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“The Economic History of the Corporate Form in Ancient India”

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THE ECONOMIC HISTORY OF THE CORPORATE FORM IN ANCIENT INDIA

*By: Vikramaditya Khanna**

Abstract

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

The examination reveals that business people on the Indian subcontinent utilized the corporate form from a very early period. The corporate form (e.g., the *sreni*) was being used in India from around 800 B.C. 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 its growth are consistent with those put forward for the growth of organizational entities in Europe. These factors include increasing trade, methods to contain agency costs, and methods to patrol the boundaries between the assets of the *sreni* and those of its members (i.e., to facilitate asset partitioning or entity shielding and reduce creditor information costs). Finally, examining 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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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	WHAT IS A CORPORATION AND WHAT ENCOURAGES ITS GROWTH?	2
	<i>A. Corporations and Business Organizations.</i>	2
	<i>B. Factors Leading to the Growth of Corporate Entities and Business Organizations.</i>	3
III.	THE ANCIENT INDIAN FORMS OF BUSINESS ORGANIZATION	6
	<i>A. Precursors to the Corporate Form in Ancient India</i>	6
	<i>B. Economic Entities in Ancient India – Sreni</i>	8
	1. <i>Separate Legal Entity & General Prevalence</i>	9
	2. <i>Structure</i>	10
	3. <i>Internal Governance</i>	11
	4. <i>Formation</i>	14
	5. <i>The Accumulation, Use, and Division of Funds.</i>	17
	6. <i>Other Roles of the Sreni</i>	19
	<i>C. Political and Municipal Entities in Ancient India</i>	21
	1. <i>Political Nature of State</i>	21
	a. <i>Vairajya – the kingless state.</i>	21
	b. <i>The elected king states.</i>	22
	c. <i>The simple monarchies.</i>	22
	2. <i>Municipal or Political Corporation.</i>	22
IV.	THE DEVELOPMENT OF THE CORPORATE FORM IN ANCIENT INDIA	27
	<i>A. Earliest Civilizations in the Indian Subcontinent and the Origin of the Sreni</i>	29
	1. <i>Earliest Sites – Mehrgarh</i>	29
	2. <i>The Indus Area Civilizations</i>	30
	3. <i>The Indo-Gangetic Civilizations</i>	33
	<i>B. The Rise of Buddhism & Jainism.</i>	34
	<i>C. The Mauryan Dynasty</i>	35
	<i>D. Post-Mauryan Kingdoms in North and South India</i>	41
	<i>E. The Gupta Dynasty & India’s “Golden Age”</i>	45
	<i>F. Post-Gupta & Harsha Vardhana</i>	48
	<i>G. Summary & Commentary</i>	50
V.	CONCLUSION	54

TABLES & FIGURES

TABLE 1: SUMMARY OF CHARACTERISTICS OF THE <i>SRENI</i>	26
TABLE 2: ANCIENT INDIAN HISTORY TIMELINE	28
Figure 1: Map of Early World Civilizations	31
Figure 2: Detailed Map of Indus Valley Sites	31
Figure 3: Map of Mauryan India	36
Figure 4: Map of Gupta India	45

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I. INTRODUCTION

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

The examination reveals that business people on the Indian subcontinent utilized the corporate form from a very early period. The corporate form (e.g., the *sreni*) was being used in India from around 800 B.C. 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

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

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

³ See Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L.J. 387 (2000); Henry Hansmann, Reinier Kraakman & Richard Squire, *Law & The Rise of the Firm*, forthcoming HARV. L. REV. (2006).

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 its growth are consistent with those put forward for the growth of organizational entities in Europe. These factors include increasing trade, methods to contain agency costs, and methods to patrol the boundaries between the assets of the *sreni* and those of its members (i.e., to facilitate asset partitioning or entity shielding and reduce creditor information costs). Moreover, specific attributes of the *sreni* grew to meet demands raised by changing business conditions. Finally, examining the development of the *sreni* sheds light on the importance of state structure for the growth of trade and the corporate form. Ancient India appears to have 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 Business Organizations.*

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

First, corporations are separate legal entities from their shareholders, which means that a corporation is able to own property in its own name separate from its individual shareholders.⁴ This also means that the corporation continues in existence even if its shareholders die or transfer their shares.⁵ This adds considerable stability to the corporate form over other organizational forms such as partnerships.⁶ Second, corporations possess

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

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

⁶ See ALLEN & KRAAKMAN, *supra* note 4, at 83 – 84. The stability of the corporate form also addresses strategic concerns, such as one partner threatening to destroy the going concern value of the entity by withdrawing or dissolving the

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

This, of course, provides a modern definition of what a corporation is. However, for most of the history of business enterprise in Europe these four features were not present.¹² These business enterprises did not generally possess limited liability, but did usually possess the first two attributes (separate legal entity status and centralized management) and sometimes the third (transferability of interest).¹³ Moreover, in recent work Hansmann, Kraakman & Squire have coined another term – a “contracting entity” – which is an entity that has “a designated pool of assets and an agent or agents with ongoing authority to enter into contracts that, as a default rule of law, are bonded by those assets”.¹⁴ As we shall discover, Ancient India not only had business forms that easily met this notion, 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 Entities and Business Organizations.*

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

entity. See Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L.J. 387 (2000); Henry Hansmann, Reinier Kraakman, & Richard Squire, *Law & The Rise of the Firm*, forthcoming HARV. L. REV. (2006) at 10 – 13 [hereinafter Hansmann, et al] (discussing other benefits as well).

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

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

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

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

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

¹² See Hansmann, et al, *supra* note 6, at 5 – 7, 18 – 28. All four features were more prevalent in the 19th Century, but the corporate form existed in the U.K. earlier. See e.g. Hansmann, et al, *supra* note 6, at 5 – 7, 35 – 38, 43 – 46; William W. Bratton Jr., *The New Economic Theory of the Firm: Critical Perspectives from History*, 41 STAN. L. REV. 1471, 1474 – 92. The absence of limited liability is not surprising because it is an attribute more suited to raising large amounts of capital from dispersed shareholders for large scale industries – something that became more prevalent only recently. See CLARK, *supra* note 4, at 2 – 4. For discussion on organizational structure (e.g., multi-divisional firms) see generally Oliver E. Williamson, *The Modern Corporation: Origins, Evolution, Attributes*, 19 J. ECON. LIT. 1537 (1981).

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

¹⁴ Hansmann, et al., *supra* note 6, at 2 (May 2005 Draft).

technologies.¹⁵ Legal organizational forms, such as the modern corporation, helped facilitate this increased demand for capital.¹⁶

The importance of growing trade is that it creates incentives for collective efforts. When trade increases people tend to travel more to sell their wares.¹⁷ Traveling has not always been easy, especially if the traders are moving through foreign and dangerous territory. In such circumstances being in a group of traders may provide some protection against robbers and thieves and also some method of spreading the risks of the journey.¹⁸ Moreover, as trade and production increase the advantages of working in a large group (i.e., economies of scale) are likely to be quite considerable (e.g., spreading the fixed costs of production).¹⁹ Further, as trade increases the gains from specialization, and the sustainability of it, are likely to increase.²⁰

The importance of technology is that certain changes in the technological environment may require large amounts of capital to utilize them (as some productive technology did in the industrial revolution).²¹ This would often require collective effort in raising and contributing capital because the amount may be too much for any one party to be able, or willing, to provide.²² Thus, increasing trade and changing technology influenced the need for collective efforts and thereby influenced the development of, and demand for, organizational forms.

On the supply side, it is important to note that the corporate form did not develop in a vacuum. Rather it developed against a pre-existing set of legal and institutional conditions that hastened its development. Absent some of these conditions it would have been more difficult and taken longer for the corporate form to develop.²³ Moreover, it was probably these conditions and the monitoring methodologies of the time that made the costs of the corporate form bearable to the business and investment community.

For example, one critical feature of the corporate form (and indeed any legal entity) is that it partitions the assets of the corporation from that of its owners – a matter critical to creditors who transact with the corporation.²⁴ Thus, when a creditor transacts with the

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

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

¹⁷ See Avner Grief, *Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders' Coalition*, 83 AM. ECO. REV. 525, 526 – 28 (1993). For general discussion on trade and travel see MAX WEBER, GENERAL ECONOMIC HISTORY (FRANK H. KNIGHT TRNSL.) 155 – 79 (1961); THAPLYAL, *infra* note 18, at 13, 17 – 18. For further discussion of economic history see DOUGLASS C. NORTH, STRUCTURE AND CHANGE IN ECONOMIC HISTORY (1981).

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).

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

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

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

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

²³ It is worth noting that there is some interaction between supply and demand (strong demand for something may induce people to think of ways to supply it). Nonetheless, the supply side cannot be ignored or entirely subsumed within the demand side. Cf. Hansmann, et al., *supra* note 6, at 1 – 2, 5 – 7, 17 – 23.

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

corporation it knows which assets (those of the corporation) stand behind the transaction.²⁵ Similarly, when a creditor transacts with the owners in their individual capacities it also knows which assets (those of the owners) stand behind the transaction.²⁶ Knowing this is important for a number of reasons including that it helps creditors to know which assets they need to focus their monitoring efforts on – the corporation’s or the owner’s – and thereby reduces the creditors’ monitoring and information costs compared to a world where such asset partitioning was not possible.²⁷

Of course, for this to happen one needs to be able to identify which assets belong to which entity (corporation or owner) and monitor movements of assets from one entity to another.²⁸ If this monitoring is not practical then it will be more difficult for the corporate form to develop. Indeed, the historical development of the corporate form in Europe suggests that the ability to patrol the boundary between different sets of assets was a very important factor.²⁹ This becomes easier as accounting systems become more refined and as bankruptcy proceedings become more sophisticated.³⁰

Another critical feature of the corporate form is that it often brings together a number of people to invest in and run an entity. If rules to address the potential conflicts of interest amongst owners and between managers and owners are not present (or cannot be devised quickly) then the corporate form will grow more slowly.³¹ After all, investors will want some assurance that their funds will not be misused or that their co-owners will not misappropriate the funds for themselves.³² Fiduciary duty doctrine, some securities regulation, and reputational mechanisms serve to address these concerns.³³ But for these to function properly there must be monitoring methodologies in place for the owners to have the information necessary to enforce these duties or to impose reputational penalties.³⁴ The

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

²⁶ See *id.*

²⁷ See *id.* I use the term asset partitioning, affirmative asset partitioning, and entity shielding interchangeably as these were terms used by Hansmann, et al at various points. See *id.*, at 1. Hansmann, et al identify a number of other advantages of asset partitioning or entity shielding such as reducing the administrative costs of bankruptcy, protecting going concern value, investment diversification, and promoting transferability. See *id.*, at 10 – 14. My references to reducing creditor information or monitoring costs should be read to include these other advantages when relevant. Hansmann, et al also identify a number of costs of asset partitioning or entity shielding which include debtor opportunism, higher enforcement costs, creation of a bankruptcy system, de-diversification of creditor claims, illiquid investments and exploitation by control persons. See *id.*, at 14 – 17.

²⁸ See *id.*, at 19 – 25. Of course, a prerequisite to this is that the organization can own assets in its own name and that the owners can individually own assets. There is evidence of both in Ancient India. See ATINDRANATH BOSE, SOCIAL AND RURAL ECONOMY OF NORTHERN INDIA CIRCA 600 B.C. – 200 A.D. VOL. I, 38 – 65 (1961).

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

³⁰ See *id.*, at 29 – 35.

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

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

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

³⁴ This is implicit in the reputational literature (if no one knows that a firm is producing low quality then the firm’s reputation is unlikely to 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.

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

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

III. THE ANCIENT INDIAN FORMS OF BUSINESS ORGANIZATION

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

A. *Precursors to the Corporate Form in Ancient India*

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

³⁵ See Hansmann, et al., *supra* note 6, at 31. On reputational mechanisms see Klein & Leffler, *supra* note 33; Shapiro, *supra* note 33; Grief, *supra* note 17; Robert Ellickson, *Of Coase and Cattle: Dispute Resolution among Neighbors in Shasta County*, 38 STAN. L. REV. 623 (1985); Lisa Bernstein, *Merchant Law in a Merchant Court: Rethinking the Code's Search for Immanent Business Norms*, 144 U. PA. L. REV. 1765 (1995) [*hereinafter* Merchant]; Bernstein, *supra* note 33; Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115 (1992) [*hereinafter* Opting Out].

³⁶ See Timur Kuran, *Why the Middle East is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation*, 18 JOURNAL OF ECONOMIC PERSPECTIVES 71, 72 – 76 (2004) (discussing the importance of these matters in the Middle East). For discussion of property in Ancient India see *supra* note 28. I do not intend the text to contain an exhaustive list of all the things that help or retard the growth of organizational forms like the corporation. Rather this list is designed to be indicative of some of the more important things.

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

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

More generally, the *gana* and *samgha* appear to refer to political and religious entities.³⁹ The *puga* and *vrata* to entities with members that often had economic motivations, but were also residents of an entire town or village devoted to a profession.⁴⁰ *Nigama* and *sreni* refer most often to economic organizations of merchants, craftspeople and artisans, and perhaps even para-military entities.⁴¹ Finally, the *pani* is often interpreted as representing a group of merchants traveling in a caravan to trade their wares.⁴² Of these the *sreni*, *nigama* and *pani* are the ones most frequently engaged in economic activities. Before examining the *sreni* in detail it is important to describe the features of some of the other economic entities.

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

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

There also appear to have been obligations that mirrored the duty of care and duty of loyalty that are such a common feature of today's fiduciary duties.⁴⁸ For a cause of action based on a partner negligently causing harm to the partnership the partners sat in judgment on their co-partner and decided whether such negligence in fact occurred.⁴⁹ If the partner

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

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

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

⁴² See MAJMUDAR, *supra* note 18, at 14.

⁴³ See *id.*

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

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

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

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

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

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

was found negligent he had to make good the losses.⁵⁰ This bears some similarity to today's duty of care. Moreover, if the allegation was fraud then the accused partner would face some kind of ordeal or oath.⁵¹ If the partner failed then he would have to make good the losses to the partnership, forfeit his profits and be removed from the partnership.⁵² This bears some similarity (except for the method of proof) to today's duty of loyalty.

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

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

B. *Economic Entities in Ancient India – Sreni*

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

The *sreni* shares some similarities with the guilds of medieval Europe,⁵⁹ 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 – indeed, there is an example of a silk weaving *sreni* where some members practiced

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

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

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

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

⁵⁴ This is seen when *Brihaspati* says: "Trade or 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 For greater discussion of European guilds see Alfred Kieser, *Organizational, Institutional, and Societal Evolution: Medieval Craft Guilds and the Genesis of Formal Organizations*, 34 ADMINISTRATIVE SCIENCE QUARTERLY 540 (1989); Avner Grief, Paul Milgrom & Barry R. Weingast, *Coordination, Commitment, and Enforcement: The Case of the Merchant Guild*, 102 J. POL. ECON. 745 (1994).

other professions as well (e.g., archery, astrology).⁶⁰ Further, the *sreni* was mobile and has been known to move from one location to another without the threat of outside military force.⁶¹ Moreover, the *sreni* was used in 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,⁶² 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.⁶³ 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.⁶⁴ Moreover, it was quite clear that changes in *sreni* membership or location did not change its obligations to other parties.⁶⁵ 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.⁶⁶

In addition to this, one of the interesting features of the *sreni* is its prevalence in Ancient Indian society.⁶⁷ Sources identify between 18 to 150 *sreni* at various times in Ancient India covering both trading and craft activities.⁶⁸ 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

⁶⁰ 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).

⁶¹ See THAPLYAL, *supra* note 18, at 180 – 194. There could be more than one *sreni* engaged in the same occupation in the same town (*see id.* at 40). However, some sources generally encouraged the monarch to keep only one *sreni* devoted to an occupation in one region. See R.P. KANGLE, CHANAKYA'S ARTHASASTRA, PART II, BOOK 2, CHAPTER 1, VERSE 32, at 58 (1972, reprint 1988). Although mobility was possible, some authors suggest it would require state acquiescence. See ROMILA THAPAR, ASOKA AND THE DECLINE OF THE MAURYAS 73 (2000).

⁶² See *infra* Part IV.A.

⁶³ See YAJ, *supra* note 46, II, at 186 – 92; THE LAWS OF MANU VIII at 5, (GEORG BÜHLER ED. & TRANS.) IN SACRED BOOKS OF THE EAST VOL. 25 (1886) [hereinafter MANU]; R.P. KANGLE, CHANAKYA'S ARTHASASTRA, PART II, BOOK 3, CHAPTER 1, Verse 15, at 192 (1972, reprint 1988) [hereinafter ARTHASASTRA and this would be cited as 3.1.15]. See ARTHASASTRA, *supra*, at 3.7.40 (discussing inheritance); 3.14.1 - .38 (discussing partnership); 4.1.1 - .65 (discussing artisans); 4.2.1 - .36 (discussing traders).

⁶⁴ See THE JATAKA OR STORIES OF THE BUDDHA'S FORMER BIRTHS IV, 37 (W.H.D. ROUSE TRANS.) (1901) [hereinafter JATAKA IV]. The institution continued thereafter. See MAJMUDAR, *supra* note 18, at 23.

⁶⁵ See RADHA KUMUD MOOKERJI, LOCAL GOVERNMENT IN ANCIENT INDIA 119 – 120 (1958).

⁶⁶ 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).

⁶⁷ See THAPLYAL, *supra* note 18, at 57 – 64; MAJMUDAR, *supra* note 18, at 18 – 19.

⁶⁸ 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 63, at 11.1.4 - .5 (discussing the *sreni* from Kamboja, Surashtra, and Licchivika).

workers, and bamboo workers to money-lenders, barbers, jewelers, and weavers.⁶⁹ Moreover, some of these professions were further sub-divided into even more finely grained categories.⁷⁰

2. *Structure*

Although the *sreni* was utilized in many different occupations, its basic internal structure was quite consistent. The first component of the *sreni* was the general assembly of its members and some *sreni* could have over 1000 members.⁷¹ There were apparently no upper limits on the number of members.⁷²

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 *Jethaka* or *Sreshthi*) who was often experienced, skilled, intelligent, and sometimes already quite wealthy.⁷³ The headman was also critical because he represented the interests of the *sreni* in the king's court and in many official business matters.⁷⁴ 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*.⁷⁵ The headman also wielded significant power within the *sreni* because he exercised the adjudicative powers of the *sreni* with respect to breaches of the internal rules of the *sreni* that bound all members.⁷⁶ For all this, it was not uncommon for the headman to receive a hefty salary.⁷⁷

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.⁷⁸ 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.⁷⁹ In such a situation one would expect that the next headman would not be a relation of the removed headman nor be chosen by the removed headman. Rather an

⁶⁹ See MAJMUDAR, *supra* note 18, at 18 – 19.

⁷⁰ See BOSE, *supra* note 28, at 245 – 46 (noting that arrow making was considered separate from bow making and bow string making).

⁷¹ See THE JATAKA OR STORIES OF THE BUDDHA'S FORMER BIRTHS III, 281, 405 (H. T. FRANCIS & R.A. NEIL TRANS.)(1897)[*hereinafter* JATAKA III]. There was, however, considerable variety in the number of members ranging from small *sreni* (less than 100) up to *sreni* with 1000 or so members. See THAPLYAL, *supra* note 18, at 39 – 40 (noting also that the 1000 number was often conventional).

⁷² See THAPLYAL, *supra* note 18, at 39.

⁷³ See JATAKA IV, *supra* note 64, at 147 – 48, 161; THE JATAKA OR STORIES OF THE BUDDHA'S FORMER BIRTHS I, 114 (ROBERT CHALMERS TRANS.)(1895)[*hereinafter* JATAKA I]; THE JATAKA OR STORIES OF THE BUDDHA'S FORMER BIRTHS II, 12 (W.H.D. ROUSE TRANS.)(1895)[*hereinafter* JATAKA II]; JATAKA III, *supra* note 71, 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 64, at 157.

⁷⁴ See MOOKERJI, *supra* note 65, at 48 – 49; JATAKA I, *supra* note 73, at 114; MAHAVASTU III, at 405 (J. JONES ED & TRANS.)(1956).

⁷⁵ See MAJMUDAR, *supra* note 18, at 58.

⁷⁶ See BRIH, *supra* note 46, XVII at 17 – 18

⁷⁷ See ARTHASASTRA, *supra* note 63, at 5.3.1 - .11 (noting the pay of *sreni-mukhyas*).

⁷⁸ See JATAKA IV, *supra* note 64, at 136. For discussion of other relations who might “inherit” the position see THAPLYAL, *supra* note 18, at 46.

⁷⁹ See BRIH, *supra* note 46, XVII at 20; YAJ, *supra* note 46, II, at 186 – 87.

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.⁸⁰ The executive officers were generally elected by the assembly and the written sources provide a list of qualifications for the officers.⁸¹ In most instances they are expected to be well versed in the *Vedas* (the first Hindu scriptures), not greedy, of noble ancestry, and proficient in their craft.⁸² Some sources also provide negative qualifications (e.g., not too old or too young).⁸³

In light of the above, it appears that the *sreni* possessed centralized management where the headman and executive officers had considerable power,⁸⁴ 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.⁸⁵

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.⁸⁶ These rules, called *sreni dharma*, could cover a number of topics including division of assets and liabilities, election and removal of headmen and officers, production practices, prices, quality controls and so forth.⁸⁷ Moreover, many ancient scholars

⁸⁰ See BRIH, *supra* note 46, XVII at 9 – 10; YAJ, *supra* note 46, II, at 186 – 87. Some *sreni* appeared to have more executive officers ranging up to 12 for elephant drivers *sreni*. See THAPLYAL, *supra* note 18, at 51.

⁸¹ See MAJMUDAR, *supra* note 18, at 40 – 43. It may have been the case that the officers were often nominated by the headman and then voted on by the general assembly. See *id.*

⁸² 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.

⁸³ See BRIH, *supra* note 46, XVII at 8.

⁸⁴ 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.

⁸⁵ 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.

⁸⁶ See GAUTAMA DHARMASTRUT, XI at 21 – 22 (G. BÜHLER ED. & TRANS.) IN THE SACRED LAWS OF THE ARYAS, SACRED BOOKS OF THE EAST VOL. 2 (1965); ARTHASASTRA, *supra* note 63, at 2.7.2, 2.7.6, 3.7.40; YAJ, *supra* note 46, II, at 186 – 92; BRIH, *supra* note 46, II at 26 – 28, XVII at 5; KAT, *supra* note 46, at verses 225, 254.

⁸⁷ See THAPLYAL, *supra* note 18, at 72.

encouraged (and some required) that the *sreni dharma* be written down in a document (often called the *sthitipatra*)⁸⁸ and that it be registered with the state for use in later disputes.⁸⁹

The *sreni dharma* was usually the result of discussion and debate within the general assembly.⁹⁰ Indeed, the members of the general assembly had the right to free speech within limits.⁹¹ Thus, anyone who “interrupted a speaker during his speech and said something absurd” or “opposed what was reasonable” could be punished.⁹² The object was to maintain a fairly democratic stance within the *sreni*.

Once these rules were devised their enforcement fell largely to the *sreni*. The primary method of enforcement was via the headman who, with the executive officers, had the authority to act on behalf of the *sreni* with respect to matters of *sreni dharma*.⁹³ Thus, the headman or the executive officers could impose a penalty on a *sreni* member for violation of the *sreni dharma*.⁹⁴

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 the member could bring an appeal to the king.⁹⁵ If the king found the imposition of the penalty to be outside *sreni dharma* and motivated by ill will towards the member then the punishment could be repealed.⁹⁶ This suggests that a simple misapplication of the *sreni dharma* by the headman or officers might not be enough to repeal a penalty – there would need to be some ill will.

Another method of redress for the aggrieved member might be to go to the *sreni* assembly and request them to punish the headman or officer. It is quite clear that the assembly could punish or remove the headman or officers, without needing the king’s approval, for a number of things including violation of the *sreni dharma* and destruction of *sreni* property.⁹⁷ Of course, if the headman or officer refused to follow the *sreni* assembly’s decision then the matter would be put forward to the king who was to decide according to *sreni dharma* and impose increasingly severe punishments until the headman accepted the removal or punishment.⁹⁸ The king’s power could extend to confiscating all the property of the headman and even banishment.⁹⁹

⁸⁸ See BRIH, *supra* note 46, VIII at 9, 26; KAT *supra* note 46, at verse 254.

⁸⁹ See ARTHASASTRA, *supra* note 63, at 2.7.2, 2.7.6.

⁹⁰ See THAPLYAL, *supra* note 18, at 73 n. 121.

⁹¹ See KAT, *supra* note 46, at verse 671.

⁹² See *id.*

⁹³ See BRIH, *supra* note 46, XVII at 17 – 18.

⁹⁴ See *id.* According to Majmudar, the *sreni* could only regulate matters as related to its business affected by members, not to the general aspects of members’ lives. See MAJMUDAR, *supra* note 18, at 62. But see THAPLYAL, *supra* note 18, at 50 (suggesting that the headman of the *sreni* could have a say in property disputes between spouses).

⁹⁵ See BRIH, *supra* note 46, XVII at 20.

⁹⁶ See *id.*

⁹⁷ See ARTHASASTRA, *supra* note 63, 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.

⁹⁸ See BRIH, *supra* note 46, XVII at 20; VIRAMITRODAYA, at 429.

⁹⁹ 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 *sreni*, their power was not unfettered. Indeed, one can see some similarities to modern corporate governance.

First, deference was given to management decisions so that a king would normally interfere only when the *sreni* member could show ill will in the decision to punish the member.¹⁰⁰ 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.¹⁰¹

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,¹⁰² 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.¹⁰³

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.¹⁰⁴ 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*.¹⁰⁵ 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.¹⁰⁶ 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.¹⁰⁷ This is similar to the independence requirement in modern boards.¹⁰⁸ Moreover, one could view some of the

¹⁰⁰ See BRIH, *supra* note 46, XVII at 20. I do not treat the king's interference in enforcing a *sreni* decision to remove a headman as being connected to deference to management. If the *sreni assembly* voted against the headman because of the imposition of a penalty on a member then the king enters the fray only to ensure that the headman leaves the *sreni* (as per the assembly's decision) rather than to enforce or defer to *sreni* management.

¹⁰¹ See CLARK, *supra* note 4, at 126; ALLEN & KRAAKMAN, *supra* note 4, at 240 – 60; KLEIN, RAMSEYER & BAINBRIDGE, *supra* note 4, at 316 – 67. Some degree of liability insulation might make sense given the size of the penalties for the head or executive officers (e.g., banishment). Cf. also Bernard S. Black, Brian Cheffins & Michael Klausner, *Outside Director Liability*, STANFORD LAW SCHOOL JOHN M. OLIN PROGRAM IN LAW & ECONOMICS WORKING PAPER No. 250 (2003) at 63.

¹⁰² 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).

¹⁰³ 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.

¹⁰⁴ 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.

¹⁰⁵ See YAJ, *supra* note 46, II at 190. The *Mahabharata* suggests *sreni dharma* violations are very serious and it may not be possible to obtain expiation for them. See THE MAHABHARATA OF KRISHNA-DWAIPAYANA VYASA (PRATAP CHANDRA ROY TRNSL.) XII at 37.14 [*hereinafter* MAHABHARATA]. The numeral XII refers to the chapter (the *parva*) of the *Mahabharata* rather than the volume of the translation in which the chapter is found. The XII *parva* is the *santi-parva*.

¹⁰⁶ See MAJUMDAR, *supra* note 18, at 170 – 77 (translating and quoting this inscription from Uttaramullur).

¹⁰⁷ See *id.*

¹⁰⁸ See NYSE LISTED COMPANY MANUAL, Sections 303A.1 Independent Directors, 303A.2 Independence Tests, available at www.nyse.com.

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*.¹⁰⁹

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.¹¹⁰ 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 his speech – this provides, within reason, a fairly simple method of raising grievances to the general assembly.

Similarly, when a matter related to a decision by *sreni* management is taken to the king it is usually only when the officers or headman acted with ill will. 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.¹¹¹

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. 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.¹¹² 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.¹¹³ Of

¹⁰⁹ See YAJ, *supra* note 46, II at 191; BRIH, *supra* note 46, XVII at 8 – 9.

¹¹⁰ See KAT, *supra* note 46, at verse 671.

¹¹¹ See ALLEN & KRAAKMAN, *supra* note 4, at 240 – 42, 248 – 53.

¹¹² 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* – a reasonable assumption might be that 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.

¹¹³ See ARTHASASTRA, *supra* note 63, at 2.7.2.

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.¹¹⁴ 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,¹¹⁵ or agreeing to the *sreni dharma* (*lekha-kriya*),¹¹⁶ or having a person of high standing (perhaps an arbitrator) vouch for a new member and act as guarantor (*madhyastha*).¹¹⁷

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.¹¹⁸ If admitted, the new member would often be required to make some payment into the *sreni* general treasury.¹¹⁹ Also, upon admission the member would immediately share all the assets and liabilities with all other *sreni* members.¹²⁰ Some sources suggest that the assets and liabilities were to be shared equally,¹²¹ 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.¹²² It appears 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.¹²³ Undoubtedly, much of the training would have taken place from father to son, and indeed many professions were largely hereditary,¹²⁴ 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.¹²⁵ 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.¹²⁶ Once the period

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

¹¹⁵ See *id.*; NAR, *supra* note 46, I at 327 – 31.

¹¹⁶ See BRIH, *supra* note 46, XVII at 7, 11 – 12.

¹¹⁷ See *id.*, at 7.

¹¹⁸ See VIRAMITRODAYA, at 432.

¹¹⁹ See KAT, *supra* note 46, at verse 626. Entry into the *sreni* did not preclude individual members from maintaining separate individual activities and businesses. See THAPLYAL, *supra* note 18, at 37 – 42. This underscores the separate entity status of the *sreni* from its members.

¹²⁰ See *id.*, at verse 675 – 76.

¹²¹ See *id.*, at verse 675.

¹²² See YAJ, *supra* note 46, II at 259; BRIH, *supra* note 46, XIV at 3 – 5, 27 – 32.

¹²³ See NAR, *supra* note 46, V at 3, 12, 15 – 21; YAJ, *supra* note 46, II, at 184.

¹²⁴ See THAPLYAL, *supra* note 18, at 55 – 57; BOSE, *supra* note 28, at 235.

¹²⁵ See NAR, *supra* note 46, V at 3.

¹²⁶ 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).

of apprenticeship was completed the student was then capable of engaging in the occupation.¹²⁷ Although not perfect, the apprenticeship served the function of keeping a steady flow of people into the professions.¹²⁸ 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.¹²⁹ Upon exit, the member would no longer have any claim to the assets or liabilities of the *sreni*.¹³⁰ 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.¹³¹ Moreover, if a member was removed from the *sreni* (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.¹³²

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 *sreni* used for municipal purposes (municipal *sreni*) it was possible for one member to sell his share of the *sreni* to someone else.¹³³ Indeed, there are quite detailed rules describing the powers and obligations (especially voting rights) attached to these shares in managing municipal matters.¹³⁴ 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*.¹³⁵ However, one cannot be certain and moreover we have little basis on which to know how such a transfer might occur in an economic *sreni*. The matter may best be treated as something open to, and meriting, further investigation.

¹²⁷ See NAR, *supra* note 46, V at 20 – 21.

¹²⁸ See THAPLYAL, *supra* note 18, at 82 – 83.

¹²⁹ See MAJMUDAR, *supra* note 18, at 58.

¹³⁰ See KAT, *supra* note 46, at verses 675 – 76.

¹³¹ See ARTHASASTRA, *supra* note 61, at 3.14.1 - .3. This seems analogous to a partner leaving a partnership when liabilities earned during his tenure have yet to be paid. A partner generally carries this liability or obligation with her. See ALLEN & KRAAKMAN, *supra* note 4, at 50 – 54; UNIFORM PARTNERSHIP ACT, section 36 (1914). The system of fining described in the text (in *sreni*) seems to address the same concern as the partnership rule in modern times. We are concerned about partners using their reputation to obtain contracts and credit from people and then leaving the 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, if someone contracts with the *sreni* assuming there would be 300 members working on a 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.

¹³² See THAPLYAL, *supra* note 18, at 78.

¹³³ See MAJMUDAR, *supra* note 18, at 162 – 63.

¹³⁴ See MAJMUDAR, *supra* note 18, at 162 – 64.

¹³⁵ 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.

One final point about entering and exiting the *sreni* is worth making. In Ancient India the caste system was quite important.¹³⁶ 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.¹³⁷

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 number of sources. However, regardless of the source they were all treated as belonging to the entire *sreni* rather than specific members.¹³⁸ Indeed, significant penalties attached to members who received something for the whole *sreni* and did not give it to the *sreni*.¹³⁹

One source of assets were the individual contributions (cash or kind) made by members to join the *sreni* or hold *sreni* “stock”.¹⁴⁰ Another source, and a fairly significant one, was gifts given to various members of the *sreni* by the monarch for a variety of reasons.¹⁴¹ These gifts belonged to the *sreni* and would have been quite substantial.¹⁴² Yet another source would have been profits from the various projects the *sreni* completed.¹⁴³ 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.¹⁴⁴ Finally, the *sreni* assets also included the penalties recovered from *sreni* members when they violated *sreni dharma*.¹⁴⁵ 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.¹⁴⁶

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 costs of producing goods for sale (for craft *sreni*), purchasing goods for later resale (for merchant *sreni*),

¹³⁶ 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).

¹³⁷ See ROMILA THAPAR, *ANCIENT INDIAN SOCIAL HISTORY: SOME INTERPRETATIONS* 129-130, 133 (1996). See generally JAISWAL, *supra* note 136; PANDEY, *supra* note 136; DASS & DEULKAR, *supra* note 136. 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.

¹³⁸ See KAT, *supra* note 46, at verse 677; BRIH, *supra* note 46, XVII at 24. The *sreni* thus owned the productive assets.

¹³⁹ See YAJ, *supra* note 46, II at 190; BRIH, *supra* note 46, XVII at 22.

¹⁴⁰ See KAT, *supra* note 46, at verses 625 – 26.

¹⁴¹ See *id.*, at 677; BRIH, *supra* note 46, XVII at 24.

¹⁴² See *id.*

¹⁴³ See THAPLYAL, *supra* note 18, at 70.

¹⁴⁴ See *id.*

¹⁴⁵ See *id.*, at 70.

¹⁴⁶ 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.

transporting and protecting goods during travel (e.g., hiring guards), and the expenses associated with running a *sreni*.¹⁴⁷

However, there were other noteworthy costs and expenses. First, the *sreni* generally kept some amount of funds to defend their members against legal action.¹⁴⁸ Some sources provide examples of *sreni* arranging bail for *sreni* members.¹⁴⁹ This bears some resemblance to modern corporations providing resources for the legal defense of executives via the indemnification of legal costs or liability insurance.¹⁵⁰

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.¹⁵¹ One might view this as an early form of incentive payment to induce extra effort from the *sreni* members.¹⁵² 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.¹⁵³

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 likelihood of profit was very high.¹⁵⁴ 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.¹⁵⁵

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

¹⁴⁷ See NAR, *supra* note 46, III at 4. See also BRIH, *supra* note 46, XVII at 5 – 6.

¹⁴⁸ See THAPLYAL, *supra* note 18, at 72 (citing to an instance in the *Dasakumara-charita*)

¹⁴⁹ See *id.*

¹⁵⁰ See CLARK, *supra* note 4, at 664 – 74; ALLEN & KRAAKMAN, *supra* note 4, at 243 – 48; KLEIN, RAMSEYER & BAINBRIDGE, *supra* note 4, at 525 – 38.

¹⁵¹ See BRIH, *supra* note 46, XIV, at 10.

¹⁵² See YALE D. TAUBER & DONALD R. LEVY, EXECUTIVE COMPENSATION 37 (2002).

¹⁵³ See BRIH, *supra* note 46, XIV, at 9 – 10; YAJ, *supra* note 46, II at 260.

¹⁵⁴ Assume a *sreni* member 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 it generated a loss of 100 then the member would bear the entire 100. If, however, the activity generated a profit of 100 then the member receives 1 (his percentage share of 100) plus 10 (reward of one-tenth the profits) or 11 for his efforts. If the *sreni* member thought there was an equal chance of this activity resulting in a profit or loss he would not undertake it as that would provide him with an expected *loss* of 44.5 (i.e., $50\%(-100) + 50\%[1\%(100) + 10\%(100)] = -50 + 5.5$ 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.

¹⁵⁵ There might be some reputational advantage to “being right about innovative products” in future dealings, but for reasons of brevity I do not address that argument here.

approach was equal sharing,¹⁵⁶ 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.¹⁵⁷ Some further suggested division based on the contribution of skill and technical knowledge.¹⁵⁸ 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.¹⁵⁹ In another context the head working together with another could receive twice the share.¹⁶⁰ The variety of different sharing formulas with a larger share for 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.¹⁶¹ 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.¹⁶² 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.¹⁶³ It is clear that over time *sreni* developed an excellent reputation for reliability and stability.¹⁶⁴ 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.¹⁶⁵ Additionally, *sreni* would provide loans to people for a variety of projects and charge interest on these loans.¹⁶⁶ 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.¹⁶⁷ Indeed, the reputation of the *sreni* was often so great that they would mint coins used in commercial exchange.¹⁶⁸ The value of even rudimentary banking, credit, and currency services must

¹⁵⁶ See KAT, *supra* note 46, at verse 675.

¹⁵⁷ See NAR, *supra* note 46, III at 2 – 5; YAJ, *supra* note 46, II at 259; BRIH, *supra* note 46, XIV at 3 – 4.

¹⁵⁸ See MAJMUDAR, *supra* note 18, at 78.

¹⁵⁹ See BRIH, *supra* note 46, XIV at 32; KAT, *supra* note 46, at verses 632 – 36.

¹⁶⁰ 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 amongst the *sreni*. See *id.*, at 31.

¹⁶¹ This involved many different activities ranging from training of members and regulation of terms of trade to protection of members and maintaining local markets. See THAPLYAL, *supra* note 18, at 84 – 85.

¹⁶² See *id.*, at 87 – 96.

¹⁶³ See ARTHASASTRA, *supra* note 61, at 3.11 & 3.12 (discussing the law of non-payment of debt and of deposits).

For further discussion of this see DAS, *supra* note 20, at 173 – 76.

¹⁶⁴ See THAPLYAL, *supra* note 18, at 94.

¹⁶⁵ See *id.*, at 91 – 95.

¹⁶⁶ See *id.*, at 94.

¹⁶⁷ See *id.*,

¹⁶⁸ See *id.*, at 89 – 90.

have provided considerable support to the growth of trade and the economy more generally.¹⁶⁹

However, *sreni* were active in other aspects of life besides trade. Many *sreni* would engage in acts to support charity and religious institutions.¹⁷⁰ 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.¹⁷¹ Although such acts may have been motivated primarily by a sense of duty to society, they would also have been excellent public relations.¹⁷²

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*.¹⁷³ 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 (i.e., the highest court) in deciding certain disputes.¹⁷⁴ 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.¹⁷⁵

In addition, the *sreni* could hear smaller claims that primarily involved economic disputes.¹⁷⁶ 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.¹⁷⁷ 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.¹⁷⁸

¹⁶⁹ See *id.*, at 16 (discussing importance of coins as currency), 87 – 96 (discussing banking-like activities of the *sreni*).

¹⁷⁰ See BRIH, *supra* note 46, XVII, at 11 – 12, 22 – 23.

¹⁷¹ 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*.

¹⁷² 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).

¹⁷³ 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.

¹⁷⁴ See THAPLYAL, *supra* note 18, at 97 – 98 (discussing stories mentioned in the *Vasudevabindi* and *Mrichbhakatikam*).

¹⁷⁵ See *id.*

¹⁷⁶ See MAJMUDAR, *supra* note 18, at 62 – 65. However, the *sreni* could not adjudicate criminal matters (that was the sole province of the king). See MAJMUDAR, *supra* note 18, at 64.

¹⁷⁷ See THAPLYAL, *supra* note 18, at 101 – 02.

¹⁷⁸ See *id.*, at 102. See Steven Shavell, *The Appeals Process as a Means of Error Correction*, 24 J. LEGAL STUD. 379, 381 (1995). The penalties on officials would have provided a strong incentive to “get it right” in the first instance. Cf. J. Mark Ramseyer & Eric B. Rasmusen, *Why is the Japanese Conviction Rate So High?*, 30 J. LEGAL STUD. 53 (2001) (arguing that the high

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.¹⁷⁹

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.¹⁸⁰ 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.¹⁸¹ These republics were essentially states or villages that were ruled by a family, extended family, or group, but not by kingship.¹⁸² 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.¹⁸³ 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.¹⁸⁴ These

conviction rate in Japan is due to the negative stigma imposed on prosecutors (and concomitant negative career repercussions) when they fail to obtain convictions, which leads them to prosecute only strong cases).

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

¹⁷⁹ The *sreni* clearly paid taxes to the monarch and this was a significant source of funds for the monarch. See MAJMUDAR, *supra* note 18, at 27.

¹⁸⁰ See MAJMUDAR, *supra* note 18, at 97 – 105, 161 – 169.

¹⁸¹ 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 *Rig Veda*); 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 sometimes considered a proto-type Athenian democracy. See *id.*, at 227 – 30.

¹⁸² See *id.*, at 236 – 49.

¹⁸³ See *id.*, at 230 – 34 (describing these administrative units in Vaisali). See also *id.*, at 233 – 34 (discussing how in the kingless state of the Lichchavis criminal penalties were meted out). The description of criminal penalties suggests a defendant could not be found guilty unless seven (7) separate decision making bodies thought that person should not be acquitted. See *id.* This means that if the probability of a false conviction in each decision making body was 50% (roughly the preponderance standard) and if each body made decisions independent of the others 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.

¹⁸⁴ See *id.*, at 229 – 34.

entities would have a headman who would be assisted by a council of two to five people much like the economic *sreni*.¹⁸⁵

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.¹⁸⁶ Moreover, there is evidence of quite competitive campaigning to obtain the votes of those entitled to vote.¹⁸⁷ Although not entirely clear, it appears that the term of the kingship was for life and often candidates might be members of the same extended family.¹⁸⁸

Such states were governed by the king with his council of ministers (*mantriparishad*), which could be quite large and was consulted on a regular basis.¹⁸⁹ However, much of the municipal and operational activities were conducted by the smaller units (usually villages or municipal *sreni*) which again had a village headman (often nominated by the king) who would be assisted by a council of two to five people.¹⁹⁰

One of the primary differences with the *vairajya* is that here the entity was subordinate to the king and engaged in fewer activities than in the *vairajya*.¹⁹¹ For example, one would not expect the entity here to be as actively involved in defense of the state as in the *vairajya*.

c. The simple monarchies.

There are, of course, many simple monarchies where the eldest son (or chosen heir) of the king becomes ruler after the king's passing, abdication, or retirement.¹⁹² Often much of the work of the municipal area was handled by entities like the municipal *sreni* and again in a committee format similar in many respects to that in the elected king states.¹⁹³

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.¹⁹⁴ The village or municipal entities were run much like the economic *sreni* – assembly votes counted a great deal, open

¹⁸⁵ See *id.* at 245.

¹⁸⁶ See *id.*, at 97 – 110, 112.

¹⁸⁷ See MAJUMDAR, *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.

¹⁸⁸ See *id.*; J.P. SHARMA, *REPUBLICS IN ANCIENT INDIA CIRCA 1500 B.C. – 500 B.C.* (E.J. BRILL TRNSL. 1968); R.C. MAJUMDAR (ED), *THE CLASSICAL ACCOUNTS OF INDIA* (1960) (discussing non-Indian accounts of life in Ancient India); A.K. MAJUMDAR, *CONCISE HISTORY OF ANCIENT INDIA: POLITICAL THEORY, ADMINISTRATION, AND ECONOMIC LIFE*, VOL. II, Ch. 7 (1980).

¹⁸⁹ See MAJUMDAR, *supra* note 18, at 133 – 35. The group was very important as there is evidence that absent members of the council would be contacted and consulted by letter. See *id.*, at 126 – 28.

¹⁹⁰ See *id.*, at 130 – 35.

¹⁹¹ See *id.*, at 134 – 45.

¹⁹² See *id.*, at 97 – 105.

¹⁹³ See *id.*, at 146 – 77.

¹⁹⁴ Moreover, many municipal entities had the power to levy taxes and regulate the price of commodities within their realm. See *id.*, at 187.

discussion was important and critical, and people felt themselves to be bound by assembly decisions.¹⁹⁵ 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.¹⁹⁶ 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).¹⁹⁷

Although many questions can be raised about the governance of these committees, 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 or 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.¹⁹⁸ 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)¹⁹⁹ 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.²⁰⁰

The ability to transfer shares raises interesting questions about the possible acquisition of shares of an entity by another entity or its members (i.e., a corporate acquisition). Some inscriptional evidence indicates that villages could certainly combine by agreement of the voting members of their assemblies.²⁰¹ 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.²⁰²

¹⁹⁵ See *id.*, at 125 – 47.

¹⁹⁶ See *id.*, at 157 – 177.

¹⁹⁷ See *id.*, at 167 – 77. The village would also be held liable for the debts of employees. See *id.*, at 177 – 78.

¹⁹⁸ See *id.*, at 161 – 62.

¹⁹⁹ See *id.*, at 162 – 66.

²⁰⁰ 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. 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.

²⁰¹ 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)”).

²⁰² See NAR, *supra* note 46, X at 4 – 6. The presence of combinations of economic *sreni* suggests the possibility of transference of interest. This may be, but there is little detail on how it might happen. Moreover, combinations of economic *sreni* may not necessarily mean that one *sreni* member can sell his share to another person (i.e., substituting the other person for the *sreni* member) but could mean that more members were added to the *sreni* (from the other *sreni*) and then some kind of treat was entered into. Nonetheless, the presence of these combinations suggests the possibility of transferability.

Aside from share transference the inscriptional evidence provides highly valuable and detailed descriptions of how committee members were selected. From this evidence it appears that the process had two steps. First, there were a number of qualifications that potential committee members needed to satisfy. Second, there was the process of how the selection would take place.

The qualifications required of committee members evince a strong concern with independence, competence, and proper incentives. For example, those people who have not submitted accounts from prior committee assignments, and their relations, are not qualified to sit on committees.²⁰³ This combines concerns with accountability and transparency (the need to have accounts) with independence requirements (no relations of “tainted” persons are permitted to run).²⁰⁴ Also, those who have violated certain rules or have engaged in inappropriate behavior would be prohibited from serving on committees as might their relations.²⁰⁵ Finally, those who have not served on committees for three years are specifically listed as potential candidates²⁰⁶ – 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.²⁰⁷ 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.²⁰⁸ 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.²⁰⁹

In addition to these qualifications and disqualifications, the selection process was designed to reduce the likelihood of corruption and fraud. The process involved placing the names of qualified candidates in a pot and then having their names drawn from that pot.²¹⁰ The items containing the details of the candidates were referred to as pot tickets.²¹¹ The process from this point is described in the following translation of an inscription:

²⁰³ 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. See *infra* text accompanying note 212.

²⁰⁴ See *id.*, at 177.

²⁰⁵ See *id.*, at 171 – 73.

²⁰⁶ 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.”)

²⁰⁷ 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).”)

²⁰⁸ 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.

²⁰⁹ See MAJMUDAR, *supra* note 18, at 171 – 73, 177.

²¹⁰ See *id.*, at 173 – 77.

²¹¹ See *id.*

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

“Of the thirty persons thus chosen, those who had previously been on the ‘garden supervision’ (committee) and on the ‘tank supervision’ (committee), and those who are advanced in learning and those who are advanced in age, shall be chosen for (the committee of) ‘annual supervision’. Of the rest, twelve shall be taken for the ‘garden supervision’ (committee), and the remaining six shall form the ‘tank supervision’ (committee). . . . The great men who are members of these 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). . . .”²¹²

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 Ancient Indian *sreni* it might prove illustrative to provide a summary of its traits (Table 1). A quick glance over Table 1 indicates that the *sreni* possessed many of the features of more recent organizational entities such as corporations or the Medieval European guilds.²¹³ Indeed, it is difficult to compare the *sreni* to entities in its own time frame in other places because the *sreni* predates the Roman proto-corporations by centuries and the *sreni* is considerably more complex and

²¹² 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”).

²¹³ For greater discussion of Medieval European guilds see Sylvia L. Thrupp, *The Guilds*, in THE CAMBRIDGE ECONOMIC HISTORY OF EUROPE, VOL. 3, 230 – 80 (1963).

detailed than the Roman entities.²¹⁴ In light of the traits listed in Table 1 it would appear that the *sreni* can be placed somewhere between the more modern corporations and the Medieval European guilds. Where on this continuum the *sreni* registers is difficult to say because it shares similarities with both kinds of entities and yet is different in important ways from both.

TABLE 1
SUMMARY OF CHARACTERISTICS OF THE *SRENI*

<i>Characteristics</i>	<i>Present in Ancient Indian Sreni?</i>
Separate Entity	Yes
Centralized Management	Yes
Transferability of Interest	Probably Yes
Limited Liability	Probably Not ²¹⁵
Agent has power to bind entity?	Yes ²¹⁶
Management elected?	Yes (though at times appears hereditary)
Can management be removed?	Yes
Duty of Loyalty	Probably Yes
Duty of Care	Yes
Liability insulation	Yes (though apparently not very detailed)
Screens on shareholder suits and internal enforcement activity	Yes (though apparently not very detailed)
Internal rules have binding effect	Yes
Some reimbursement for legal defense	Yes
Formation is easy	Yes
Register with state	Yes
State approval needed	Yes
Use of incentive payments	Yes (though apparently not very detailed)
Entry is easy	Some conditions, but no caste bars. ²¹⁷
Sharing of assets and liabilities	Terms of agreement and additional rules
Exit is easy	Yes, but with obligations potentially
Board/Committee Independence	Probably Yes
Other board qualifications	Yes (though apparently not very detailed)
Voting Regulation	Yes (though apparently not very detailed)
Open debate in meetings & shareholder resolutions	Yes, with some limits (though apparently not very detailed)
Transparency is valuable and disclosure is encouraged	Probably Yes (though apparently not very detailed)

²¹⁴ 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., but may have come into existence in the 3rd century B.C. See *id.*, at 23 n. 59 (referring to E. Badian, PUBLICANS AND SINNERS: PRIVATE ENTERPRISE IN THE SERVICE OF THE ROMAN EMPIRE 68 – 69 (1983)) & 24 n. 63 (referring to ULRICH MARMENDIER, SOCIETATES PUBLICANORUM: STAATLICHE WIRTSCHAFTSAKTIVITÄTEN IN DEN HÄNDEN PRIVATER UNTERNEHMER 252 – 55 (2002)). For discussion of organizational forms in Babylon and Mesopotamia see discussion *infra* note 252.

²¹⁵ 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.

²¹⁶ 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*. See BRIH, *supra* note 46, XIV at 5.

²¹⁷ Upon entry some payment of capital could be expected. See KAT, *supra* note 46, at verse 626.

For example, although the *sreni* bear more than a passing resemblance to the Medieval European guilds the *sreni* are, in some respects, even more complex than the guilds (e.g., in terms of mobility, ease of entry and exit, permitting multi-profession *sreni*, use of the *sreni* in non-economic contexts, and so forth).²¹⁸ Thus, certain features of the *sreni* do not have analogs in Medieval entities, but do have them in more modern US corporations.

Of course, US corporations possess many features that the *sreni* do not. For example, the amount and detail of regulation governing US corporations is considerably greater (e.g., US voting regulation,²¹⁹ disclosure, liability screens and insulation are very detailed) and there are other differences between the *sreni* and US corporations not discussed here due to space, and other, considerations (e.g., there is no evidence of securities class action litigation in Ancient India).

However, my primary point 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, given 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. This 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 or entity shielding and reducing creditor information costs). Second, what factors led to the development of specific attributes of the *sreni*. For example, when did the presence of executive officers become common; when did the use of incentive payments come into being and what led to these developments? Third, what can the development of the *sreni* in Ancient India tell us about the factors that may have led to it? For example, how important is a centralized empire to the growth of trade and the corporate form compared to alternate state structures seen in

²¹⁸ For greater discussion of Medieval European guilds see Sylvia L. Thrupp, *The Guilds*, in THE CAMBRIDGE ECONOMIC HISTORY OF EUROPE, VOL. 3, 230 – 80 (1963). Thaplyal also notes the similarity with guilds. See THAPLYAL, *supra* note 18.

²¹⁹ For discussion of proxy rules see CLARK, *supra* note 4, at 357 – 400; ALLEN & KRAAKMAN, *supra* note 4, at 171 – 238.

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.²²⁰ However, writings before the 7th Century B.C. provide some potential challenges to the researcher. This is primarily because of difficulties in dating the materials and the practices described within them.²²¹ In light of this, for sources from the 7th Century B.C. onwards I shall treat the time line as being fairly close to accurate. For sources that probably pre-date the 7th Century B.C. I shall focus on dates and time frames for which there is general agreement. 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.

TABLE 2
ANCIENT INDIAN HISTORY TIMELINE

<i>Period</i>	<i>Years Covered Approximately</i>
A. Earliest Civilizations	6500 B.C. to 700 B.C.
1. Earliest Sites – Mehrgarh & Others	6500 B.C. to 3300 B.C.
2. The Indus Area Civilizations	3300 B.C. to 1900 B.C.
3. Indo-Gangetic Civilizations	1900 B.C. to 700 B.C.
B. The Rise of Buddhism & Jainism	700 B.C. to 320 B.C.
C. The Mauryan Dynasty	320 B.C. to 185 B.C.
D. Post-Mauryan Kingdoms in North and South India	200 B.C. to 1300 A.D.
E. The Gupta Dynasty & India's "Golden Age"	250 A.D. to 550 A.D.
F. Harsha Vardhana & The Rajput Kingdoms	600 A.D. to 1100 A.D. ²²²

²²⁰ Moreover, we often have roughly contemporary writings (e.g., Chinese and Greek) as well as excavations providing further support to these writings. See J.W. MCCRINDLE, *ANCIENT INDIA AS DESCRIBED BY MEGASTHENES AND ARRIAN* 1- 181 (discussing Megasthenes' *Indica*) (REVISED ED. R.C. MAJMUDAR, 1960). For the writings of Chinese scholars see H.A. GILES, *TRAVELS OF FA-HSIEN* (1923); T. WATTERS, *ON YUAN CHWANG'S TRAVELS IN INDIA* (1961). Yuan Chwang is sometimes referred to as Hsuan Tsang. See HWUI LI, *LIFE OF HSUAN TSANG* (S. BEAL TRNSL.) (1911). The writings of Megasthenes are from around the time of Alexander (circa 300 B.C.), Fa-hsien from the 4th Century A.D. and Yuan Chwang/Hsuan Tsang from the 7th Century A.D. Excavation evidence will be detailed in the next few sections.

²²¹ Dating the earliest practices is difficult given the well known oral tradition in India prior to the 7th Century B.C. which suggests that the sources could have been composed at one time and put into writing later. See THAPLYAL, *supra* note 18, at 17; MOOKERJI, *infra* note 347, at 137 (discussing how even 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. Moreover, the actual dates for some of written sources are subject to some variation. See THAPLYAL, *supra* note 18, at 2 – 6.

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 India from 1000 A.D. to 1700 A.D.*, *Draft* and then in Vikramaditya S. Khanna, *The Economic History of the Corporate Form in India from 1700 A.D. Onwards*, *Draft*.

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 things in common. One could, of course, present the time line in different ways, but Table 2 is simply a method of providing a starting point for discussion. It does not preclude alternative divisions of Ancient Indian history.

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* and the *Brihadaranyaka Upanishad* to the *sreni*.²²³ There is, however, little detail provided about how the *sreni* was organized except to mention the position of the headman (*sreshthi*).²²⁴ Nonetheless, it appears that the *sreni* was most likely known in Ancient India by roughly 800 B.C.²²⁵ This suggests that the *sreni* is of considerable antiquity and would predate the Roman proto-corporations by centuries.²²⁶

Although this time period (6500 B.C to 700 B.C.) does not provide much further written material on the *sreni*, it does provide significant excavational evidence. I briefly discuss this evidence because it provides the context and building blocks for later economic development. Moreover, some of the later economic development in the Indian Subcontinent bears some similarities to the evidence discussed in the next few paragraphs.

1. *Earliest Sites – Mehrgarh & Others*

Current archaeological thinking suggests that the earliest settlements in the Indian Subcontinent date back to roughly 6500 B.C.²²⁷ Excavations at Mehrgarh (near Quetta, Pakistan) and neighboring sites²²⁸ provide evidence of a fertile region and inhabitants

²²³ See MAHABHARATA, *supra* note 105, at XII 37.14, XII 59.49, XII 138.63; BRIHADARANYAKA UPANISHAD WITH SANKARA'S COMMENTARY 1.411-12 (1953); MAJMUDAR, *supra* note 18, at 14 (discussing the *pani* in the *Rig Veda*).

²²⁴ See MAHABHARATA, *supra* note 105, at XII 59.49, XII 138.63; HARI PADA CHAKRABORTI, VEDIC INDIA: POLITICAL AND LEGAL INSTITUTIONS IN VEDIC LITERATURE 327 – 28 (1981). See also CHAKRABORTI, *supra*, at 319 – 26 (discussing Vedic rules on contract and payment of debts). There is some debate amongst commentators about whether the *Rig Vedic* times were sufficiently advanced to support the amount of trade necessary for the *sreni*. See THAPLYAL, *supra* note 18, at 20 – 24 (discussing the debate on this point); DAS, *supra* note 18, at 20 – 39 (arguing that Vedic society was advanced enough for the development of *sreni*).

²²⁵ The 800 B.C. date is based on references in the *Brihadaranyaka Upanishad*, *supra* note 223. 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 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 23 – 24 (noting that the *societates publicanorum* started around the 3rd Century B.C. and probably obtained full entity status by the first century B.C.)

²²⁷ See Jean-Francois Jarriage, *Excavations at Mehrgarh*, in HARAPPAN CIVILIZATION ED GREGORY L. PROSSEHL, 79 (1993); JONATHAN MARK KENOYER, ANCIENT CITIES OF THE INDUS VALLEY CIVILIZATION 33, 35, 36 – 39 (1998); Jean Francoise Jarriage & Richard H. Meadow, *The Antecedents of the Civilization in the Indus Valley*, JOURNAL AMERICAN SCIENTIST, August 1980, 122 – 133.

²²⁸ See *id.*; KENOYER, *supra* note 227, at 35.

engaged in farming, herding and keeping animals,²²⁹ and various crafts,²³⁰ as well as inhabitants who possessed dentistry skills.²³¹ There is little evidence of advanced trade in Mehrgarh, but in sites from around 5000 B.C. to 4000 B.C. there is some evidence of longer distance trade and the use of the kiln in making pottery.²³² There is, however, little further evidence of how trade functioned in those times.

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).²³³ These civilizations date from roughly 3300 B.C. and flourished for centuries going into decline around 1900 B.C. to 1500 B.C.²³⁴ Excavations suggest a resource rich, fertile and heavily populated area that was considerably larger than its contemporaries (e.g., Egypt and Mesopotamia).²³⁵ The Indus area civilizations were highly developed with advanced city planning and water management systems.²³⁶ 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).²³⁷

²²⁹ See KENOYER, *supra* note 227, at 37 – 38. For more detailed discussion see Jonathan Mark Kenoyer, *Trade and Technology of the Indus Valley: new insights from Harappa, Pakistan*, 29 WORLD ARCHAEOLOGY 262 (1997).

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

²³¹ The buried remains of some individuals appeared to have drillings in their teeth consistent with drilling to fill cavities and address tooth decay. See http://news.bbc.co.uk/1/hi/english/health/newsid_1272000/1272010.stm (BBC News story).

²³² See KENOYER, *supra* note 227, at 39 – 42 (discussing the regionalization sites (e.g., Nausharo) 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 *id.*, at 43 – 44. Overall, these sites suggest a mix of rural and urban environments (especially in later sites) with internal trade and developed arts and crafts accompanied by a fairly high degree of building sophistication.

²³³ See KENOYER, *supra* note 227, at 49 – 68.

²³⁴ See KENOYER, *supra* note 227, at 173 – 86.

²³⁵ See KENOYER, *supra* note 227, at 17, 49 – 50.

²³⁶ See KENOYER, *supra* note 227, at 50. 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 227, at 50.

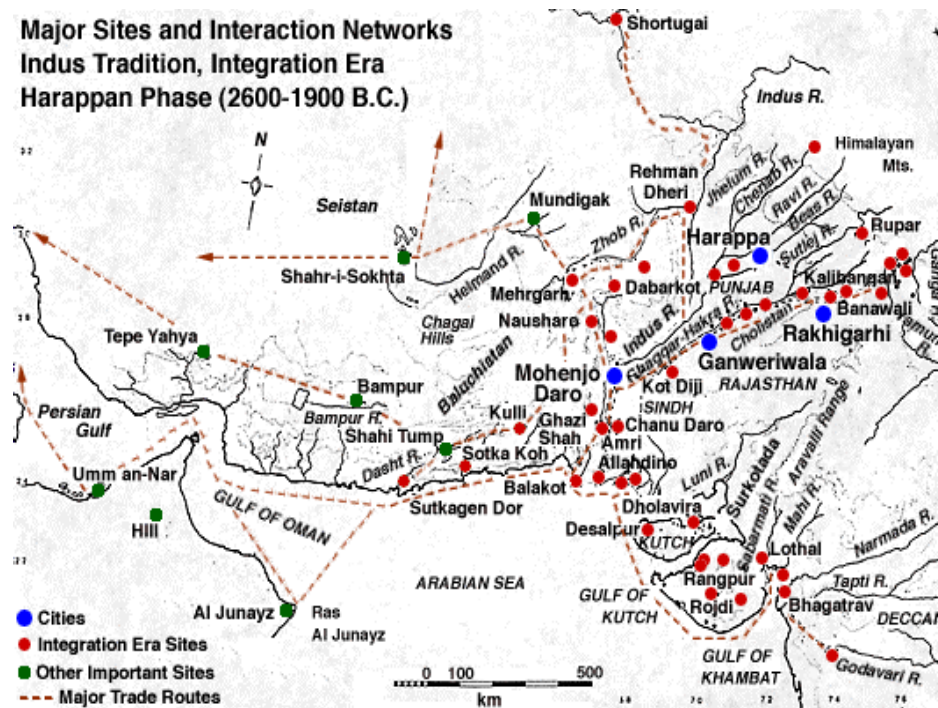
²³⁷ See KENOYER, *supra* note 227, at 99 – 100. Evidence from the Indus and Mesopotamian seals (circa 2600 B.C.) suggests that the Indus Valley was a large net exporter to Mesopotamia. See KENOYER, *supra* note 227, at 81 – 105, 127 – 73; DILIP K. CHAKRABARTI, THE EXTERNAL TRADE OF THE INDUS CIVILIZATION 81 *et seq* (examining the archaeological evidence and discussion of the variety of trade routes, commodities and so forth) (1990). For discussion of the trade and structure of some of the Mesopotamian and Assyrian kingdoms see See MOGENS TROLLE LARSEN, THE OLD ASSYRIAN CITY-STATE AND ITS COLONIES 85 – 105 (1976); SHEREEN RATNAGAR, ENCOUNTERS THE WESTERLY TRADE OF THE HARAPPAN CIVILIZATION 215 – 30 (1981); Shereen Ratnagar, *Theorizing Bronze-Age Intercultural Trade: The Evidence of the Weights* 29 PALEORIENT 79 (2003).

There is evidence of wealth being an important matter in socioeconomic terms in the Indus Valley. See Jonathan Mark Kenoyer, *Wealth and Socioeconomic Hierarchies of the Indus Valley Civilization*, in ORDER, LEGITIMACY, AND WEALTH IN ANCIENT STATES (JANET RICHARDS & MARY VAN BUREN EDS.) 88 – 109 (2000). Some sites appear to suggest dockyards as well. See AGRAWALA, *supra* note 44, at 265 (discussing the Lothal site).

Figure 1 – Map of Early World Civilizations²³⁸



Figure 2 – Detailed Map of Indus Valley Sites²³⁹



²³⁸ <http://www.harappa.com/indus2/oldworld.html>.

²³⁹ <http://www.harappa.com/indus/map1.html>.

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.²⁴⁰ Second, although these civilizations were not under the rule of a single monarch²⁴¹ they appeared to live in relative peace with each other,²⁴² relied on common weights and measurements,²⁴³ and had similar city plans with separate areas of the city dedicated to certain professions.²⁴⁴ 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.²⁴⁵

Indeed, 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.²⁴⁶ The uniformity of weights and measures, uncommon at that time in world history,²⁴⁷ benefits trade by reducing the transactions costs of engaging in trade.²⁴⁸ The localization of craft and industry to certain parts of the city might enhance group cohesion, make training of new recruits/employees somewhat easier, and increase productivity (due in some measure to the reasons just described). 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 may make 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 thereby reduce agency costs.²⁴⁹ Moreover, enhancing group cohesion would help to encourage the growth of *sreni dharma* within the *sreni* (assuming they existed at that time).

²⁴⁰ 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.*

²⁴¹ See KENOYER, *supra* note 227, 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.*

²⁴² See KENOYER, *supra* note 227, at 15, 42, 81 – 82. Kenoyer suggests that the fortified walls are too low to prevent invaders, but probably high (and deep) enough to block floods and wild animals. *See id.*, at 41 – 42. Moreover, there is little evidence in most sites of armed conflict or massacres. *See* Kenneth A.R. Kennedy, *Have Aryans Been Identified in the Prehistoric Skeletal Record from South Asia*, in *THE INDO-ARYANS OF ANCIENT SOUTH ASIA* (ED. GEORGE ERDOSY) 49, 54, 60 (1995); G.F. Dales, *Mythical Massacre at Mohenjodaro*, 16 *EXPEDITION* 37 (1964).

²⁴³ See KENOYER, *supra* note 227, at 26, 81, 99, 178, 182.

²⁴⁴ See KENOYER, *supra* note 227, at 69 – 81.

²⁴⁵ See KENOYER, *supra* note 227, at 69 – 81. It is also possible that there were alliances at this time that encouraged trade or that the various business people agreed on certain basics to encourage trade. A final resolution is likely when the Indus script is deciphered.

²⁴⁶ *See id.*, at 18. The elaborate trade routes detailed in KENOYER, *supra* note 227, at 81 – 105 attest to a fairly high level of safety. *See id.*, at 89 – 94 (discussing transportation through the Indus civilization).

²⁴⁷ See KENOYER, *supra* note 227, at 26, 81, 99, 178, 182.

²⁴⁸ 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.

²⁴⁹ See Bernstein, *Opting Out*, *supra* note 35; David Charny, *Nonlegal Sanctions in Commercial Relationships*, 104 *HARV. L. REV.* 373 (1990).

In addition, excavations have found many seals which, although undeciphered,²⁵⁰ are considered by some scholars as ways to identify property.²⁵¹ 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.²⁵²

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

3. *Indo-Gangetic Civilizations*

Following the decline of the Indus area sites (near 1900 B.C. to 1500 B.C.),²⁵³ there was a rise in the eastern civilizations centered primarily on the banks of the Ganges River which bore similarities to the Indus area sites.²⁵⁴ These Indo-Gangetic kingdoms grew very quickly and became quite wealthy as the region is well watered, lush and green, and bountiful in natural resources.²⁵⁵ Scholars debate about whether the *sreni* could have existed in the early part of this period.²⁵⁶ However, it is quite clear that the *sreni* would have existed by the end of this period. Indeed, the written materials suggest that by roughly 1000 B.C. to 800

²⁵⁰ See KENOYER, *supra* note 227, at 69 – 81, 83 – 90; ASKO PARPOLA, DECIPHERING THE INDUS SCRIPT 248 – 54 (1994).

²⁵¹ See KENOYER, *supra* note 227, at 83 – 90; AGRAWALA, *supra* note 44, at 256. Some suggest that the seals were used in an intricate “agent” system of business. See Shashi Asthana, *Indus-Mesopotamian Trade: Nature of Trade and Structural Analysis of the Operative System*, in ESSAYS IN INDIAN PROTOHISTORY 31 – 47 (EDS D.P. AGRAWAL & DILIP K. CHAKRABARTI) (1979).

²⁵² I am in the process of researching the presence and structure of organizational entities in Mesopotamia and Ancient Babylon, which appear to be frequent trading partners with the kingdoms and empires in Ancient India. There is some evidence for an early organizational entity (similar to a partnership) and of trade with the Indus area. See MOGENS TROLLE LARSEN, THE OLD ASSYRIAN CITY-STATE AND ITS COLONIES 85 – 105 (1976); SHEREEN RATNAGAR, ENCOUNTERS THE WESTERLY TRADE OF THE HARAPPAN CIVILIZATION 215 – 30 (1981); Shereen Ratnagar, *Theorizing Bronze-Age Intercultural Trade: The Evidence of the Weights* 29 PALEORIENT 79 (2003). If the Indus area and the Assyrians had significant trade then it would seem difficult to believe that the Indus residents would not have at least known of these entities and perhaps used them. In any case, nothing definitive is likely to be known until the Indus script is deciphered.

²⁵³ See KENOYER, *supra* note 227, at 173 – 86.

²⁵⁴ See KENOYER, *supra* note 227, at 173 – 85; George Erdosy, *City States of North India and Pakistan at the Time of the Buddha*, in THE ARCHAEOLOGY OF EARLY HISTORIC SOUTH ASIA (FRANK RAYMOND ALLCHIN ED) 99 – 122 (1995). There appears to be evidence suggesting that aspects of the Indus civilizations were carried over to the Gangetic ones. See RAYMOND ALLCHIN & BRIDGET ALLCHIN, ORIGINS OF A CIVILIZATION – THE PREHISTORY AND EARLY ARCHAEOLOGY OF SOUTH ASIA 223 – 261 (1997). This period appeared to be one of considerable growth in these Kingdoms. See DAS, *supra* note 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 254, 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 THAPLYAL, *supra* note 18, at 20 – 24 (providing an overview of this discussion).

B.C. the *pani* and the *sreni* were probably known to the Indians.²⁵⁷ Moreover, the monitoring methodologies and general growth in trade in the Indo-Gangetic kingdoms (e.g., localized professions) further contribute to the notion that the prerequisites for the corporate form were in place by about 1000 B.C.²⁵⁸ However, as mentioned earlier we have little detail about the workings of the *sreni* in the written materials from this time frame.

B. *The Rise of Buddhism & Jainism.*

The dawn of the 7th Century B.C. was an important period in Ancient Indian history. Around this time two great religions – Buddhism and Jainism – were founded.²⁵⁹ 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.²⁶⁰

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.²⁶¹ In addition, there was significant urbanization (as in the Indus area) and the use of coins as currency was quite common thereby making transactions easier.²⁶² 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.²⁶³ 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 to be localized in parts of towns and cities, thereby enabling monitoring of group members.²⁶⁴ 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.²⁶⁵ All the basics were then in place for the corporate entity.

²⁵⁷ See BRIHADARANYAKA UPANISHAD WITH SANKARA'S COMMENTARY 1.411-.12 (1953); MAJMUDAR, *supra* note 18, at 14.

²⁵⁸ 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. See Ram Sharan Sharma, *Role of Property, Family and Caste in the Origin of the State in Ancient India*, in ESSAYS, *infra* note 265, at 4.

²⁵⁹ 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.

²⁶⁰ See T.W. RHYS DAVIDS, *BUDDHIST INDIA* (1959); ADHYA, *infra* note 320, at 84 – 85; THAPAR, *supra* note 85, at 25 – 33, 130 – 33. Probably the most famous convert in India was the Emperor Ashoka. See D.R. Bhandarkar, *Asoka and his Successors*, in A COMPREHENSIVE HISTORY OF INDIA II, 30 – 43 (EDS K.A. NILAKANTA SASTRI) (1956).

²⁶¹ See BOSE, *supra* note 28, at 62 – 63, 78; Tripathi, *supra* note 236, at 497; THAPLYAL, *supra* note 18, at 18 – 20. Also, note that Buddhism did not encourage animal sacrifices which would have benefited the economy by not expending animal resources in such activities. See BOSE, *supra* note 28, at 101 – 03. In spite of all this, one should not be under the impression that evidence of economic growth is available only in the Buddhist literature. There is evidence of active trade even in the non-Buddhist literature. See Agrawala, *infra* note 265.

²⁶² See THAPLYAL, *supra* note 18, at 16; AGRAWALA, *supra* note 44, at 273 (noting the presence of metallic currency in Buddhist times). It also seems that credit transactions occurred at this time and would have benefited trade. See AGRAWALA, *supra* note 44, at 273.

²⁶³ See THAPLYAL, *supra* note 18, at 15 – 16.

²⁶⁴ See *id.*, at 15, 57 – 60; DAS, *supra* note 20, at 68.

²⁶⁵ See AGRAWALA, *supra* note 44, at 268 (discussing the presence of books and accounts as early as the 8th century B.C.); DAS, *supra* note 20, at 55 – 83; BANKEY LAL SHARMA, *ECONOMIC IDEAS IN ANCIENT INDIA BEFORE KAUTILYA* 75 – 100 (1987) (discussing the elaborate taxation system before the Mauryan empire which seems only possible if some rudimentary level of accounting had developed); Vasudeva S. Agrawala, *Trade and Commerce From Panini's Astadhyayi*, in ESSAYS IN ANCIENT INDIAN ECONOMIC HISTORY (BRAJADULAL CHATTOPADHYAYA ED.) 149 – 59 (1987) (noting mentions of capital and profit which seems indicative of some degree of accounting) (*hereinafter* ESSAYS).

Indeed, we have considerable written sources attesting to the presence and importance of the *sreni* by this time in Indian history.²⁶⁶ These sources suggest that the *sreni* were numerous, in varied fields, and indeed could be mobile from one place to another.²⁶⁷ The *sreni* were clearly important in society as they were often invited for official state functions.²⁶⁸ They were also actively involved in trading, production (crafts), and rudimentary banking services by this time.²⁶⁹ Their importance is further highlighted by the fact that the *Bhandagarika* (an arbitrator for inter-*sreni* disputes) became established at this time as a government official.²⁷⁰

However, besides references to the importance of the *sreni* in society we have only a few tidbits of information on how it was organized and governed. We know that by this stage *sreni* had headmen and that the *sreni* were sometimes composed of a large number of members.²⁷¹ Although headmen are mentioned, there is little mention of executive officers which is surprising given that some *sreni* were quite large. We do, however, see references to the *sreni* laying down their *sreni dharma* and the law books containing recommendations to the king that he should enforce these rules.²⁷² This suggests that the governance of the *sreni* is something that people had spent time thinking about by this stage. This is to be expected given the increasing importance and size of the *sreni*. We do not have, however, references to what was contained in the *sreni dharma* of the time. This makes assessing the functioning of these entities more difficult. Nonetheless, we can say with confidence that the *sreni* had grown in number and importance by this stage, played a critical role in society, and that the writers of the time were cognizant of the notion of governance in these entities.

C. *The Mauryan Dynasty*

Although the economic environment in India was growing rapidly, many things were about to change. The incursions of Alexander the Great into Northwestern India started the process of significant change in India.²⁷³ Even after his death a large portion of his army stayed in the area and the threat of a Greek invasion loomed over India.²⁷⁴ 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.

²⁶⁶ By this time the oral tradition became less dominant and the newer religions generally encouraged writing. See THAPLYAL, *supra* note 18, at 17. Thus, there was a proliferation of written materials that most scholars date from between the 7th Century B.C. to the 4th Century B.C. See *id.*, at 2 – 6 (discussing the sources in this time frame including the *Jataka Stories* (circa 7th to 6th Century B.C.) for Buddhist perspectives and the *Dharmasutras* (5th Century B.C.) from the non-Buddhist perspectives). See *id.*, at 24 – 27; DAS, *supra* note 20, at 60 – 68; SHARMA, *supra* note 265, at 137 – 39.

²⁶⁷ See MAJMUDAR, *supra* note 18, at 18 – 19; DAS, *supra* note 20, at 60 – 68; SHARMA, *supra* note 265, at 137 – 39.

²⁶⁸ See DAS, *supra* note 20, at 67 – 69; MAJMUDAR, *supra* note 18, at 18 – 23.

²⁶⁹ See MAJMUDAR, *supra* note 18, at 18 – 19. JATAKA IV, *supra* note 64, at 37.

²⁷⁰ See JATAKA IV, *supra* note 64, at 37.

²⁷¹ See text accompanying notes 71 to 73.

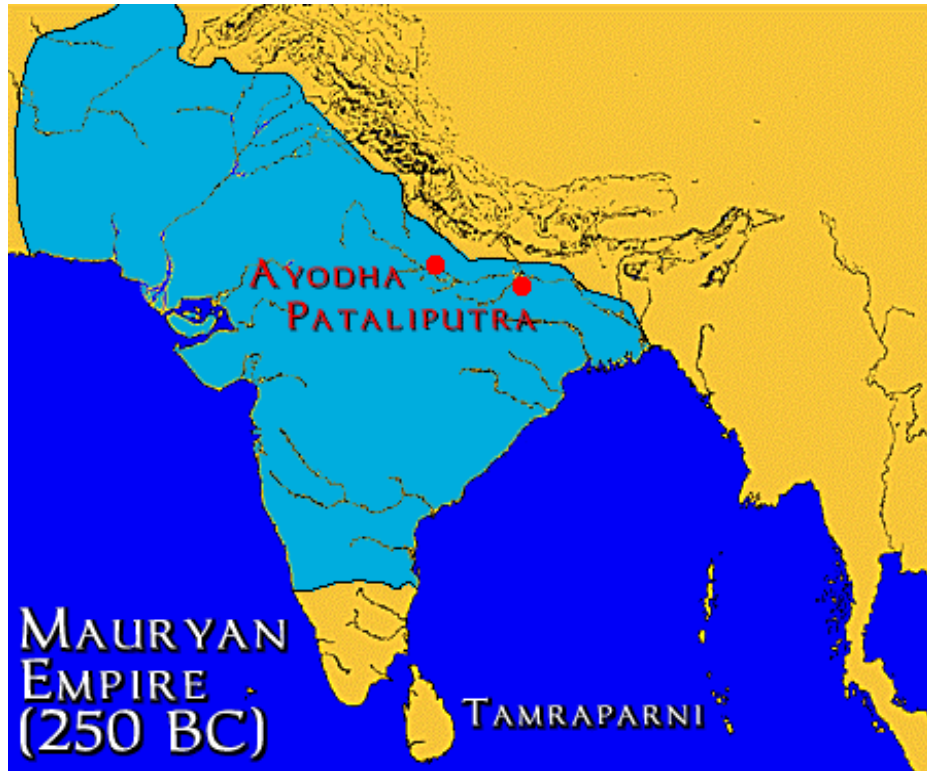
²⁷² See GAUTAMA DHARMASUTRA XI, *supra* note 86, at 23.

²⁷³ See RADHA KUMUD MOOKERJI, CHANDRAGUPTA MAURYA AND HIS TIMES 22 – 36, 44 – 46, 219 (1966); ROMILA THAPAR, ASOKA AND THE DECLINE OF THE MAURYAS 13 – 19 (1997).

²⁷⁴ See THAPAR, *supra* note 273, 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.²⁷⁵ All of the emperors expanded the empire until it reached its zenith under Ashoka and covered virtually all of India, modern day Pakistan, Bangladesh, and Afghanistan (see Figure 3). Although the empire existed for only about 135 years, its development brought changes to India that would reverberate for many years to come.

Figure 3 – Map of Mauryan India²⁷⁶



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.²⁷⁷ The improved infrastructure combined with increased security, greater uniformity in measurements, and increasing usage of coins as currency would enhance trade.²⁷⁸

²⁷⁵ See THAPAR, *supra* note 273, at 13 – 16; MOOKERJI, *supra* note 273, at 165 – 82.

²⁷⁶ [http://ancienthistory.about.com/gi/dynamic/offsite.htm?site=http://www.wsu.edu:8080/%257Edec/ANCI](http://ancienthistory.about.com/gi/dynamic/offsite.htm?site=http://www.wsu.edu:8080/%257Edec/ANCI%20NDIA/MAURYMAP.HTM)
NDIA/MAURYMAP.HTM ©1996, Richard Hooker.

²⁷⁷ See MOOKERJI, *supra* note 273, at 204 – 10; THAPAR, *supra* note 273, at 82 – 85; THAPLYAL, *supra* note 18, at 27 – 28. In fact, there appear to have been a number of different kinds of roads and during the time of Ashoka some roads were designed with rest stops for the weary traveler. See MOOKERJI, *supra* note 273, at 209 – 10 (identifying about 15 types of roads); THAPAR, *supra* note 273, at 82 – 85; THAPLYAL, *supra* note 18, at 27 – 28.

²⁷⁸ See Balakrishna Govind Gokhale, *The Merchant in Ancient India*, 97 JOURNAL OF THE AMERICAN ORIENTAL SOCIETY 125, 129 (1977) (noting that the money economy (i.e., reliance on coins) was in place even during Buddhist times).

The second major change was the publication and implementation of the *Arthashastra* around 300 B.C. to 275 B.C. The *Arthashastra* (roughly the knowledge or science of material gain) is one of the most important ancient texts on economics, politics and administration.²⁷⁹ The authorship of the *Arthashastra* is usually attributed to the legendary Chanakya.²⁸⁰ Chanakya was the chief adviser and minister who helped Chandragupta Maurya obtain the Magadha Kingdom (a very powerful kingdom in Ancient India) and then unified the Northern Indian kingdoms into a force to repel the Greeks.²⁸¹

The *Arthashastra* is a treatise on how to maintain and expand power, obtain material gain, and administer an empire.²⁸² It covers both theory and implementation and contains many clear and detailed rules regarding the governing of an empire. 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.²⁸³ Its influence can hardly be overstated.

In the *Arthashastra* the central authority plays a critical role in many aspects of life and most importantly in economics and politics. Although there was an active private sector, it is clear that the state occupied a large role in commercial (and other) activity.²⁸⁴ The degree of regulation was quite high and few areas of life were more regulated than *sreni* activity. Chanakya appeared quite suspicious of the *sreni*.²⁸⁵ He was generally concerned with any entity that had many members, good resources and a strong sense of group loyalty as the *sreni* did.²⁸⁶ He probably viewed them as potential threats to the cohesion of the recently formed empire, which was knit together with some considerable effort.²⁸⁷ However, the *sreni* could not simply be outlawed because they existed before the Mauryans and the support of the *sreni* was probably needed to increase the chances of unity in the empire. Moreover, it is

²⁷⁹ There are a number of translations of the *Arthashastra*. I am relying on R.P. KANGLE, THE KAUTILYA ARTHASASTRA, PART II, AN ENGLISH TRANSLATION WITH CRITICAL AND EXPLANATORY NOTES (1972) [*hereinafter* ARTHASASTRA] and for commentary R.P. KANGLE, THE KAUTILYA ARTHASASTRA, PART III, A STUDY [IN ENGLISH] (1972). Another excellent translation is L.N. RANGARAJAN (ED.), KAUTILYA: THE ARTHASASTRA (1992).

²⁸⁰ See KANGLE, ARTHASASTRA, PART III, *supra* note 279, at 59 – 115. Chanakya (also known as Kautilya and Vishnugupta) is one of the most enigmatic characters in Indian history. See MUDRA-RAKSHASA (PT. RANJIT SHARMA TRNSL.)(1944); BHALCHANDRA DATTARAYA KHER, CHANAKYA: A BIOGRAPHICAL NOVEL (1992); MOOKERJI, *supra* note 273, at 18 – 19, 33 – 38. He was revered for his intellect and political acumen, but also frequently recommended the use of spies, prostitutes and assassins to obtain the desired ends. See KANGLE, ARTHASASTRA, *supra* note 279, at 1.11 - .12; 2.27; 11.1.1 - .56. In addition to the *Arthashastra*, Chanakya also wrote *Chanakyaniti*. See ETHICS OF CHANAKYA: CHANAKYANEETI (T.Y. RAMESH TRNSL.)(1997).

²⁸¹ See MOOKERJI, *supra* note 273, at 1 – 46; KHER, *supra* note 280.

²⁸² Following the departure of Seleucus, the Greeks left behind an Ambassador – Megasthenes – who wrote an important book on India entitled “Indica”. See MCCRINDLE, *supra* note 220, at 1 – 181; MOOKERJI, *supra* note 273, at 183 – 96 (discussing Megasthenes’ observations on social conditions in India at that time). Many aspects of life were regulated and some writings estimate that the army had over 600,000 men. See THAPAR, *supra* note 273, at 119 – 20.

²⁸³ See *infra* discussion Part IV.F.

²⁸⁴ See MOOKERJI, *supra* note 273, at 102 (discussing nationalization of industries); 203 – 05 (discussing the private sector). Mauryan India was also engaged in large scale commodity production as suggested in D.D. Kosambi, *The State and Commodity Production in the Magadha State (500 to 200 B.C.)*, in THE CULTURE AND CIVILIZATION OF ANCIENT INDIA IN HISTORICAL OUTLINE 152 – 57 (1982).

²⁸⁵ See KANGLE, ARTHASASTRA, PART II, *supra* note 279, at 4.1 - .2 (referring to artisans and merchants as “thorns”).

²⁸⁶ See *id.*, at 4.1 - .2; 11.1.1 - .56 (discussing methods of dealing with oligarchies).

²⁸⁷ For Chanakya the unity of the Indian states was very important in order to keep invaders (such as the Greeks) out of India and anything that impeded this unity would have been looked upon with suspicion. See KANGLE, ARTHASASTRA, PART III, *supra* note 279, at 244 – 65 (discussing defense and internal affairs); PART II, *supra* note 279, at 7.1.1 - 7.4.22 (discussing aspects of foreign policy).

likely that Chanakya was cognizant of the importance of economic prosperity to maintaining the support of the citizenry – a matter of paramount importance to the emperor and to maintaining unity.²⁸⁸ The *sreni* were the engines of economic growth and could not be dealt with in the same manner as a hostile regional monarch. Thus, regulating the *sreni* was a matter of balance for Chanakya – their support was needed, but they could not be permitted to destabilize the empire and hence needed to be watched carefully.

Before discussing the details of *sreni* regulation it may be useful to compare the situation in Mauryan India to that in the Roman Empire. The Romans and the Mauryans had extensive trade connections, but it appears that Rome did not adopt corporate forms for purely private commerce (such as the *sreni* in India).²⁸⁹ This seems surprising because, given the extensive trade, the Romans would have been aware of the *sreni* organizational form. What might explain this? It appears that the Mauryans and the Romans were in quite different situations. Both empires could have been concerned about alternative entities (e.g., *sreni*) that might attract the public's loyalty away from the Empire, but the Romans did not, it appears, have to contend with *pre-existing* private commercial entities as the early Mauryan Empire did.²⁹⁰ One might speculate this would lead the Mauryans to be more concerned about keeping the support of the *pre-existing* private commercial entities (the *sreni*) while carefully watching that they do not threaten the cohesion of the Empire. The Romans did not have such entities to contend with and hence could have prevented any threat to the cohesion of their Empire by not permitting such entities to develop.²⁹¹ Indeed, the early Roman proto-corporations were largely used for public (state-driven) projects which would have limited their ability to threaten the Empire.²⁹² Although speculative, this may provide a plausible explanation for why we do not see private commercial entities in Rome, but do see them in one of Rome's primary trading partners – Mauryan India. Mauryan India had to maintain the support of the pre-existing commercial entities (the *sreni*), but be careful to make sure they do not threaten the Empire.²⁹³

In light of this, the regulation of the *sreni* was quite detailed.²⁹⁴ There were administrative officials whose task it was to superintend the various industries and

²⁸⁸ See KANGLE, ARTHASASTRA, PART III, *supra* note 279, at 166 – 93 (discussing the state economy). This is also seen in how much trade was encouraged and regulated. See MOOKERJI, *supra* note 273, at 197 – 225. Chanakya encouraged foreign trade and it was carefully planned. See AGRAWALA, *supra* note 44, at 267.

²⁸⁹ See KANGLE, ARTHASASTRA, PART III, *supra* note 279, at 166 – 93 (discussing the state economy in Mauryan times); AGRAWALA, *supra* note 44, at 267 (discussing foreign trade); Hansmann, et al, *supra* note 6, at 23 – 27 (discussing the *societates publicanorum* in Rome which were not engaged in purely private corporate activities). See also JEAN-JACQUES AUBERT, BUSINESS MANAGERS IN ANCIENT ROME: A SOCIAL AND ECONOMIC STUDY OF INSTITORES, 200 B.C. – A.D. 250, at 325 – 30, 342 – 46 (1994).

²⁹⁰ See Hansmann, et al, *supra* note 6, at 23 – 27 (discussing the *societates publicanorum* in Rome which were not engaged in purely private corporate activities).

²⁹¹ Cf. *id.*, at 24 – 27 (noting that the Romans indeed did not let such entities develop).

²⁹² See *id.*, at 24 – 27.

²⁹³ This provides a potential (and probably partial) explanation for the difference in Rome and Mauryan India and why the Romans did not develop these entities. See *id.*, at 60 (raising this as an important question). Of course, it appears that the Roman Emperors clamped down on the entities (*societas publicanorum*) that worked on public projects to the extent that it had major depressive effects on the Roman economy. See *id.*, at 26 – 27. The *Arthashastra* would probably not recommend such a measure by the Emperor, but Emperors do not always follow their advisors.

²⁹⁴ For a more general discussion of the role of the government in the economy around this time also see D.D. Kosambi, *The State and Commodity Production in the Magadhan State (500 to 200 B.C.)* in THE CULTURE AND CIVILIZATION OF ANCIENT INDIA IN HISTORICAL OUTLINE (1982).

professions represented by the *sreni*.²⁹⁵ This was done through regular administrative processes, but also through the use of spies and assassins.²⁹⁶ The level of regulation could be quite minute and encompassed regulating the price of products or services, quality control, weights and measurements, planning of town areas for professions, and even the pay for the *sreni* headmen (*sreni-mukhyas*).²⁹⁷ Taxes were collected and the use of fairly detailed accounting rules required.²⁹⁸ Moreover, there were simple and clear rules about debt obligations and when a debt would cease to be enforceable.²⁹⁹ In spite of this fairly heavy regulation, the *Arthashastra* expected the monarch to generally apply *sreni dharma* to internal *sreni* matters, encouraged *sreni* to be active participants in the credit markets providing loans (sometimes to the monarch) and receiving deposits, as well as providing concessions to *sreni* in suits involving other *sreni*.³⁰⁰ Moreover, even with such detailed regulation, it is clear that there were markets for commodities as the *Arthashastra* prohibits traders from operating in a group to effectively corner a market (which presumes the existence of markets).³⁰¹ Thus, the *Arthashastra* treads a delicate balance to maintain an active economy via the *sreni* and the state, but not to permit the *sreni* to present a significant challenge to the empire.

There is considerable evidence that domestic and foreign trade grew significantly during the Mauryan Empire administered according to the *Arthashastra*.³⁰² There were many *sreni* during this time and the *Arthashastra* expected the king to respect *sreni dharma* (and indeed to record it for use in later disputes).³⁰³ 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.³⁰⁴ In addition to this, there is discussion of *sreni* members being able to remove the headman.³⁰⁵ This provided the *sreni* members with redress against an agent (the head) who was violating the terms of their arrangement. Further, not only

²⁹⁵ See KANGLE, ARTHASASTRA, PART II, *supra* note 279, 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 273, at 89 – 123. See KANGLE, ARTHASASTRA, PART III, *supra* note 279, at 166 – 214 (discussing state economy and state administration).

²⁹⁶ See KANGLE, ARTHASASTRA, *supra* note 279, at 2.7.9 - .10; 2.9.12; 2.9.25; 4.5.1 - .18; 5.1.45; 11.1.6 - .14.

²⁹⁷ See KANGLE, ARTHASASTRA, *supra* note 279, 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).

²⁹⁸ For some discussion of taxes and levies see KANGLE, ARTHASASTRA, *supra* note 279, PART III, at 173 – 83. There are a number of articles and books on Accounting related to the *Arthashastra*. See Balbir S. Sihag, *Kautilya on the Scope and Methodology of Accounting, Organizational Design and the Role of Ethics in Ancient India*, 31 THE ACCOUNTING HISTORIANS JOURNAL 125 – 148 (2004); ANJAN K. BHATTACHARYYA, MODERN ACCOUNTING CONCEPTS IN KAUTILYA'S ARTHASASTRA (1988); Richard Mattessich, *Review and Extension of Bhattacharyya's Modern Accounting Concepts in Kautilya's Arthashastra*, 8 ACCOUNTING, BUSINESS AND FINANCIAL HISTORY 191 – 209 (1998); RICHARD MATTESSICH, THE BEGINNINGS OF ACCOUNTING AND ACCOUNTING HISTORY – ACCOUNTING PRACTICE IN THE MIDDLE EAST (8000 B.C. TO 2000 B.C.) AND ACCOUNTING THOUGHT IN INDIA (300 B.C. AND THE MIDDLE AGES) (2000).

²⁹⁹ See KANGLE, ARTHASASTRA, *supra* note 279, at 3.11.1 - 50. There is little discussion of how a bankruptcy proceeding operates until about 100 years after the decline of the Mauryans. See DAS, *supra* note 20, at 132 (noting that “[a]mong the instruments of credit we find references to debt sheets in the *Milindapanha* where the bankrupt makes a public statement of his assets and liabilities”).

³⁰⁰ See KANGLE, ARTHASASTRA, *supra* note 279, at 2.7.2, 2.7.6, 3.11 - .12, 4.1., 5.2.46 - .48.

³⁰¹ See *id.*, at 4.2.18 - .19. Cornering a market presumes the existence of a market of some kind.

³⁰² See THAPAR, *supra* note 87.

³⁰³ See *id.*; KANGLE, ARTHASASTRA, *supra* note 279, at 2.7.2, 2.7.6, 3.7.40.

³⁰⁴ This is somewhat surprising given the more centralized nature of the Mauryan Empire, but such concessions may well have been needed to maintain the support of the *sreni* and ensure the cohesion of the Empire. This tracks the discussion in *supra* text accompanying notes 289 - 293.

³⁰⁵ See KANGLE, ARTHASASTRA, *supra* note 279, at 2.7.2, 11.1.6 - .7.

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.³⁰⁶

In light of this, one can state that the *sreni* were a large 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 movement of assets between owners and *sreni*) would have been quite a good environment in which *sreni*-like structures could grow and develop.

The Mauryan Empire and the *Arthashastra*, however, are not the only developments of importance during this time. Buddhism received significant support during the Mauryan Empire when Ashoka adopted the Buddhist faith.³⁰⁷ 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.³⁰⁸ What made it interesting in this context was that Ashoka continued to administer the empire largely according to the dictates of the *Arthashastra*.³⁰⁹

At first glance, one might find the mix of Buddhism (which generally preached non-violence, renouncement of material ends, and attainment of *nirvana*) and the *Arthashastra* (which generally preached the acquisition and consolidation of power and material ends with a dollop of assassination and subterfuge) a rather odd mix. However, it is by no means clear that Buddhism and the *Arthashastra* could not be used together.

First, the *Arthashastra* is not a text on religion and as such it is not attempting to be an alternate religion to Buddhism.³¹⁰ Second, the Buddhist monks had a somewhat more centralized method of organizing their religion than Hinduism and hence the centralization associated with the *Arthashastra* may not have been entirely at odds with Buddhism.³¹¹

Further, the evidence we have suggests that Ashoka found an interesting fusion of the principles elaborated in Buddhism and the *Arthashastra*. After adopting Buddhism, Ashoka renounced war and the conquest of smaller states providing them with some degree of greater sovereignty in their own affairs.³¹²

³⁰⁶ See MAJMUDAR, *supra* note 18, at 23.

³⁰⁷ Ashoka spread Buddhism all the way to Afghanistan and encouraged people in places as far flung as Egypt, Southeast Asia, and China to adopt the faith. See THAPAR, *supra* note 273, at 137 – 81. He also erected a number of pillars throughout India that provided his rules. See MOOKERJI, *supra* note 273, at 236 – 45. Many of these pillars exist to this day.

³⁰⁸ See THAPLYAL, *supra* note 18, at 18 – 20. Moreover, Buddhism seemed more supportive of the *vaishya* (roughly, mercantile) caste compared to Hinduism. See DAS, *supra* note 20, at 92 – 107.

³⁰⁹ See MOOKERJI, *supra* note 273, at 236 – 45 (comparing the *Arthashastra* with Ashoka's Edicts).

³¹⁰ It should be noted that certain parts of the *Arthashastra* were clearly meant to be enforced in a Hindu context (e.g., different penalties for different castes for the same behavior). See KANGLE, *ARTHASASTRA*, *supra* note 279, at 4.11.13; 4.12.1 – .40; 4.13.1; 4.13.32. Moreover, Chanakya was a Brahmin of the Hindu faith which suggests that he may have had the Hindu faith in mind when writing the *Arthashastra*.

³¹¹ 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 273, at 305 – 10.

³¹² See THAPAR, *supra* note 273, at 166. See also *id.*, at 205 (discussing how Ashoka's reign probably benefited trade).

Although consistent with Buddhism, this need not be inconsistent with the *Arthashastra*. Ashoka implemented these policies *after* he had conquered most of India and at this time maintaining rigid control might breed uprising rather than support.³¹³ Moreover, maintaining control and continuing to fight wars over such a large territory was bound to have drained the empire's resources – something the *Arthashastra* would probably consider an anathema.³¹⁴ 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).³¹⁵ Tax collections would increase as the economy grew and the measures adopted appeared to do just that. Viewed in this manner, Ashoka's behavior does not appear to be that opposed to the *Arthashastra* which was written largely during a time when the empire was smaller and faced many immediate threats to its existence. I do not mean to suggest that Ashoka's adoption of Buddhism was not motivated, at least in part, by a religious epiphany, but it is worth noting that the *Arthashastra* and Buddhism are not as opposed as they may appear on first glance.

However, even with this, there continued to be considerable centralization, excellent intelligence systems, and the superintendents of industries continued to exist.³¹⁶ Ashoka also utilized the fairly efficient toll and taxes system proscribed by the *Arthashastra* and encouraged trade in a variety of ways.³¹⁷

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.³¹⁸

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.³¹⁹

In the North the first dynasty to replace the Mauryan was the Sunga, which ruled over a smaller empire centered around Pataliputra (the capital of the Mauryans) for about a century.³²⁰ They were replaced by some short lived kingdoms until 30 B.C.³²¹ In the far

³¹³ 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.

³¹⁴ See KANGLE, *ARTHASASTRA*, Part II, *supra* note 279, 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).

³¹⁵ See *id.*; THAPAR, *supra* note 273, at 202 – 05.

³¹⁶ See THAPAR, *supra* note 273, at 202 – 05.

³¹⁷ For example, he planted trees along the trade routes to provide travelers with places to rest and receive shade. See THAPAR, *supra* note 273, at 70, 81.

³¹⁸ Ashoka was succeeded by a series of short lived kings ending with Brihadrata who was assassinated in 185 B.C. See THAPAR, *supra* note 273, at 197 – 213 (discussing reasons for the decline of the Mauryans).

³¹⁹ North and South India were not unified again until the Mughal empire in Medieval India around the 15th and 16th Centuries.

³²⁰ 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*

Northwest the Mauryans were replaced by the Indo-Greeks (for about 150 years), the Shakas (Scythians), and then the Kushanas (from Central Asia) who created a large kingdom that reigned until roughly 100 A.D.³²² 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.³²³ 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.³²⁴

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.³²⁵ Trade was very active, especially with Rome, as is evidenced by the large number of Roman coins found in this area.³²⁶ 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.³²⁷ 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.³²⁸ There is considerable evidence of very active trade during both the Satavahana and Chalukya dynasties.³²⁹ 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

COMPREHENSIVE HISTORY OF INDIA II 94 – 115 (K.A. NILAKANTA SASTRI ED.)(1957)[*hereinafter* COMPREHENSIVE HISTORY]. Puyamitra Sunga was the commander-in-chief of the Mauryan Emperor’s Guard, who assassinated the last Mauryan emperor, and also a Brahmin who apparently tried to suppress Buddhism, which had been encouraged during the reign of Ashoka. See Jagannath, *supra*.

³²¹ The Sunga dynasty was followed by the Kanvas who ruled in Magadha for about 45 years. See ADHYA, *supra* note 320, at 13.

³²² See *id.*, at 11 – 17; J.N. Banerjea, *The Bactrian Greeks in India*, in COMPREHENSIVE HISTORY, *supra* note 320, II, at 138 – 85; J.N. Banerjea, *The Scythians and Parthians in India*, in COMPREHENSIVE HISTORY, *supra* note 320, II, at 186 – 221; J.N. Banerjea & Jagannath, *The Rise and Fall of the Kushana Power*, in COMPREHENSIVE HISTORY, *supra* note 320, II, at 222 – 62; DAS, *supra* note 20, at 107 – 34.

³²³ See ADHYA, *supra* note 320, at 11 – 17; DAS, *supra* note 20, at 107 – 34; P.C. Bagchi, *Cultural and Colonial Expansion: Central Asia, China & the Far East*, in COMPREHENSIVE HISTORY, *supra* note 320, II, at 764 – 76; Kamesar Prasad, *Urban Occupations and Crafts in the Kusana Period*, in ESSAYS, *supra* note 265, at 111 – 120.

³²⁴ See ADHYA, *supra* note 320, at 18 – 19.

³²⁵ The dynasty ended in the 1300s when the Delhi Sultanate succeeded in invading the Pandya capital of Madurai. For greater discussion of the Pandya dynasty see generally SAKKOTTAI KRISHNASWAMI AIYANGAR, *ANCIENT INDIA AND SOUTH INDIAN HISTORY & CULTURE VOL. I*, 434 - 463 (discussing South Indian history), *VOL. II*, 577 – 94 (discussing the Tamil Sangam and the Pandyas) (1941); K. A. NILAKANTA SASTRI, *THE PANDYAN KINGDOM: FROM THE EARLIEST TIMES TO THE SIXTEENTH CENTURY passim* (1972).

³²⁶ See DAS, *supra* note 20, at 122. Moreover, it appears that these Indians were fond of Roman wine. See HIMANSHU PRABHA RAY, *MONASTERY AND GUILD – COMMERCE UNDER THE SATAVAHANAS* 130 – 35 (1986).

³²⁷ See ADHYA, *supra* note 320, at 20 – 24. The invasions of the Shakas (Scythians) helped to accelerate the downfall of this dynasty. See K. Gopalachari, *The Satavahana Empire*, in COMPREHENSIVE HISTORY, *supra* note 320, II, at 293 – 327. Some seem to suggest that the Satavahanas may have started their rule as early as 200 B.C. See Gopalachari, *supra*.

³²⁸ See Gopalachari, in COMPREHENSIVE HISTORY, *supra* note 320, II, at 293 – 327. The gap in their rule was largely because of the Rashtrakuta dynasty that ruled the region from 750 A.D. to 970 A.D. For further discussion of the Chalukyas see KRISHNA MURARI, *THE CALUKYAS OF KALYANI, FROM CIRCA 973 A.D. TO 1200 A.D.* 367 – 371 (discussing the genealogy of the dynasty) (1977).

³²⁹ See DAS, *supra* note 20, at 107 – 34; Gopalachari, *supra* note 327 (discussing the Satavahanas); MURARI, *supra* note 328, at 283 – 310 (discussing the economy and trade in Chalukyan times); Vivekananda Jha, *Leather Workers in Ancient and Early Medieval India*, in ESSAYS, *supra* note 265, at 122 – 23; RAY, *supra* note 326, at 90 – 167.

A.D., and was then replaced by the Chola kingdom.³³⁰ The Cholas ruled until the 13th century A.D. when the Islamic invasions also claimed their kingdom.³³¹

This reads like a story about a region in a 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.³³² 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.³³³ Thus, safety along the land trade routes was not as weak as one might imagine. Moreover, the sea routes from the West, East, and South of India were quite safe and efficient, especially after the discovery of the monsoon patterns.³³⁴ 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.³³⁵ Indeed, it may have been that the growth in foreign sea trade more than compensated for the instability, at times, in domestic land trade.³³⁶ 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.³³⁷

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.³³⁸ In this post-Mauryan era the newly unshackled *sreni* grew quickly and established their sway

³³⁰ For further discussion of the Pallavas see C. MINAKSHI, *ADMINISTRATION AND SOCIAL LIFE UNDER THE PALLAVAS* (1997); AIYANGAR, *supra* note 325, at 490 – 591 (discussing the Pallavas).

³³¹ For further discussion on the Cholas see S. SWAMINATHAN, *THE EARLY CHOLAS HISTORY, ART, AND CULTURE* (1998); *PEARLS THIRCE THREE HUNDRED : EUOLOGIES OF THE PĀNDEYA, COLA, AND CĒRA PRINCES* (TRSL BY A.V. SUBRAMANIAN) (1993); AIYANGAR, *supra* note 325, at 592 – 734.

³³² See DAS, *supra* note 20, at 107 – 34; ADHYA, *supra* note 320, 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.

³³³ 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.*

³³⁴ See ADHYA, *supra* note 320, at 124 – 28 (describing the importance of understanding the monsoon trade winds pattern for the growth of trade between Rome and Ancient India).

³³⁵ See DAS, *supra* note 20, at 107 – 34; ADHYA, *supra* note 320, 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.

³³⁶ 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 320, 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 320, at 152 – 76 (discussing trade with China and South East Asia).

³³⁷ See DAS, *supra* note 20, at 156 – 57.

³³⁸ See THAPLYAL, *supra* note 18, at 28 – 29.

over much of India.³³⁹ Moreover, kings were quite keen to have the favor of the *sreni*, no doubt to help stabilize or cement their control over a region.³⁴⁰ 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.³⁴¹

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.³⁴² We witness this in a number of ways. First, we have even more clear references to the kings being expected to maintain *sreni dharma*.³⁴³ 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.³⁴⁴ 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.³⁴⁵ 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.

³³⁹ See DAS, *supra* note 20, at 111 – 13; 131 – 33; ADHYA, *supra* note 320, at 82 – 94.

³⁴⁰ See DAS, *supra* note 20, at 131 – 32; ADHYA, *supra* note 320, at 86.

³⁴¹ See ADHYA, *supra* note 320, 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 *supra* Part III.B.6. The numerical and political growth of the *sreni* is not surprising as the *Arthashastra* would probably have not permitted *sreni* to reach a size large enough to pose any threat to the empire.

³⁴² Cf. V.S. Khanna, *Corporate Criminal Liability: What Purpose Does it Serve?*, 109 HARV. L. REV. 1477, 1481, 1485 – 86 (discussing the growth of corporate criminal liability (and corporate regulation) as corporations became more important in society).

³⁴³ 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.

³⁴⁴ 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.

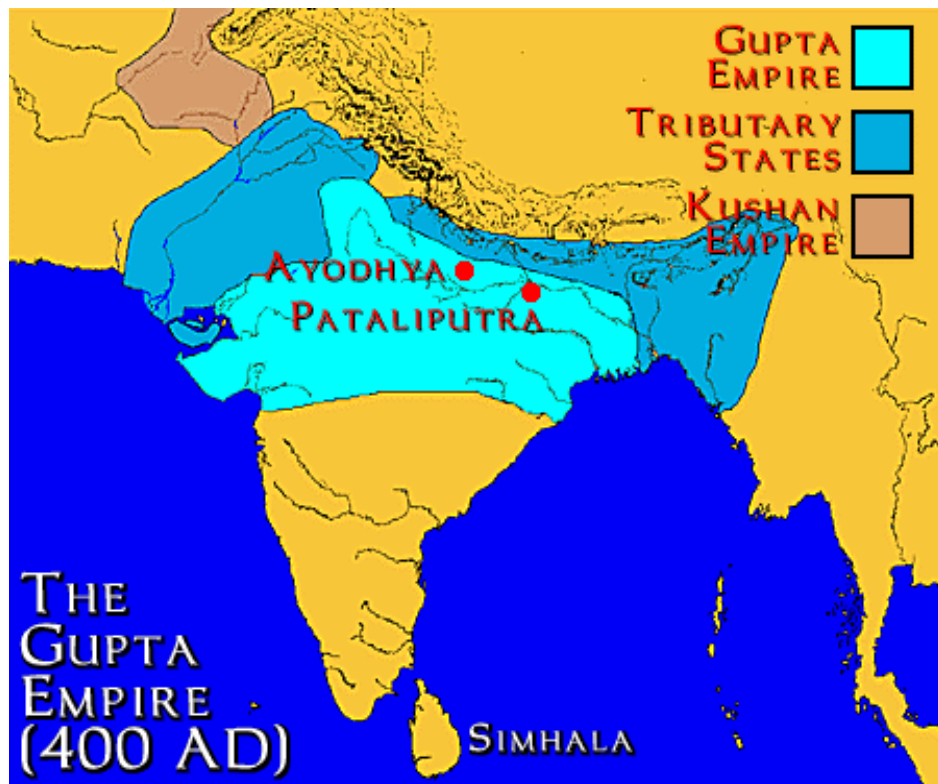
³⁴⁵ As the probability of apprehension declines the expected sanctions drops and so does deterrence. To maintain adequate deterrence the sanction, when imposed, would need to be severe enough to counter-balance the low likelihood of its imposition or resources would need to be expended to increase the 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.

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.

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 India³⁴⁶



The Gupta Empire dates from roughly 240 A.D. until 550 A.D. and is usually referred to as India's "Golden Age".³⁴⁷ The primary emperors of this dynasty were

³⁴⁶ <http://www.wsu.edu:8080/~dee/ANCINDIA/GUPTAMAP.HTM> ©1996, Richard Hooker.

³⁴⁷ This term is 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).

Chandragupta I,³⁴⁸ Samudragupta,³⁴⁹ and Chandragupta II (who took the name Vikramaditya).³⁵⁰ All of these emperors expanded the boundaries of the empire until it reached its apex in the reign of Vikramaditya.³⁵¹ Much like the Mauryan Empire, the Gupta Empire also had a number of long range implications for India and for the *sreni*.

The first was that, although Chandragupta I brought some of the principles of the *Arthashastra* back into effect, the Gupta Empire was not nearly as centralized as the Mauryan.³⁵² Rather the Gupta Empire was a looser confederation of kingdoms which relied more on tributes, strategic alliances, and greater decentralization than the Mauryan Empire.³⁵³ 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.³⁵⁴ The significance of this for trade was that the central authority did not regulate economic activity as tightly as the Mauryans,³⁵⁵ yet it provided quite efficient administration, maintained safe trade routes, and encouraged trade.³⁵⁶ There are even instances where the Gupta emperors provided favorable treatment to *sreni* which relocated their operations to a region where the Guptas were trying to generate growth.³⁵⁷

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.³⁵⁸ These contacts bolstered the increasing and active trade with the Far East and South East Asia, which supported the Indian economy at

³⁴⁸ Chandragupta I (reign from 319 A.D. – 335 A.D.) recaptured the Magadha capital, Pataliputra, and the surrounding areas. See MOOKERJI, *supra* note 347, at 13 – 17. He unified some of the affiliated kingdoms and married into the Lichchavis 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.*

³⁴⁹ 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 347, at 1 – 2.

³⁵⁰ 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 347, at 44 – 69; THE GOLDEN AGE, *supra* note 347, at 2. He presided over one of the greatest economic and literary periods in Ancient Indian history. See MOOKERJI, *supra* note 347, at 135 – 55; DAS, *supra* note 20, at 134 – 56; THAPLYAL, *supra* note 18, at 32 – 35.

³⁵¹ See MOOKERJI, *supra* note 347, at 44 – 69.

³⁵² See MOOKERJI, *supra* note 347, at 150 – 55 (discussing the administrative set up of the Gupta Empire).

³⁵³ See *id.*, at 19 – 29, 150 – 55. It appears that Chandragupta I obtained greater control through a strategic marriage alliance with the Lichchavis. 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).

³⁵⁴ See THAPLYAL, *supra* note 18, at 32 – 36. Moreover, the Guptas were a Hindu kingdom although they did not appear to persecute other religions. See MOOKERJI, *supra* note 347, 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.

³⁵⁵ 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.

³⁵⁶ See *id.*, at 148 – 55; DAS, *supra* note 20, at 134, 135 (discussing rest houses for travelers), 136 – 56.

³⁵⁷ See THAPLYAL, *supra* note 18, at 183 – 84.

³⁵⁸ See MOOKERJI, *supra* note 347, at 129 – 30 (discussing how Samudragupta and his successors followed a policy of setting up foreign centers of Indian culture).

the time when the Roman Empire was weakening.³⁵⁹ 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 science, mathematics, art, literature and Indian culture.³⁶⁰ 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.³⁶¹ On the science side, the use and development of iron in India at this time reached the highest levels.³⁶² Indeed, one of the more famous historic attractions in India – the iron pillar of Mehrauli – is said to date from this period.³⁶³ This pillar, made of approximately 100% iron and roughly 24 feet tall, has remained rust free for around 1600 years in the Indian climatic environment.³⁶⁴ The significance of this level of sophistication in iron would also have been displayed in more efficient tools for trade, transportation and storage.³⁶⁵

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*.³⁶⁶ Some estimate that there were at least 150 *sreni* by this time.³⁶⁷ 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.³⁶⁸

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

³⁵⁹ See DAS, *supra* note 20, at 149 – 53.

³⁶⁰ See MOOKERJI, *supra* note 347, at 135 - 148; THE GOLDEN AGE, *supra* note 347 *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.

³⁶¹ See S.A. Paramhans, *Foundations of Indian Mathematics and Geometrical Ideas in the Sulba Sutras*, in COMPREHENSIVE HISTORY, *supra* note 320, II, at 665 – 97.

³⁶² See DAS, *supra* note 20, at 138 (discussing the iron pillar and noting that it is over 99% iron); MOOKERJI, *supra* note 347, at 66 – 68.

³⁶³ See DAS, *supra* note 20, at 138 (discussing the iron pillar and noting that it is over 99% iron); MOOKERJI, *supra* note 347, at 66 – 68.

³⁶⁴ 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).

³⁶⁵ 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.

³⁶⁶ See MOOKERJI, *supra* note 347, at 49, 148 – 50; THAPLYAL, *supra* note 18, at 32 – 36; DAS, *supra* note 20, at 136 – 39, 144 – 45 (discussing the growth of the *sreni* and increasing specialization in the *sreni*).

³⁶⁷ See THAPLYAL, *supra* note 18, at 32 n. 109.

³⁶⁸ See MOOKERJI, *supra* note 347, at 49, 148 – 50; THAPLYAL, *supra* note 18, at 32 – 36; DAS, *supra* note 20, at 136 – 39, 144 – 45. These features are all discussed in the *Bṛhaspatismṛiti*, *Yājñavalkyasmṛiti* and *Naradasmṛiti* all of which existed during the Gupta Empire. See discussion *supra* Part III.B. at various points for references to these sources.

monitoring to supplement internal monitoring.³⁶⁹ Moreover, one might not be surprised if *sreni* were willing to take on additional occupations in an environment of quickly growing and profitable opportunities.³⁷⁰ Similarly, *sreni* might be willing to move to new locations to take up attractive new opportunities.³⁷¹ 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.³⁷² By 550 A.D. the Empire had been weakened and fell.³⁷³ 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.³⁷⁴ His reign began in 606 A.D. and he started to amass control and dominion over parts of India quickly establishing an empire (based again on a loose confederacy) that nearly rivaled the Guptas.³⁷⁵ Harsha was an impressive military leader, an able statesman and diplomat, and a brilliant administrator.³⁷⁶ 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.³⁷⁷ To service this large trade the *sreni* continued to function as they did under the

³⁶⁹ See text accompanying note 345.

³⁷⁰ See MOOKERJI, *supra* note 347, 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 mean to suggest that there is no benefit to specialization in this environment. Indeed, there was as is noted by DAS, *supra* note 20, at 136 – 39, 144 – 45. However, new products or services may develop that utilize some of the *sreni* members' skills and may make it worthwhile to enter that field. Also, sometimes when growth is accelerating it may be difficult to obtain good talent for your particular profession and it may not be a bad idea to expand into other areas if they appear profitable for your combination of human capital.

³⁷¹ 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).

³⁷² 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 347, 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.*

³⁷³ The last three significant rulers of the Gupta dynasty were Kumaragupta II, Buddhagupta, and Narasimhagupta. See MOOKERJI, *supra* note 347, at 104 – 06. The last official ruler was Vishnugupta. See *id.*

³⁷⁴ See VASUDEVA S. AGRAWALA, *THE DEEDS OF HARSHA BEING A CULTURAL STUDY OF BANA'S HARSHACHARITA* (P. K. AGRAWALA, ED.) *passim* (1969); SHANKAR GOYAL, *HISTORY AND HISTORIOGRAPHY OF THE AGE OF HARSHA* (1992); RADHA KUMUD MOOKERJI, *HARSHA* (1926). One of the earliest sources is the play by Bana entitled *Harshacharita*. See *HARSHACHARITA OF BANA* (E.B. COWELL & F.W. THOMAS TRNSL.) (2d ed. 1968).

³⁷⁵ See GOYAL, *supra* note 374, 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 284, at 180 – 82; BOSE, *supra* note 28, at 102.

³⁷⁶ See GOYAL, *supra* note 374, at 182 – 226.

³⁷⁷ 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 374, at 214 – 26. A fairly detailed account of life in India at this time is contained in WATERS, *supra* note 220.

Gupta Empire.³⁷⁸ However, upon Harsha's passing his kingdom fell apart and India descended to warring feudal lords and small kingdoms.³⁷⁹

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.³⁸⁰ The decline in trade was due in large measure to the frequent wars within India and general on-going political instability, which made long distance land trade more risky.³⁸¹ 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.³⁸² This was further exacerbated by diminishing foreign trade with the dwindling Roman Empire.³⁸³ In the Post-Gupta period the Roman Empire was a weaker trading partner and therefore could not provide the same kind of support to the economy as in the Post-Mauryan period as noted in Part IV.D. 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*.³⁸⁴ As the *sreni* became undone their heads often began to position themselves to be feudal lords, which further distracted them from *sreni* affairs.³⁸⁵ 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.³⁸⁶ 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.³⁸⁷ During and around this period there was much on-going struggle to obtain control of India by many different groups and coalitions. This, no doubt, 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.³⁸⁸ Indeed, Timur Kuran has argued that this was the

³⁷⁸ See DAS, *supra* note 20, at 161 – 66.

³⁷⁹ See THAPLYAL, *supra* note 18, at 143.

³⁸⁰ 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 taken over by the Pratiharas until about the mid 900s. See generally B.N. PURI, *THE HISTORY OF THE GURJARA-PRATIHARAS* (1986). In the middle part of India the Rashtrakutas established their reign for nearly 250 years and were probably the largest kingdom of this post-Harsha era. See HANPANA NAGARAJIAH, *A HISTORY OF THE RĀSTRAKŪTAS OF MALKHED AND JAINISM* 1- 60 (discussing the monarchs and feudatories of the Rastrakutas), 293 (providing a map of the Rastrakuta kingdom)(2000). Finally, in the western and northern parts of India there were a series of Rajput kingdoms that came of age during the 400 years between Harsha and the Islamic invasions. See K.N. SETH, *THE GROWTH OF THE PARAMARA POWER IN MALWA passim* (1978).

³⁸¹ See THAPLYAL, *supra* note 18, at 142 – 43.

³⁸² See *id.*, at 143.

³⁸³ See *id.*, at 140 – 41.

³⁸⁴ See *id.*, at 143.

³⁸⁵ See *id.*, at 143 – 44.

³⁸⁶ See *id.*, at 144 – 45.

³⁸⁷ See AGRAWALA, *supra* note 44, at 281 – 85.

³⁸⁸ See Timur Kuran, *Why the Middle East is Economically Underdeveloped: Historical Mechanisms of Institutional Stagnation*, 18 JOURNAL OF ECONOMIC PERSPECTIVES 71 (2004)[hereinafter *Stagnation*]; Timur Kuran, *The Logic of Financial Westernization in the Middle East*, 56 JOURNAL OF ECONOMIC BEHAVIOR AND ORGANIZATION 593 (2005)[hereinafter *Westernization*]. As the Islamic invasions in India come after the period I am examining I do not comment on the exact nature of the Islamic law that was brought with them and implemented in India. It is possible that the law may have been different than that from the Middle East.

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.³⁸⁹ 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 suggests that the *sreni* developed and grew along the lines of 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 or entity shielding to the development of the corporate form.³⁹⁰ 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. 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).

³⁸⁹ See Kuran, *Stagnation*, *supra* note 388, at 72 – 76 (discussing Middle Eastern Islamic inheritance and contract law), *passim* (discussing the absence of corporate entities from the Middle East).

³⁹⁰ See Hansmann, et al, *supra* note 6.

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.³⁹¹ 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.³⁹² 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.³⁹³ 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 internal 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.³⁹⁴ This seems true, but uniformity rarely comes without cost. To

³⁹¹ Both the level of resources and degree of foreign trade have been critical in examining the growth of trade in Ancient India in this paper. Indeed, these factors are relevant in other places too. See MAX WEBER, *GENERAL ECONOMIC HISTORY* 151 – 63 (FRANK H. KNIGHT, TRANS.)(1961).

³⁹² See text accompanying notes 366 - 371.

³⁹³ 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).

³⁹⁴ 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);

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.³⁹⁵ Of course, 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).³⁹⁶ 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.³⁹⁷

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. To illustrate why consider the following example. Imagine there are two moderately sized kingdoms that are antagonistic toward each other and that in one kingdom there is a *sreni* that is 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

Thomas W. Merrill & Henry E. Smith, *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, 110 YALE L. J. 1 (2000).

³⁹⁵ See Paulo Mauro, *Corruption and Growth*, 110 Q.J. ECON. 681, 682 – 83 (1995) (discussing corruption). Of course, if there are few wars 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 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*].

³⁹⁶ For discussion on the difficulty of collection action see MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GOODS* (1971).

³⁹⁷ 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 395 (noting that corruption is generally higher in more heterogeneous societies). On the development of norms and that they often occur in groups with many common interests see Robert Ellickson, *Of Coase and Cattle: Dispute Resolution among Neighbors in Shasta County*, 38 STAN. L. REV. 623 (1985); Lisa Bernstein, *Merchant Law in a Merchant Court: Rethinking the Code's Search for Immanent Business Norms*, 144 U. PA. L. REV. 1765 (1995); Lisa Bernstein, *Private Commercial Law in the Cotton Industry: Creating Cooperation Through Rules, Norms and Institutions*, 99 MICH. L. REV. 1724 (2000).

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

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 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 *sreni* development 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.³⁹⁸ This may have implications for the corporate convergence debate that merit further inquiry.³⁹⁹

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).⁴⁰⁰ The continuity in internal governance may largely be an artifact of the relatively consistent treatment and development of *sreni dharma* over time.⁴⁰¹ Nonetheless, it has interesting, albeit ambiguous implications, for the convergence debate.

³⁹⁸ There are no mentioned instances of controlling shareholders in the *sreni*, but evidence from inscriptions on the municipal *sreni* indicate that sale of shares was possible and so were combinations of *sreni* (this is true for the economic *sreni* too). Both of these matters indicate that controlling members were possible, but the absence of their mention suggests most *sreni* were quite dispersely held. One author suggests that large merchant *sreni* may have exercised some kind of control over smaller artisan *sreni*, although how this was done is not entirely clear. See KIRAN KUMAR THAPLYAL, *STUDIES IN ANCIENT INDIAN SEALS* 241 (1962).

³⁹⁹ For discussion of convergence see Henry Hansmann & Reinier H. Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439 (2001); Lucian A. Bebchuk & Mark Roe, *A Theory of Path Dependence in Corporate Ownership and Governance*, 52 STAN. L. REV. 127 (1999); Ronald J. Gilson, *Globalizing Corporate Governance: Convergence of Form or Function*, 49 AM. J. COMP. L. 329 (2001); John C. Coffee, Jr., *The Future as History: The Prospects for Global Convergence in Corporate Governance and its Implications*, 93 NW. U L. REV. 641 (1999).

⁴⁰⁰ See text accompanying notes 272, 303 - 305; 338 - 343; 366 - 371.

⁴⁰¹ This is analogous to the debate on voluntary versus mandatory rules of corporate governance. See e.g., Bebchuk, *Federalism*, *supra* note 395; Bebchuk, *Contractual Freedom*, *supra* note 395. There were, of course, some mandatory rules in *sreni* governance as seen in Table 1.

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, when left to their own devices the *sreni* seemed to develop rules similar to the modern Anglo-American corporation, which 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. 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 around 800 B.C. 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 an earlier time period. Indeed, much can be learned about the corporate form from studying the Ancient Indian *sreni*.