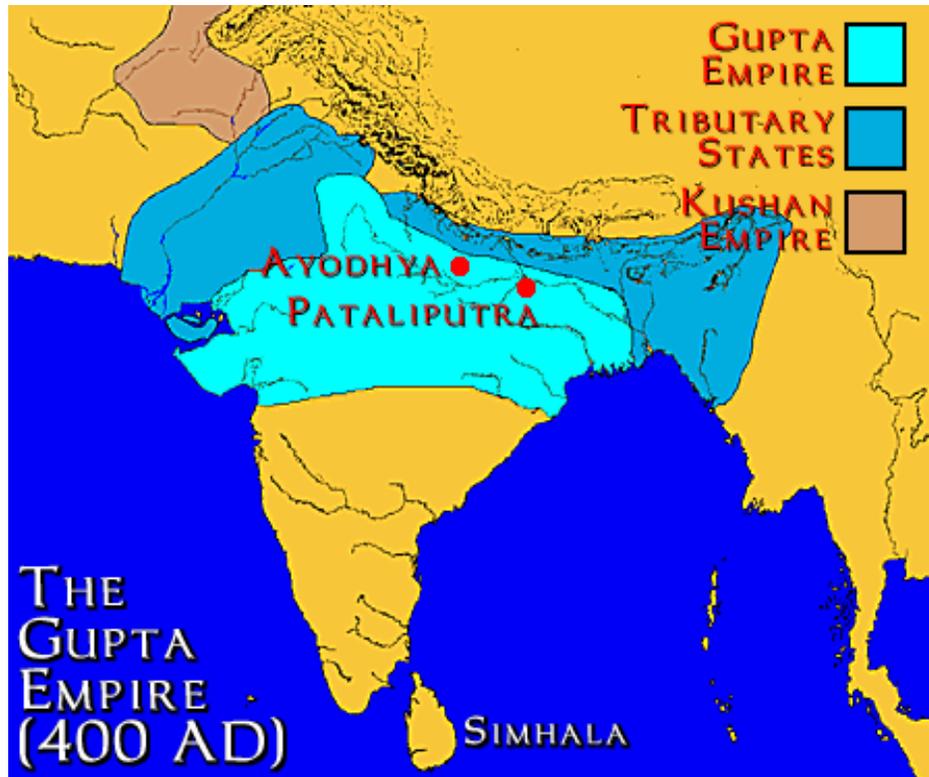
³³⁸ See YAJ, *supra* note 46, at 186 – 92. The basic loyalty concerns seem to receive its first mention here, but we also see the first mention of some liability insulation for management. See *discussion supra* Part III.B.3.

³³⁹ As the probability of apprehension declines the expected sanctions drops and so does deterrence. To maintain adequate deterrence the sanction, when imposed, would need to be severe enough to counter-balance the low likelihood of its imposition or resources would need to be expended to increase the likelihood of imposition. This is consistent with the Becker formula. 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.

E. The Gupta Dynasty & India's "Golden Age"

The dispersed kingdoms of Northern 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 India³⁴⁰



The Gupta Empire dates from roughly 240 A.D. until 550 A.D. and is usually referred to as India's "Golden Age".³⁴¹ The primary emperors of this dynasty were Chandragupta I,³⁴² Samudragupta,³⁴³ and Chandragupta II (who took the name

³⁴⁰ <http://www.wsu.edu:8080/~dee/ANCINDIA/GUPTAMAP.HTM> ©1996, Richard Hooker.

³⁴¹ This is the term most often used to describe this era. For general discussions of the Gupta Empire see RADHA KUMUD MOOKERJI, *THE GUPTA EMPIRE* (1959); *THE GOLDEN AGE: GUPTA ART – EMPIRE, PROVINCE AND INFLUENCE* (KARL KHANDALAVALA ED.) (1991)[*hereinafter* THE GOLDEN AGE]; HEMCHANDRA RAYCHAUDHURI, *POLITICAL HISTORY OF ANCIENT INDIA: FROM THE ACCESSION OF PARIKSHIT TO THE EXTINCTION OF THE GUPTA DYNASTY* (1997).

³⁴² Chandragupta I (reign from 319 A.D. – 335 A.D.) recaptured the Magadha capital, Pataliputra, and the surrounding areas. See MOOKERJI, *supra* note 341, at 13 – 17. He unified some of the affiliated kingdoms and married into the Lichhavis thereby consolidating his power over the Gangetic area in India. See *id.* Although Chandragupta I is identified as the first major Gupta Emperor there were two other kings before him. See *id.*, at 11 – 12. The first king is generally considered as Sri Gupta (reign from roughly 240 A.D. – 280 A.D.) and then his son Ghatotkacha (reign from 280 A.D. – 319 A.D.) succeeded him. See *id.*

³⁴³ Samudragupta (reign from 335 A.D. – 376 A.D.) was the son of Chandragupta I and he expanded the scope of the empire to cover more of Northern, Eastern and Central India. See *id.*, at 17 – 43. Samudragupta was also known to be a patron of the fine arts and India began to experience what might be termed its renaissance. See *id.*, at 38 – 40; *THE GOLDEN AGE*, *supra* note 341, at 1 – 2.

Vikramaditya).³⁴⁴ All of these emperors expanded the boundaries of the empire until it reached its apex in the reign of Vikramaditya.³⁴⁵ Much like the Mauryan Empire, the Gupta Empire also had a number of long range implications for India and for the *sreni*.

The first was that, although Chandragupta I brought some of the principles of the *Arthashastra* back into effect, the Gupta Empire was not nearly as centralized as the Mauryan.³⁴⁶ Rather the Gupta Empire was a looser confederation of kingdoms which relied more on tributes, strategic alliances, and greater decentralization than the Mauryan Empire.³⁴⁷ 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.³⁴⁸ The significance of this for trade was that the central authority did not regulate economic activity as tightly as the Mauryans,³⁴⁹ yet it provided quite efficient administration, maintained safe trade routes, and encouraged trade.³⁵⁰ There are even instances where the Gupta emperors provided favorable treatment to the *sreni* which relocated their operations to another town or region where the Guptas were trying to generate growth.³⁵¹

A number of other matters also contributed to the growth of the economy in the Gupta Empire. First, the Guptas were quite active in building contacts with other countries and in some respects exporting Indian culture.³⁵² These contacts supported the increasing and active trade with the Far East and South East Asia, which supported the Indian economy at the time when the Roman Empire was weakening.³⁵³ Moreover, the greater security on trade routes in India provided by the Gupta Empire would have enhanced domestic trade.

Second, a number of scientific and technological developments made Indian products even more attractive. During the Gupta Empire India experienced a resurgence of

³⁴⁴ Chandragupta II (reign from 375 A.D. to 414 A.D.) renamed himself Vikramaditya and became one of the most legendary emperors of Ancient India. See MOOKERJI, *supra* note 341, at 44 – 69; THE GOLDEN AGE, *supra* note 341, at 2. He presided over one of the greatest economic and literary periods in Ancient Indian history. See MOOKERJI, *supra* note 341, at 135 – 55; DAS, *supra* note 20, at 134 – 56; THAPLYAL, *supra* note 18, at 32 – 35.

³⁴⁵ See MOOKERJI, *supra* note 341, at 44 – 69.

³⁴⁶ See MOOKERJI, *supra* note 341, at 150 – 55 (discussing the administrative set up of the Gupta Empire).

³⁴⁷ See *id.*, at 19 – 29, 150 – 55. It appears that Chandragupta I obtained greater control through a strategic marriage alliance with the Lichchhavis. See *id.*, at 13 – 17. Samudragupta adopted a more mixed strategy. With some kingdoms he adopted an attitude of complete dominion (usually those closer to his capital). See *id.*, at 19 – 20, 23 – 29. With the kingdoms somewhat further away he would capture them, release them and restore their kingdom if they paid tribute to him and acknowledged his overlordship. See *id.*, at 20, 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, *yuktapurushas*, to return conquered lands).

³⁴⁸ See THAPLYAL, *supra* note 18, at 32 – 36. Moreover, the Guptas were a Hindu kingdom although they did not persecute other religions. See MOOKERJI, *supra* note 341, at 130 – 34. Hinduism is a less centralized religion, than Buddhism, and one that appears more consistent with the lighter and more decentralized Gupta Empire.

³⁴⁹ An example of the Gupta approach is in their use of coins. Generally, they did not change the currency in use in the region. Rather, on one side of the coin would remain the pre-existing image and on the other side something to indicate that the coin was from the Gupta Empire. See *id.*, at 30 – 32, 139 – 41. This is directly analogous to the Euro coins which on one side indicate the country that printed them and on the other have some indication of the European Union.

³⁵⁰ See *id.*, at 148 – 55; DAS, *supra* note 20, at 134, 135 (discussing rest houses for travelers), 136 – 56.

³⁵¹ See THAPLYAL, *supra* note 18, at 183 – 84.

³⁵² See MOOKERJI, *supra* note 341, at 129 – 30 (discussing how Samudragupta and his successors followed a policy of setting up foreign centers of Indian culture).

³⁵³ See DAS, *supra* note 20, at 149 – 53.

science, mathematics, art, literature and Indian culture.³⁵⁴ 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.³⁵⁵ On the science side, the use and development of iron in India at this time reached the highest levels.³⁵⁶ Indeed, one of India's most famous historic attractions – the iron pillar of Mehrauli – is said to date from this period.³⁵⁷ This pillar, made of virtually 100% iron and roughly 24 feet tall, has remained rust free for around 1600 years in the Indian climatic environment.³⁵⁸ The significance of this level of sophistication in iron would also have been displayed in more efficient tools for trade, transportation and storage.³⁵⁹

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 *sreni*.³⁶⁰ Some estimate that there were at least 150 *sreni* by this time.³⁶¹ Moreover, the written sources of this era provide the most detailed accounts of the *sreni* and their internal operations discussing the rules regarding admission into the *sreni*, the sharing of assets, the position of executive officers, the use of incentive devices, the ability to punish the headman and executive officers, the fiduciary-like duties, the importance and enforceability of *sreni dharma*, the mobility of the *sreni*, the multi-profession *sreni*, and the expansion of the *sreni* into various other aspects of life.³⁶²

These features are all consistent with the *sreni* being a critical factor in exploiting the opportunities for economic growth in the Gupta Empire. For example, as *sreni* membership grew and its wealth increased one might expect a greater need for more external legal monitoring to supplement internal monitoring.³⁶³ Moreover, one might not be surprised if *sreni* were willing to take on additional occupations in an environment of quickly growing and profitable opportunities.³⁶⁴ Similarly, *sreni* might be willing to move to new locations to

³⁵⁴ See MOOKERJI, *supra* note 341, at 135 - 148; THE GOLDEN AGE, *supra* note 341 *passim*. Some of the best examples of Ancient Indian artifacts and writings come from this period. See THE GOLDEN AGE, *supra*. A number of important temples were built or reconstructed under Vikramaditya and his court held the “nine gems” of India including, many suggest, the famous Sanskrit poet Kalidasa. See MOOKERJI, *supra*, at 135 – 148. Many of the scriptures and epics were re-written, codified, and clarified during the reign of Vikramaditya. See *id.*

³⁵⁵ See S.A. Paramhans, *Foundations of Indian Mathematics an Geometrical Ideas in the Sulba Sutras*, in COMPREHENSIVE HISTORY, *supra* note 314, II, at 665 – 97.

³⁵⁶ See DAS, *supra* note 20, at 138 (discussing the iron pillar and noting that it is over 99% iron); MOOKERJI, *supra* note 341, at 66 – 68.

³⁵⁷ See DAS, *supra* note 20, at 138 (discussing the iron pillar and noting that it is over 99% iron); MOOKERJI, *supra* note 341, at 66 – 68.

³⁵⁸ Scientists at the Indian Institute of Technology Kanpur claim to have solved the riddle of how this pillar was designed. See *ITT Team Solves the Pillar Mystery*, TIMES OF INDIA, 21 March 2005 (noting that an iron phosphorus alloy system was used to create this pillar and that this is, even today, the best way to defeat corrosion of iron).

³⁵⁹ Indeed, there is evidence that during the Gupta Empire the 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 20, at 139 – 41.

³⁶⁰ See MOOKERJI, *supra* note 341, at 49, 148 – 50; THAPLYAL, *supra* note 18, at 32 – 36; DAS, *supra* note 20, at 136 – 39, 144 – 45 (discussing the growth of the *sreni* and increasing specialization in the *sreni*).

³⁶¹ See THAPLYAL, *supra* note 18, at 32 n. 109.

³⁶² See MOOKERJI, *supra* note 341, at 49, 148 – 50; THAPLYAL, *supra* note 18, at 32 – 36; DAS, *supra* note 20, at 136 – 39, 144 – 45. These features are all discussed in the *Brihaspatismṛiti*, *Yajñavalkyasmṛiti* and *Naradaśmṛiti* all of which existed during the Gupta Empire. See discussion *supra* Part III.B. at various points for references to these sources.

³⁶³ See *text accompanying note 339*.

³⁶⁴ See MOOKERJI, *supra* note 341, at 148 – 49 (discussing the *Sresthi-Kulika-Nigama* or the corporation of bankers and artisans); THAPLYAL, *supra* note 18, at 180 – 94 (discussing the *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). Note I do not

take up attractive new opportunities.³⁶⁵ Finally, by this stage it is clear that the king is almost bound to enforce *sreni dharma*, which reinforces the importance of the *sreni*. In many respects, the Gupta Empire was a high point in the growth of trade and the *sreni* organizational form.

However, the Gupta confederacy began to weaken over time and invasions from the Huns in the North accelerated its decline.³⁶⁶ By 550 A.D. the Empire had been weakened and fell.³⁶⁷ The Empire's remnants ruled increasingly smaller kingdoms and India began to descend into warring factions.

F. *Post-Gupta & Harsha Vardhana*

Soon after the demise of the Gupta Empire one of the kingdoms that took over part of their empire – the Pushyabhutis – began to expand under Harsha Vardhana.³⁶⁸ His reign began in 606 A.D. and he started to amass control and dominion over parts of India quickly establishing an empire (based again on a loose confederacy) that nearly rivaled the Guptas.³⁶⁹ Harsha was an impressive military leader, an able statesman and diplomat, and a brilliant administrator.³⁷⁰ 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.³⁷¹ To service this large trade the *sreni* continued to function as they did under the Gupta Empire.³⁷² Unfortunately, upon Harsha's passing his kingdom fell apart and India descended to warring feudal lords and small kingdoms.³⁷³

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.³⁷⁴ The

mean to suggest that there is no benefit to specialization in this environment. Indeed, there was as is noted by DAS, *supra* note 20, at 136 – 39, 144 – 45. However, new products or services may develop that utilize some of the *sreni* members' skills and may make it worthwhile to enter that field. Also, sometimes when growth is accelerating it may be difficult to obtain good talent for your particular profession and it may not be a bad idea to expand into other areas if they appear profitable for your combination of human capital.

³⁶⁵ See THAPLYAL, *supra* note 18, at 180 – 94 (discussing the *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).

³⁶⁶ By 480 A.D. the Huns, who had been repelled a number of times, broke through the Gupta defenses in Northern India. See MOOKERJI, *supra* note 341, at 120. The remnants of the Gupta Empire and their allies fought back and were able to either "Indianize" or repel the Huns by 550 A.D., but by then it was too late for the Gupta Empire. See *id.*

³⁶⁷ The last three significant rulers of the Gupta dynasty were Kumaragupta II, Buddhagupta, and Narasimhagupta. See MOOKERJI, *supra* note 341, at 104 – 06. The last official ruler was Vishnugupta. See *id.*

³⁶⁸ See VASUDEVA S. AGRAWALA, THE DEEDS OF HARSHA BEING A CULTURAL STUDY OF BĀNA'S *HARSHACHARITA* (P. K. AGRAWALA, ED.) *passim* (1969); 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 *Harsbharita*. See HARSHACHARITA OF BANA (E.B. COWELL & F.W. THOMAS TRNSL.)(2d ed. 1968).

³⁶⁹ See GOYAL, *supra* note 368, at 167 – 181, 214 – 226. Indeed, many important aspects of modern Hinduism date from his era, although Harsha himself is reputed to have been a Buddhist. See Kosambi, *supra* note 283, at 180 – 82; BOSE, *supra* note 28, at 102.

³⁷⁰ See GOYAL, *supra* note 368, at 182 – 226.

³⁷¹ See DAS, *supra* note 20, at 156 – 74 (discussing this trade including that with China and Japan). Evidence from this period attests to the opulence of the empire, the large trade with the East, the variety of goods traded and the general beneficence of Harsha. See *id.*; GOYAL, *supra* note 368, at 214 – 26. A fairly detailed account of life in India at this time is contained in WAITERS, *supra* note 217.

³⁷² See DAS, *supra* note 20, at 161 – 66.

³⁷³ See THAPLYAL, *supra* note 18, at 143.

³⁷⁴ The South Indian kingdoms have already been mentioned earlier, 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 MAITREYA, THE FALL OF THE PALA EMPIRE (1987). The Central and Northeastern parts of India were

decline in trade was due in large measure to the frequent wars within India and general on-going political instability, which made long distance land trade more risky.³⁷⁵ 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.³⁷⁶ This was further exacerbated by diminishing foreign trade with the dwindling Roman Empire.³⁷⁷ In light of all this, the *sreni* began to shrink in size and importance. Further, their weakened position led to fewer people being willing to entrust them with their deposits which served only to worsen the financial position of the *sreni*.³⁷⁸ As the *sreni* became undone their heads often began to position themselves to be feudal lords, as did some rich merchants, which further distracted them from *sreni* affairs.³⁷⁹ 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.³⁸⁰ For all intents and purposes the *sreni* were no longer a significant force.

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.³⁸¹ During this period and onwards there was much on-going struggle to obtain control of India by many different groups and coalitions. This, no doubt, would have continued to weaken 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 corporate entities.³⁸² Indeed, Timur Kuran has argued that this was the result of the Middle East's unique background leading to an inheritance law and contract law that largely impeded the development of the corporate form.³⁸³ Nonetheless, even before the Islamic invasions the *sreni* had been considerably weakened in India and the *sreni* did not appear to be as important players as they used to be in the Indian economic, social and political environment. The Ancient Era had indeed ended, but the growth of trade and organizational forms in India had been exceptional.

taken over by the Pratiharas until about the mid 900s. See generally B.N. PURI, THE HISTORY OF THE GURJARA-PRATHĀRAS (1986). In the middle part of India the Rashtrakutas established their reign for nearly 250 years and were probably the largest kingdom of this post-Harsha era. See HANU MANI, A HISTORY OF THE RĀSTRĀKŪTAS OF MALKHĒD AND JAINISM 1- 60 (discussing the monarchs and feudatories of the Rastrakutas), 293 (providing a map of the Rastrakuta kingdom)(2000). Finally, in the western and northern parts of 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. SETH, THE GROWTH OF THE PARAMARA POWER IN MALWA *passim* (1978).

³⁷⁵ See THAPLYAL, *supra* note 18, at 142 – 43.

³⁷⁶ See *id.*, at 143.

³⁷⁷ See *id.*, at 140 – 41. Indeed, one of the important differences between this time frame and the Post-Mauryan kingdoms discussed in Part IV.D is that the Roman Empire was a much weaker trading partner now than during the Post-Mauryan times.

³⁷⁸ See *id.*, at 143.

³⁷⁹ See *id.*, at 143 – 44.

³⁸⁰ See *id.*, at 144 – 45.

³⁸¹ See AGRAWALA, *supra* note 44, at 281 – 85.

³⁸² 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 brought with them. It is possible that the law may have been different than that from the Middle East.

³⁸³ See Kuran, *Stagnation*, *supra* note 382, at 72 – 76 (discussing Middle Eastern Islamic inheritance and contract law), *passim* (discussing the absence of corporate entities from the Middle East).

G. *Summary & Commentary*

The political, economic and social conditions throughout the history of Ancient India reveal a number of things of importance to understanding the development of the *sreni* and organizational forms in India. Moreover, this discussion provides insights into other matters related to the growth of corporations and how their governance develops.

First, the analysis shows that the *sreni* developed and grew along lines that are suggested by the discussion in Part II. Thus, the corporate form would grow when the demand for it increased, induced by increasing trade and technology developments, and when the supply of the conditions necessary for the corporate form's development were present. These conditions include the monitoring methodologies necessary for reducing agency costs and creditor information costs. In Ancient India the *sreni* appears to have developed when these conditions were present (good monitoring of *sreni* members plus good accounting rules) along with rapidly growing trade. This provides further support for the thesis advanced recently by Hansmann, Kraakman & Squire on the importance of asset partitioning to the development of the corporate form.³⁸⁴ The analysis also indicates that the *sreni* developed considerably before the earliest Roman proto-corporations

Second, the number, size and complexity of the *sreni* increased with the growth of trade in India. As the *sreni* became more numerous and occupied more important roles in society it is not surprising that more attention would be paid to it and that its internal governance would become a matter for further discussion.³⁸⁵ The analysis suggests that the more detailed rules of governance, the greater legal respect accorded to *sreni dharma*, and the greater legal enforcement of its terms (from recommendations to requirements) grew as the importance of the *sreni* increased. Moreover, certain features seem clearly targeted to addressing concerns with *sreni* in a growing trade environment. Examples include the mobility of *sreni* and the presence of multi-profession *sreni*.

Third, when examining the factors leading to the growth of trade in Ancient India one notices that it grew under a variety of different government and political structures. There have been 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 to ask is whether these structures are equally good at encouraging trade and growth of the *sreni*. This, of course, phrases the question too broadly and one must address the question with some caveats. First, state structure is not the only determinant of trade growth and other factors such as the resources available in the area, technology, and growth of foreign trade are also relevant.³⁸⁶ Second, phrases such as "loose empire" and "centralized empire" are broad labels that encompass many different kinds of

³⁸⁴ See Hansmann, et al, *supra* note 6.

³⁸⁵ Cf. Khanna, *supra* note 336 (discussing this in the context of corporate liability in the US, UK and parts of Europe).

³⁸⁶ Both the level of resources and degree of foreign trade have been critical in examining the growth of trade in Ancient India in this paper. Indeed, these factors are relevant in other places too. See MAX WEBER, GENERAL ECONOMIC HISTORY 151 – 63 (FRANK H. KNIGHT, TRANS.)(1961).

structures. Greater attention to the institutional, economic, and political characteristics of each particular regime would be necessary in assessing the impact on trade.

In spite of all these caveats, it appears that economic growth was fastest during the “loose empire” structure of the Guptas. The Gupta Empire occupied an intermediate point on the continuum between strongly centralized and strongly decentralized state structures. Moreover, the Guptas provided a great deal of flexibility to the *sreni* in determining how to govern themselves and organize their business.³⁸⁷ One could conjecture that this intermediate point with considerable flexibility may be the lowest total cost structure for the highly heterogeneous environment in which the Guptas reigned.³⁸⁸ Such a structure would have provided safety along trade routes and reduced transactions costs (e.g., using the same currency and weights systems) as well as providing business entities with flexibility to adapt to changing business and local environments. Whether this was the most desirable state structure or not is difficult to know, but it certainly led to phenomenal growth.

This, however, does not end the discussion. Although the Gupta reign was one of great economic growth, it is clear that the other state structures in Ancient India had considerable economic growth too. They may not have been as brisk as the Guptas, but they were quite successful. How did that happen?

The growth of trade in these other state structures could be attributed to a number of factors (e.g., growth of foreign trade, advancement of iron technology), but I shall focus on two that are relevant for our discussion. First, under virtually every state structure in Ancient India it would appear that the *sreni* were given considerable discretion to manage their own internal affairs. Thus, the flexibility and adaptability prevalent during the Gupta Empire would have been present, in large degree, under all the other state structures too. This benefits trade by permitting entities to adapt efficiently to their environment.

Second, safety along trade routes and uniformity of trade measures and currency can be achieved under varying state structures, but with differing costs and benefits. For example, one of the features of an empire is that it can require uniformity in practices, currency and laws. Uniformity and standardization should make transactions easier and thereby enhance trade.³⁸⁹ This seems true, but uniformity rarely comes without cost. To establish and maintain an empire over heterogeneous groups will require effort (and hence unification costs), is subject to its own inefficiencies (e.g., a slow and/or corrupt bureaucracy), and uniformity is not always efficient for all groups in society.³⁹⁰ Of course,

³⁸⁷ See text accompanying notes 360 - 365.

³⁸⁸ The Gupta empire obtains uniformity in a fairly inexpensive way by not having very large coordination costs and also by not having very large bureaucracy (corruption) costs compared to the other state structures which may have been inexpensive on one front but not on the other(s).

³⁸⁹ Cf. THAPLYAL, *supra* note 18, at 16 (discussing the importance of coinage (a “standardized” form of payment relative to the barter system) in furthering trade). On standardization in specific contexts see Marcel Kahan & Michael Klausner, *Standardization and Innovation in Corporate Contracting (Or ‘The Economics of Boilerplate’)*, 83 VA. L. REV. 713 (1997); Thomas W. Merrill & Henry E. Smith, *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, 110 YALE L. J. 1 (2000).

³⁹⁰ See Paulo Mauro, *Corruption and Growth*, 110 Q.J. ECON. 681, 682 – 83 (1995)(discussing corruption). Of course, if there are few wars or treaties then unification costs are low, but that, one assumes, is more likely with smaller pieces of territory with more homogenous populations. Similar arguments can be made for other attributes of an empire (e.g., security along trade routes, access to markets). See BOSE, *supra* note 28, at 236 (discussing features leading to growth of trade); THAPLYAL, *supra* note 18, at 18.

uniformity can be achieved without the emperor's fiat, but then it requires the coordinated effort of many states and their leaders (or leadership groups) and is therefore likely to be more costly (i.e., have high coordination costs).³⁹¹ Thus, uniformity could be obtained in different structures but with different costs and benefits. 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.³⁹²

Thus, it may well be possible to achieve safe trade routes and more uniform practices under various regimes, but the costs and benefits will be quite different. This may go some way in explaining how trade grew in such different state structures in Ancient India and why trade may have been the greatest under the Guptas and still remarkably active under other state structures.

Another point related to state structure and the *sreni* is that the Mauryan Empire gave the least degree of autonomy to the *sreni* followed by the Gupta Empire and then by the Post-Mauryan kingdoms. This is not all that surprising. Imagine if there were two moderately sized kingdoms that were antagonistic toward each other and that in one kingdom there was a *sreni* that was very profitable and much liked with over 1000 members. One can easily imagine the kings being keen to win the favor of a successful and popular *sreni* rather than alienate it. Indeed, the cost of alienation would be loss of support and potential defection (or movement) into the neighboring antagonistic kingdom. Rulers in this environment would find that coalitions with *sreni* would strengthen their hold on power. Compare this to where there is an Empire that is 10 times larger than either kingdom in the above example. In this situation a 1000 person *sreni* carries less political clout due, in part, to its (now) smaller proportionate representation of the population. Moreover, a large Empire may be bigger than any of its nearby rivals reducing the likelihood that a disaffected *sreni* would consider it worthwhile to defect to the smaller and potentially less profitable environment. Of course, the Empire could "squeeze" *sreni* too far and then they might defect, but the point is that an Empire would need to do more to a *sreni* to result in defection than a smaller kingdom with a competing neighbor. This appears true for the Mauryan

Uniformity is not always desirable. Sometimes the most efficient rules may vary between industries and regions and imposing uniformity upon this will be inefficient in itself and also may impede the development of better rules that are more situation specific and efficient. See Lucian A. Bebchuk, *Federalism and the Corporation: The Desirable Limits on State Competition in Corporate Law*, 105 HARV. L. REV. 1435 (1992)[*hereinafter Federalism*]; Lucian A. Bebchuk, *Limiting Contractual Freedom in Corporate Law: the Desirable Constraints on Charter Amendments*, 102 HARV. L. REV. 1820 (1989)[*hereinafter Contractual Freedom*].

³⁹¹ For discussion on the difficulty of collection action see MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GOODS* (1971).

³⁹² However, these are 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 and backgrounds because coordination and agreement is probably easier and corruption may be less. See Mauro, *supra* note 390 (noting that corruption is generally higher in more heterogeneous societies). On the development of norms and that they often occur in groups with many common interests see Robert Ellickson, *Of Coase and Cattle: 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); Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms and Institutions*, 99 MICH. L. REV. 1724 (2000).

One can sketch similar arguments for the costs of other political structures as well as for the trade benefits of different structures. For example, the benefits of an empire structure for domestic trade increase as heterogeneity increases because the value of secure domestic trade routes increases as domestic trade increases and the cost of obtaining such routes through coordination between kingdoms is more difficult as heterogeneity increases.

Empire as well as the Roman. Moreover, as the Empire becomes smaller and less centralized we would expect, all else equal, that coalitions become more attractive and hence more overtures and autonomy are granted to the *sreni* (e.g., the Post-Mauryan kingdoms and the Gupta Empire). This is what we witness.

Finally, there are two more aspects of the development of the *sreni* that make it noteworthy. First, the general similarity of *sreni* internal governance to many aspects of modern corporate governance is quite interesting. 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 are many of the methods of addressing them. This is especially the case with the *sreni* and modern Anglo-American corporations as both tend to have more dispersed ownership structures.³⁹³ This may have implications for the corporate convergence debate that merit further inquiry.³⁹⁴

Second, the internal governance of the *sreni* appeared to develop along lines predicted by the growth of trade and the presence of factors contributing to the supply of monitoring methodologies necessary for *sreni* development. The fact that there is this predictable continuity in internal governance suggests that even in different government systems similar rules can develop. However, a very important caveat must be added to this. In Ancient India it would appear that each political structure tended not to interfere in the internal dynamics of the *sreni* (by generally enforcing *sreni dharma*) unless some particular emergent event had occurred (e.g., the *sreni* votes out the headman and he refuses to leave).³⁹⁵ The continuity in internal governance may largely be an artifact of the relatively consistent treatment and development of *sreni dharma* over time.³⁹⁶ Nonetheless, it has interesting, albeit ambiguous implications, for the convergence debate.

On one hand, the consistency and predictability of *sreni* governance development suggests that path dependence is quite strong as *sreni* governance stayed on this “path” for at least 1000 years. However, given how little the various political structures interfered with internal governance of the *sreni* one should be cautious in drawing strong inferences about path dependence. Also, the fact that when left to their own devices the *sreni* seemed to develop rules similar to the modern Anglo-American corporation suggests that convergence has some potential bite. However, the *sreni* started out with a dispersed ownership structure so that its internal governance was probably more likely to match the Anglo-American approach than the approaches in other jurisdictions with less dispersed ownership structures.

³⁹³ There are no mentioned instances of controlling shareholders in the *sreni*, but evidence from inscriptions on the municipal *sreni* indicate that sale of shares was possible and so were combinations of *sreni* (this is true for the economic *sreni* too). Both of these matters indicate that controlling members were possible, but the absence of their mention suggests most *sreni* were quite dispersely held. One author suggests that large merchant *sreni* may have exercised some kind of control over smaller artisan *sreni*, although how this was done is not entirely clear. See KIRAN KUMAR THAPLYAL, *STUDIES IN ANCIENT INDIAN SEALS* 241 (1962).

³⁹⁴ For discussion of 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 (2001); John C. Coffee, Jr., *The Future as History: The Prospects for Global Convergence in Corporate Governance and its Implications*, 93 NW. U.L. REV. 641 (1999).

³⁹⁵ See text accompanying notes 271, 298 - 299; 332 - 337; 360 - 365.

³⁹⁶ This is analogous to the debate on voluntary versus mandatory rules of corporate governance. See e.g., Bebchuk, *Federalism*, *supra* note 390; Bebchuk, *Contractual Freedom*, *supra* note 390. There were, of course, some mandatory rules in *sreni* governance as seen in Table 1.

Overall, it may be too early to make strong conclusions about the implications for the convergence debate – greater investigation is merited.

V. 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 a period much older than many would expect for the development of the corporate form – from at least 800 B.C. and perhaps even earlier. This predates, by centuries, the earliest Roman proto-corporations. Further, the *sreni* was also in continuing and expanding use until 1000 A.D. and was utilized for many different kinds of purposes including business, municipal, social and religious activities. The *sreni* was clearly one of the most important institutions of Ancient India.

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 corporate form. 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 more modern 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 more fodder for the debate about convergence or path dependence in corporate governance.

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. Moreover, the Ancient Indian *sreni* forces us to revise our conceptions of when corporations developed to a much earlier time period. Indeed, much can be learned about the corporation from the Ancient Indian *sreni*.