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 preconditions 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. 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

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1 See ROBERT C. CLARK, CORPORATE LAW 1 (1986).
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. This also means that the corporation continues in existence even if its shareholders die or transfer their shares. This adds considerable stability to the corporate form over other organizational forms such as partnerships. Second, corporations possess

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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. Modern corporations are run by management which is supervised by a board of directors. The board is elected by shareholders on a regular, usually annual, basis. Third, a shareholder’s interest in the corporation is essentially freely transferable. This aids in the raising of capital as passive investors know they can transfer their interest, which makes the investment liquid and hence more attractive. Finally, modern corporations possess limited liability. Thus, shareholders are only liable for the amount of money they have invested in the corporation.

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. 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). 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”.

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,
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.\textsuperscript{15} Legal organizational forms, such as the modern corporation, helped facilitate this increased demand for capital.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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).\textsuperscript{19} Further, as trade increases the gains from specialization, and the sustainability of it, are likely to increase.\textsuperscript{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).\textsuperscript{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.\textsuperscript{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.\textsuperscript{23} Moreover, it was probably these conditions and the monitoring methodologies of the time that made the costs of the corporate form bearable to the business and investment community.

For example, one critical feature of the corporate form (and indeed any contracting entity) is that it partitions the assets of the corporation from that of its owners – a matter

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

\textsuperscript{16} See CLARK, supra note 4, at 13 – 15.

\textsuperscript{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.

\textsuperscript{18} For discussion in the Indian context see RAMESH CHANDRA MAJMUDAR, 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).

\textsuperscript{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.


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

\textsuperscript{22} See CLARK, supra note 4, at 2 – 3; ALLEN & KRAAKMAN, supra note 4, at 91 – 94.

\textsuperscript{23} It is worth noting that there is some interaction between supply and demand (strong demand for something may induce people to think of ways to supply it). Nonetheless, the supply side cannot be ignored or entirely subsumed within the demand side. Cf. Hansmann, et al., supra note 6, at 1 – 2, 5 – 7, 17 – 23.
critical to creditors who transact with the corporation. Thus, when a creditor transacts with the corporation it knows which assets (those of the corporation) stand behind the transaction. Similarly, when a creditor transacts with the owners in their individual capacities it also knows which assets (those of the owners) stand behind the transaction. 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.

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

Another critical feature of the corporate form 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. After all, investors will want some assurance that their funds will not be misused or that their co-owners will not misappropriate the funds for themselves. Fiduciary duty doctrine, some securities regulation, and reputational mechanisms serve to address these concerns. But for these to function properly there must be monitoring methodologies in place for the owners to have the information necessary to enforce these duties or to impose reputational penalties. The monitoring methodologies could include geographic proximity so that one party can directly observe the other, simple gossip, methods of verifying the production, 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).
30 See id., at 29 – 35.
31 See La Porta, et al, supra note 2.
32 See id.; Gioffi, 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.
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. 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), 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. 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.

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

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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); Bernstein, supra note 33; Lisa Bernstein, Opting Out of the Legal System: EXtrosal Institutional Relations in the Diamond Industry, 21 J. LEGAL STUD. 115 (1992); 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.

36 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.

37 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 Majumdar, 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 Majumdar, 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.\footnote{See Majmudar, supra note 18, at 9, 138, 142, 222; Thaplyal, supra note 18, at 162 – 64.} Nigama and sreni refer most often to economic organizations of merchants, craftspeople and artisans, and perhaps even para-military entities.\footnote{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.} Finally, the pani is often interpreted as representing a group of merchants traveling in a caravan to trade their wares.\footnote{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.} 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.\footnote{See id.} Usually these would be entered into by two or more people and they would appoint a leader.\footnote{See P.N. Agrawala, A Comprehensive Business History of India 259 (2004).} 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.\footnote{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).} 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.\footnote{See also Brihaspatisrimriti, XIV 3 – 4, in Sacred Books of the East Vol. 33 (1965) [hereinafter Brih]; Naradasrimriti, III 2 – 5, in Sacred Books of the East Vol. 33 (1965) [hereinafter Nar]; Katyayanasrimriti, verses 668 – 69, 675 – 77 (Panduranga Vamanakane Ed. & Trans.) (1933) [hereinafter Kat].} The latter was more common in partnerships amongst craft people.\footnote{See CLARK, supra note 4, at 7; Yaj, supra note 46, at 7; Yaj, supra note 46, II, at 13 – 15, 265, 268 – 69.}

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.\footnote{See Clark, supra note 4, at 799. See also Allen & Kraakman, supra note 4, at 39 – 79.} 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.\footnote{See Brih, supra note 46, at 6; Yaj, supra note 46, II, at 260; Nar, supra note 46, at 6.} If the partner was found negligent he had to make good the losses.\footnote{See Brih, supra note 46, at 7; Yaj, supra note 46, II, at 13 – 15, 265, 268 – 69.} 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.\footnote{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.} If the partner failed then he would have to make good the

losses to the partnership, forfeit his profits and be removed from the partnership. 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. 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. 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. 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. 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. 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 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.

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. Further, the sreni was mobile and has been known to move from one location to another without the threat of outside military force. Moreover, the sreni was used in

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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 Bhrispati 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).
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 used in many different occupations, its basic internal structure was quite consistent. The first component of the sreni was the general assembly of

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61 See infra Part IV.A. It is plausible that the sreni existed as early as 3000 B.C. See Part IV.A.
64 See RADHA KUMUD MOOKERJII, 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. There were apparently no upper limits on the number of members.

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 Jetthaka or Sreshthi) who was often experienced, skilled, intelligent, and sometimes already quite wealthy. The headman was also critical because he represented the interests of the sreni in the king’s court and in many official business matters. 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. 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. For all this, it was not uncommon for the headman to receive a hefty salary.

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

See The Jataka or Stories of the Buddha’s Former Births III, 281, 405 (H. T. Francis & R.A. Neil Trans.); 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. 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).

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.); The JATAKA or STORIES OF THE BUDDHA’S FORMER BIRTHS II, 12 (W.H.D. Rouse Trans.) (1895) [herin after 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. Some inscriptions suggest more than one sreni. See supra note 64, at 48 – 49; JATAKA I, supra note 72, at 114; MAHAVASTU III, at 405 (J. Jones ed & Trans.) (1956).

See MAHMUD, supra note 18, at 58.

See BHRI, supra note 46, XVII at 17 – 18.

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

See supra note 63, at 156. For discussion of other relations who might “inherit” the position see Thaplyal, supra note 18, at 46.

See BHRI, supra note 46, XVII at 20; YAJ, supra note 46, II, at 186 – 87.

See BHRI, 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 supra note 18, at 51.

See 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.\(^8\) Some sources also provide negative qualifications (e.g., not too old or too young).\(^8\)

In light of the above, it appears that the *sreni* possessed centralized management where the headman and executive officers had considerable power,\(^8\) 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.\(^8\)

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.\(^8\) These rules, called *sreni dharma*, could cover a number of topics including production practices, prices, quality controls and so forth.\(^8\) Moreover, many ancient scholars encouraged (and some required) that the *sreni dharma* be written down in a document (often called the *sthitipatra*)\(^8\) and that it be registered with the state for use in later disputes.\(^8\)

The *sreni dharma* was usually the result of discussion and debate within the general assembly.\(^8\) Indeed, the members of the general assembly had the right to free speech within limits.\(^8\) Thus, anyone who “interrupted a speaker during his speech and said something absurd” or “opposed what was reasonable” could be punished.\(^9\) The object was to maintain a fairly democratic stance within the *sreni*. 

\(^8\) 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 *MAJMUDAR*, supra note 18, at 55.

\(^9\) See *BRIH*, supra note 46, XVII at 8.

\(^8\) 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.

\(^8\) 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.


\(^9\) See *THAPLYAL*, supra note 18, at 72.
Once these rules were devised their enforcement fell largely to the \textit{sreni}. The primary method of enforcement was via the headman who, with the executive officers, had the authority to act on behalf of the \textit{sreni} with respect to matters of \textit{sreni dharma}.\footnote{See BRIH, supra note 46, XVII at 17 – 18.} Thus, the headman or the executive officers could impose a penalty on a \textit{sreni} member for violation of the \textit{sreni dharma}.\footnote{See id. According in Majmudar, the \textit{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 \textit{sreni} could have a say in property disputes between spouses).} 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.\footnote{See id., at 20.} If the king found the imposition of the penalty to be outside \textit{sreni dharma} and motivated by ill will towards the member then the punishment could be repealed.\footnote{See id.} This suggests that a simple misapplication of the \textit{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 \textit{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 \textit{sreni dharma} and destruction of \textit{sreni} property.\footnote{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.} Of course, if the headman or officer refused to follow the \textit{sreni} assembly’s decision then the matter would be put forward to the king who was to decide according to \textit{sreni dharma} and impose increasingly severe punishments until the headman accepted the removal or punishment.\footnote{See BRIH, supra note 46, XVII at 20; VIRAMITRODAYA, at 429.} The king’s power could extend to confiscating all the property of the headman and even banishment.\footnote{See BRIH, supra note 46, XVII at 16; VIRAMITRODAYA, at 429.}

From this it appears that even though the headman and officers had considerable power within the \textit{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 \textit{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.\footnote{See CLARK, supra note 4, at 126; ALLEN & KRAAIKAMN, 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). \textit{Cf.} also Bernard L. Black, Brian Cheffins & Michael Klausner, \textit{Outside Director Liability}, STANFORD LAW SCHOOL JOHN M. OLEN 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, 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.

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. 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*. 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. 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. This is similar to the independence requirement in modern boards. 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*.

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. 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

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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 *antar-parva*.

104 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 *antar-parva*.

105 See MAJMUDAR, supra note 18, at 170 – 77 (translating and quoting this inscription from Uttaramullur).

106 See id.


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

109 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

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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. If admitted, the new member would often be required to make some payment into the sreni general treasury. Also, upon admission the member would immediately share all the assets and liabilities with all other sreni members. Some sources suggest that the assets and liabilities were to be shared equally, 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. 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. Undoubtedly, much of the training would have taken place from father to son, and indeed many professions were largely hereditary, 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. 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. Once the period of apprenticeship was completed the student was then capable of engaging in the occupation. Although not perfect, the apprenticeship served the function of keeping a steady flow of people into the professions. 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. Upon exit, the member would no longer have any claim to the assets or liabilities of the sreni. However, it was possible for the exit of a member to have additional consequences. For example, if a member left the sreni after work had been commenced on a project then it appears that person could be fined. 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 firing 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 merit, 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.\footnote{See \textit{KAT}, supra note 46, at verse 677; \textit{BRIH}, supra note 46, XVII at 24.} Indeed, significant penalties attached to members who received something for the whole sreni and did not give it to the sreni.\footnote{See \textit{YAJ}, supra note 46, II at 190; \textit{BRIH}, supra note 46, XVII at 22.}

One source of assets were the individual contributions (cash or kind) made by members to join the sreni or hold sreni “stock.”\footnote{See \textit{KAT}, supra note 46, at verses 625 – 26.} Another source, and a fairly significant one, was gifts given to various members of the sreni by the monarch for a variety of reasons.\footnote{See \textit{THAPLYAL}, supra note 18, at 70.} These gifts belonged to the sreni and would have been quite substantial.\footnote{See id. at 70.} Yet another source would have been profits from the various projects the sreni completed.\footnote{See \textit{THAPLYAL}, supra note 18, at 70.} 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.\footnote{See \textit{THAPLYAL}, supra note 18, at 70.} Finally, the sreni assets also included the penalties recovered from sreni members when they violated sreni dharma.\footnote{See id.} 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.\footnote{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.}

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.\footnote{See \textit{NAR}, supra note 46, III at 4.} 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.\footnote{See \textit{THAPLYAL}, supra note 18, at 70.}

However, there were other noteworthy costs and expenses. First, the sreni generally kept some amount of funds to defend their members against legal action.\footnote{See \textit{id.}} Some sources provide examples of sreni arranging bail for sreni members.\footnote{See \textit{id.}} This bears some resemblance to modern corporations providing resources for the legal defense of executives via the indemnification of legal costs or liability insurance.\footnote{See \textit{CLARK}, supra note 4, at 664 – 74; \textit{ALLEN \\& KRAAKMAN}, supra note 4, at 243 – 48; \textit{KLEIN, RAMSEYER \\& BAINBRIDGE}, supra note 4, at 525 – 38.}

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.\footnote{See \textit{BRIH}, supra note 46, XIV, at 10.} One might view this as an early form of...
incentive payment to induce extra effort from the sreni members. 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.

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. 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.

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, 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. Some further suggested division based on the contribution of skill and technical knowledge. 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. In another context the head working together with another could receive twice the share. The variety of different sharing formulas with a larger share for

\[ \text{151 See Yale D. Tauber & Donald R. Levy, Executive Compensation 37 (2002).} \]
\[ \text{152 See Brih, supra note 46, XIV, at 9 – 10; Yaj, supra note 46, II at 260.} \]
\[ \text{153 Let us assume that there is a sreni member who wants to undertake some innovative activity. Further, the member represents 1\% of the sreni, is risk neutral, is unable to obtain sreni approval for the project, and the activity could generate a loss of 100 or a profit of 100. If, however, the activity generated a profit of 100 then the member receives 1 (his percentage share of 100) plus 10 (reward of one-tenth the profits) or 11 for his efforts. If the sreni member thought there was an equal chance of this activity resulting in a profit or loss he would not undertake it as that would provide him with an expected loss of 44.5. The expected profit (or loss) is calculated as follows. 50\%(-100) + 50\%(1\%(100) + 10\%(100)) = -50 + 5.5. or -44.5 (a loss of 44.5). I have assumed that the payoff is known (and occurs) soon enough that there is no need to discount. To make this project worthwhile the member would need to believe profits would be very high, assuming all else equal, or that the chance of profit is very high, assuming all else equal.} \]
\[ \text{154 See KAT, supra note 46, at verse 675.} \]
\[ \text{155 See Nar, supra note 46, III at 2 – 5; Yaj, supra note 46, II at 259; Brih, supra note 46, XIV at 3 – 4.} \]
\[ \text{156 See Majumdar, supra note 18, at 78.} \]
\[ \text{157 See Brih, supra note 46, XIV at 32; KAT, supra note 46, at verses 632 – 36.} \]
\[ \text{158 See Brih, supra note 46, XIV at 29. Further, in the context of warrior sreni, sent by a king to cause general chaos in another region, one-sixth of the spoils would go to the king and the rest was to be shared evenly. See id., at 31.} \]
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. 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. 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. It is clear that over time sreni developed an excellent reputation for reliability and stability. 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. Additionally, sreni would provide loans to people for a variety of projects and charge interest on these loans. 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. Indeed, the reputation of the sreni was often so great that they would mint coins used in commercial exchange. 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.

However, sreni were active in other aspects of life besides trade. Many sreni would engage in acts to support charity and religious institutions. 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.

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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).
163 See THAPLYAL, supra note 18, at 94.
164 See id., at 91 – 95.
165 See id., at 94.
166 See id., at 89 – 90.
167 See id., at 16 (discussing importance of coins as currency), 87 – 96 (discussing banking-like activities of the sreni).
168 See BRIH, supra note 46, XVII, at 11 – 12, 22 – 23.
169 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.\footnote{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).}

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.\footnote{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.} 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.\footnote{See id.} 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.\footnote{See id.}

In addition, the sreni could hear smaller claims that primarily involved economic disputes.\footnote{See THAPLYAL, supra note 18, at 97 – 98 (discussing stories mentioned in the Vasudevahindi and Mrichchhakatikam).} 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.\footnote{See THAPLYAL, supra note 18, at 101 – 02.} 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.\footnote{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. C.f. 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).}

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.\footnote{See id.}

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,
sreni, and others too. 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. These republics were essentially states or villages that were ruled by a family, extended family, or group, but not by kingship. 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. 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. These entities would have a headman who would be assisted by a council of two to five people much like the economic sreni.

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. Moreover, there is evidence of quite competitive campaigning to obtain the votes of those entitled to vote. Although not entirely clear, it

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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 Rg 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 Lichchhavis 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.\textsuperscript{187}

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

One of the primary differences with the \textit{vairajya} is that here the entity was subordinate to the king and engaged in fewer activities than in the \textit{vairajya}.\textsuperscript{190} For example, one would not expect the entity here to be as actively involved in defense of the state as in the \textit{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.\textsuperscript{191} Often much of the work of the municipal area was handled by entities like the municipal \textit{sreni} and again in a committee format similar in many respects to that in the elected king states.\textsuperscript{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.\textsuperscript{193} The village or municipal entities were run much like the economic \textit{sreni} – assembly votes counted a great deal, open discussion was important and critical and people felt themselves to be bound by assembly decisions.\textsuperscript{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.\textsuperscript{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).\textsuperscript{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

\textsuperscript{187} See \textit{id.}, 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. \textit{See id.}, at 126 – 28.

\textsuperscript{188} See \textit{id.}, at 130 – 35.

\textsuperscript{189} See \textit{id.}, at 134 – 45.

\textsuperscript{190} See \textit{id.}, at 97 – 105.

\textsuperscript{191} See \textit{id.}, at 146 – 77.

\textsuperscript{192} See \textit{id.}, at 157 – 177.

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

\textsuperscript{194} See \textit{id.}, at 125 – 47.

\textsuperscript{195} See \textit{id.}, at 157 – 177.

\textsuperscript{196} See \textit{id.}, at 167 – 77. The village would also be held liable for the debts of employees. \textit{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. 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) 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.

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 inscriptive evidence indicates that villages could certainly combine by agreement of the voting members of their assemblies. 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.

Aside from share transference the inscriptive 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. This combines concerns with accountability and transparency (the

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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, at 4 – 6.
202 See MAJMUDAR, 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. Seeinfra text accompanying note 210.
need to have accounts) with independence requirements (no relations of “tainted” persons are permitted to run). Also, those who have violated certain rules or have engaged in inappropriate behavior would be prohibited from serving on committees as might their relations. Finally, those who have not served on committees for three years are specifically listed as potential candidates – this again helps to ensure some degree of independence and that the burdens (and power) of administration are shared amongst the municipality.

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. 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. 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. The items containing the details of the candidates were referred to as pot tickets. 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.”

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. We could, instead, compare the *sreni* to Medieval European guilds to which the *sreni* bears more than a passing resemblance. 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: Staatlische Wirtschaftsaktivitäten in den Handen Privater Unternehmer* 252 – 55 (2002)).

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

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

<sup>213</sup> 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.

<sup>214</sup> 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*.

<sup>215</sup> 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 HU 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. 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, because of divergent theories about the initial development of civilization in India. Second, the writing on the seals found at various excavated sites has not yet been

218 See S.P. Gupta, supra note 219, at 279; Mookerji, supra 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.


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 (around 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, *Hinduism 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); Dailes, 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 timeline 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 timeline 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.; Moham mad 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-Sarasvati Tradition (2000)[hereinafter Sindhu-Saravati]. 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. Bish, Harappans and the Rgvedas: Points of Convergence, in The Dawn of Indian Civilization (Up to C. 600 B.C.) 393 – 442 (G.C. Pandit, 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 - 4 (Oct. 13, 2000); Romila Thapar, Hinduism and History: Why do Hindu intellectuals keep flogging a dead horse?, 17 FRONTLINE 15 – 16 (Oct. 13, 2000); Asko Parpola, Of Rajaram’s “Horses”, “decipherment” and civilizational issues, 17 FRONTLINE 124 – 25 (Nov. 24, 2000); Steven Farmer & Michael Witzel, New Evidence on the Piltdown 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

<table>
<thead>
<tr>
<th>Period</th>
<th>Years Covered Approximately</th>
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<tr>
<td>A. Earliest Civilizations</td>
<td></td>
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<tr>
<td>1. Earliest Sites – Mehrgarh</td>
<td>7500 B.C. to 700 B.C.</td>
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<tr>
<td>2. The Indus Area Civilizations</td>
<td>7500 B.C. to 4000 B.C.</td>
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<tr>
<td>3. Indo-Gangetic Civilizations</td>
<td>4000 B.C. to 1900 B.C.</td>
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<tr>
<td>4. Indo-Gangetic Civilizations</td>
<td>1900 B.C. to 700 B.C.</td>
</tr>
<tr>
<td>B. The Rise of Buddhism &amp; Jainism</td>
<td>700 B.C. to 320 B.C.</td>
</tr>
<tr>
<td>C. The Mauryan Dynasty</td>
<td>320 B.C. to 185 B.C.</td>
</tr>
<tr>
<td>D. Post-Mauryan Kingdoms in North and South India</td>
<td>200 B.C. to 1300 A.D.</td>
</tr>
<tr>
<td>E. The Gupta Dynasty &amp; India’s “Golden Age”</td>
<td>250 A.D. to 550 A.D.</td>
</tr>
<tr>
<td>F. Harsha Vardhana &amp; The Rajput Kingdoms</td>
<td>600 A.D. to 1100 A.D.</td>
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</table>

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. There is, however, little detail provided about how the sreni was organized except to mention the position of the headman (sreshthi). 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. 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.

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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 srenis); 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. Excavations at Mehrgarh (near Quetta, Pakistan) and neighboring sites provide evidence of a fertile region and inhabitants engaged in farming, herding and keeping animals, and various crafts, as well as inhabitants who possessed dentistry skills. 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. There is, however, little further evidence of how trade functioned in those times.

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

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228 See id.; Kenoyer, supra note 219, at 35; Gupta, supra note 219, at 283 – 85. There are suggestions that the Merhgarh 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.


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 [BBC News story](http://news.bbc.co.uk/hi/english/health/newsid_1272000/1272010.stm).

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.

233 There is also little available written evidence. The oldest Indian writing – the Rg 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.

contemporaries (e.g., Egypt and Mesopotamia). The Indus area civilizations were highly developed with advanced city planning and water management systems far ahead of contemporary civilizations. 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).

Figure 1 – Map of Early World Civilizations

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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. Pandey, Ed.) 377 – 91 (1999).


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. Second, although these civilizations were not under the rule of a single monarch they appeared to live in relative peace with each other, relied on common weights and measurements, and had similar city plans with separate areas of the city dedicated to certain professions. This degree of uniformity is surprising given the absence of a single monarch and some have suggested that it resulted from a focus on trade and religion.

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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, 69; 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.\textsuperscript{247} The uniformity of weights and measures, unique at that time in world history,\textsuperscript{248} benefits trade by reducing the transactions costs of engaging in trade.\textsuperscript{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.\textsuperscript{250} Moreover, enhancing group cohesion would help to encourage the growth of \textit{sreni dharma} within the \textit{sreni} (assuming they existed at that time).

Moreover, excavations have found many seals which, although undeciphered,\textsuperscript{251} are considered by some scholars as ways to identify property.\textsuperscript{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 \textit{sreni} or other organizational forms necessarily existed in these civilizations, but it does suggest that the pre-conditions for their growth were probably present.

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\textsuperscript{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. \textit{See id.}, at 89 – 94 (discussing transportation through the Indus civilization).


\textsuperscript{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.


\textsuperscript{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. \textit{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. Agrawala & Dilip K. Chakrabarti) (1979).
3. Indo-Gangetic Civilizations

Following the decline of the Indus area sites (near 1900 B.C. to 1500 B.C.), 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. 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. 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. 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.


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. 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.

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. In addition, there was significant urbanization

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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 BIHIADARANYAKA UPAISHAD WITH SANKARA'S COMMENTARY 1.411.12 (1953); MAJUDAR, 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, Ashoka and his Successors, in A COMPREHENSIVE HISTORY OF INDIA II, 30 – 43 (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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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 \textit{sreni} by this time in Indian history.\textsuperscript{265} These sources suggest that the \textit{sreni} were numerous, in varied fields, and indeed could be mobile from one place to another.\textsuperscript{266} The \textit{sreni} were clearly important in society as they were often invited for official state functions.\textsuperscript{267} They were also actively involved in trading, production (crafts), and rudimentary banking services by this time.\textsuperscript{268} Their importance is further highlighted by the fact that the \textit{Bhandagarika} (an arbitrator for inter-\textit{sreni} disputes) became established at this time as a government official.\textsuperscript{269}

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

\textsuperscript{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. \textit{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. \textit{There is evidence of active trade even in the non-Buddhist literature. See Agrawala, infra note 264.}

\textsuperscript{265} By this time the oral tradition became less dominant and the newer religions generally encouraged writing. \textit{See Thaplyal, supra note 18, at 15 – 16.}

\textsuperscript{266} See \textit{id.}, at 15, 57 – 60; Das, supra note 20, at 68.

\textsuperscript{267} Hereinafter, \textit{supra note 264.}

\textsuperscript{268} By this time the oral tradition became less dominant and the newer religions generally encouraged writing. \textit{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. \textit{See id., at 2 – 6 (discussing the sources in this time frame including the \textit{Jataka} Stories (circa 7th to 6th Century B.C.) for Buddhist perspectives and the \textit{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.}

\textsuperscript{269} By this time the oral tradition became less dominant and the newer religions generally encouraged writing. \textit{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 \textit{Jataka} Stories (circa 7th to 6th Century B.C.) for Buddhist perspectives and the \textit{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.}

\textsuperscript{270} \textit{See Thaplyal, supra note 18, at 18 – 19; Das, supra note 20, at 60 – 68; Sharma, supra note 264, at 137 – 39.}

\textsuperscript{271} \textit{See id., at 67 – 69; Majumdar, supra note 18, at 18 – 23.}

\textsuperscript{272} \textit{See Majumdar, supra note 18, at 18 – 19.}

\textsuperscript{273} \textit{See Jataka IV, supra note 63, at 37.}

\textsuperscript{274} \textit{See Jataka IV, supra note 63, at 37.}

\textsuperscript{275} \textit{See text accompanying notes 70 to 72.}
King that he should enforce these rules.\textsuperscript{271} This suggests that the governance of the \textit{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 \textit{sreni}. We do not have, however, references to what was contained in the \textit{sreni dharma} of the time. This makes assessing the functioning of these entities more difficult. Nonetheless, we can say with confidence that the \textit{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. \textit{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.\textsuperscript{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.\textsuperscript{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).

\textbf{Figure 3 – Map of Mauryan India}\textsuperscript{274}

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\textsuperscript{271} See \textit{GAUTAMA DHARMA-SUTRA XI}, supra note 85, at 23.
\textsuperscript{272} See \textit{RADHA KUMUD MOOKERJI, CHANDRAGUPTA MAURYA AND HIS TIMES} 22 – 36, 44 – 46, 219 (1966);
\textsuperscript{273} See \textit{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.}
The primary emperors were Chandragupta Maurya (after whom the dynasty is named), Bindusara, and Ashoka. All of the emperors expanded the empire until it reached its zenith under Ashoka and covered virtually all of India, modern day Pakistan, Bangladesh, and Afghanistan. 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. The improved infrastructure combined with increased security, greater uniformity in measurements, and increasing usage of coins as currency would enhance trade.

The second major change was the publication and implementation of the *Arthasastra* around 300 B.C. to 275 B.C. The *Arthasastra* (the knowledge or science of material gain) is one of the most important ancient texts on economics, politics and administration. The authorship of the *Arthasastra* is usually attributed to the legendary Chanakya. 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.

The *Arthasastra* is a treatise on how to maintain and expand power, obtain material gain, and administer an empire. 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...
it was the basis for the administration of the Mauryan Empire and indeed many later (and smaller) empires in India.\textsuperscript{282} Its influence can hardly be overstated.

In the \textit{Arthasastra} 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.\textsuperscript{283} The degree of regulation was quite high and few areas of life were more regulated than \textit{sreni} activity. Chanakya appeared quite suspicious of the \textit{sreni}.\textsuperscript{284} He was generally concerned with any entity that had many members, good resources and a strong sense of group loyalty as the \textit{sreni} did.\textsuperscript{285} He probably viewed them as potential threats to the cohesion of the empire and hence entities that needed to be watched carefully.\textsuperscript{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.\textsuperscript{287} The \textit{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 \textit{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.\textsuperscript{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 \textit{sreni} was quite detailed.\textsuperscript{289} There were administrative officials whose task it was to superintend the various industries and professions represented by the \textit{sreni}.\textsuperscript{290} This was done through regular administrative processes, but also through the use of spies and assassins.\textsuperscript{291} The level of regulation could be quite minute and encompassed regulating the price of products or services, quality control,

\begin{itemize}
\item \textsuperscript{282} See infra discussion Part IV.F.
\item \textsuperscript{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, \textit{The State and Commodity Production in the Magadhan State (500 to 200 B.C.)}, in \textit{THE CULTURE AND CIVILIZATION OF ANCIENT INDIA IN HISTORICAL OUTLINE} 152 – 57 (1982).
\item \textsuperscript{284} See Kangle, \textit{Arthasastra}, Part II, supra note 278, at 4.1 - .2 (referring to artisans and merchants as “thorns”).
\item \textsuperscript{285} See id., at 4.1 - .2, 11.1.1 - 56 (discussing methods of dealing with oligarchies).
\item \textsuperscript{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, \textit{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).
\item \textsuperscript{287} See Kangle, \textit{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.
\item \textsuperscript{288} See Hansmann & Kraakman, supra note 6, at 25 – 28 (discussing the \textit{societates publicanorum} which were not engaged in purely private corporate activities). See also Jean-Jacques Aubert, \textit{Business Managers in Ancient Rome: A Social and Economic Study of Insitores}, 200 B.C. – A.D. 250, at 325 – 30, 342 – 46 (1994).
\item \textsuperscript{289} For a more general discussion of the role of the government in the economy around this time also see D.D. Kosambi, \textit{The State and Commodity Production in the Magadhan State (500 to 200 B.C.)} in \textit{THE CULTURE AND CIVILIZATION OF ANCIENT INDIA IN HISTORICAL OUTLINE} (1982).
\item \textsuperscript{290} See Kangle, \textit{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, \textit{Arthasastra}, Part III, supra note 278, at 166 – 214 (discussing state economy and state administration).
\item \textsuperscript{291} See Kangle, \textit{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.
\end{itemize}
weights and measurements, and even the pay for the sreni headmen (sreni-mukhyas).\footnote{292} Taxes were collected and the use of fairly detailed accounting rules required.\footnote{293} Moreover, there were simple and clear rules about debt obligations and when a debt would cease to be enforceable.\footnote{294} In spite of this fairly heavy regulation, the Arthasastra 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.\footnote{295} Moreover, even with such detailed regulation, it is clear that there were markets for commodities as the Arthasastra prohibits traders from operating in a group to effectively corner a market.\footnote{296} Thus, the Arthasastra treads a delicate balance to maintain an active economy via the sreni and the state, but not to permit the sreni to present a significant challenge to the empire.

There is considerable evidence that domestic and foreign trade grew significantly during the Mauryan Empire administered according to the Arthasastra.\footnote{297} There were many sreni during this time and the Arthasastra expected the king to respect sreni dharma (and indeed to record it for use in later disputes).\footnote{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.\footnote{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.\footnote{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

\begin{footnotes}
\footnote{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).}
\footnote{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 Arthasastra. 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 Arthasastra, 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).
\footnote{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 DAns, 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”).}
\footnote{295}{See KANGLE, ARTHASAstra, supra note 278, at 2.7.2, 2.7.6, 3.11 - .12, 4.1., 5.2.46 - .48.}
\footnote{296}{See id., at 4.2.18 – .19. Cornering a market presumes the existence of a market of some kind.}
\footnote{297}{See THAPAR, supra note 87.}
\footnote{298}{See id.; KANGLE, ARTHASAstra, supra note 278, at 2.7.2, 2.7.6, 3.7.40.}
\footnote{299}{See KANGLE, ARTHASAstra, supra note 278, at 2.7.2, 11.1.6 - .7.}
\footnote{300}{See MAJMUDAR, supra note 18, at 23.}
\end{footnotes}
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 *Arthasastra*, 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. 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. What made it interesting in this context was that Ashoka continued to administer the empire largely according to the dictates of the *Arthasastra*.

At first glance, one might find the mix of Buddhism (which generally preached non-violence, renunciation of material ends, and attainment of *nirvana*) and the *Arthasastra* (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 *Arthasastra* are diametrically opposed on every matter.

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

Further, the evidence we have suggests that Ashoka found an interesting fusion of the principles elaborated in Buddhism and the *Arthasastra*. 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.

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

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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; BOSI, 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 Arthasastra with Ashoka’s Edicts).

304 It should be noted that certain parts of the *Arthasastra* 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 *Arthasastra*. However, it is not clear if Chanakya meant the *Arthasastra* 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 *Arthasastra* would probably consider an anathema.\footnote{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).*} 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).\footnote{See id.; THAPAR, supra note 272, at 202 – 05.} 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 *Arthasastra* 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 *Arthasastra* 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.\footnote{See THAPAR, supra note 272, at 202 – 05.} Ashoka also utilized the fairly efficient toll and taxes system proscribed by the *Arthasastra* and encouraged trade in a variety of ways.\footnote{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.}

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.\footnote{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).}  

**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.\footnote{North and South India were not unified again until the Mughal empire in Medieval India around the 15th and 16th Centuries.}

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.\footnote{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*.} They were replaced by some short lived kingdoms until 30 B.C.\footnote{The Sunga dynasty was followed 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).} 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
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. 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.

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. Trade was very active, especially with Rome, as is evidenced by the large number of Roman coins found in this area. 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. 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. There is considerable evidence of very active trade during both the Satavahana and Chalukya dynasties. 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. The Cholas ruled until the 13th century A.D. when the Islamic invasions also claimed their kingdom.

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
highly profitable trade with Rome, Egypt, South East Asia, and China. 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. 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. 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. Indeed, it may have been that the growth in foreign sea trade more than compensated for the instability, at times, in domestic land trade. 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.

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. In this post-Mauryan era the newly unshackled sreni grew quickly and established their sway over much of India. Moreover, kings were quite keen to have the favor of the sreni, no doubt to help stabilize or cement their control over a region. This 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.

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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. We witness this in a number of ways. First, we have even more clear references to the kings being expected to maintain *sreni dharma*. 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. 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. 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.

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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 India

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

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 Lichchhavis 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). All of these emperors expanded the boundaries of the empire until it reached its apex in the reign of Vikramaditya. Much like the Mauryan Empire, the Gupta Empire 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 Arthasastra back into effect, the Gupta Empire was not nearly as centralized as the Mauryan. Rather the Gupta Empire was a looser confederation of kingdoms which relied more on tributes, strategic alliances, and greater decentralization than the Mauryan Empire. Indeed, it is likely that the increased heterogeneity of Indian society reflected in the general economic and political conditions of the time would probably not have sustained a highly centralized empire. The significance of this for trade was that the central authority did not regulate economic activity as tightly as the Mauryans, yet it provided quite efficient administration, maintained safe trade routes, and encouraged trade. 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.

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. 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. 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 – 55.

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 – 53; 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. On the mathematics side the increasing use of the Indian numeral system and the development of zero as a placeholder would have enhanced trade by simplifying calculations and the overall transactional process. On the science side, the use and development of iron in India at this time reached the highest levels. Indeed, one of India’s most famous historic attractions – the iron pillar of Mehrauli – is said to date from this period. 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. The significance of this level of sophistication in iron would also have been displayed in more efficient tools for trade, transportation and storage.

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. Some estimate that there were at least 150 sreni by this time. 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.

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. Moreover, one might not be surprised if sreni were willing to take on additional occupations in an environment of quickly growing and profitable opportunities. Similarly, sreni might be willing to move to new locations to

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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 IIT 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 36 – 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 36 – 39, 144 – 45. These features are all discussed in the Brihataparinirvita, Yajnavalkyasyamriti and Naradasamriti 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. 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. By 550 A.D. the Empire had been weakened and fell. 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. 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 lose confederacy) that nearly rivaled the Guptas. Harsha was an impressive military leader, an able statesman and diplomat, and a brilliant administrator. Moreover, during his reign (606 A.D. to 647 A.D.) trade expanded much like it did in the Gupta Empire with an increasing focus on the Far East and South East Asia. To service this large trade the sreni continued to function as they did under the Gupta Empire. Unfortunately, upon Harsha’s passing his kingdom fell apart and India descended to warring feudal lords and small kingdoms.

Over the next 400 or so years a number of kingdoms ruled parts of India with increasingly shifting boundaries, internecine warfare and a general decline in trade. The 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 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.


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 Watters, 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
The decline in trade was due in large measure to the frequent wars within India and general ongoing political instability, which made long distance land trade more risky. Also, in these conditions many sreni members were forced to move around thereby impeding the cohesion needed for effective functioning of the sreni as well as making it harder to plan out projects. This was further exacerbated by diminishing foreign trade with the dwindling Roman Empire. 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. 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. Indeed, to make matters worse the sreni became castes in themselves and entry hardened into their profession which deprived the sreni of a broad base of talent and potentially reduced innovation in it. For all intents and purposes the sreni were no longer a significant force.

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. 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. 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. 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.
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...
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,

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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].


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 Commerical 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. This may have implications for the corporate convergence debate that merit further inquiry.

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). The continuity in internal governance may largely be an artifact of the relatively consistent treatment and development of sreni dharma over time. 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.

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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 THAPILYAL, STUDIES IN ANCIENT INDIAN SEALS 241 (1962).


395 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.