Accounting Historians Journal

Volume 10
Issue 2 *Fall 1983*

Article 9

1983

Vedic partnership rules

N. Choudhury

The Accounting Historians Journal
Vol. 10, No. 2
Fall 1983

N. Choudhury
LONDON SCHOOL OF ECONOMICS
AND POLITICAL SCIENCE

VEDIC PARTNERSHIP RULES

Abstract: The law writers of ancient India (around 700 B.C.) devised, in a period of flourishing trade, rules for the administration of partnerships, formed as a means of combining capital and skills of individual entrepreneurs. These rules are indicative of the concern of the writers with partnership economics and equity—concepts which form an important part of present day partnership law.

The earliest systematic references to partnership arrangements and rules in ancient Sanskrit appear in the Smriti ("recollections") literature which probably originated around 700 B.C., reaching their present form some 1,000 years later.[1] The Smritis, which were essentially codifications of custom, tradition and practice, constituted the law books of ancient India.[2] The ordinances contained therein, however, owed much of their credence to being regarded also as deriving their legal force from the Divine word as depicted in the hymns of the Vedas, which form the genesis of Indian social and religious thought. The chronological sequence of the Smritis cannot be conclusively determined thereby precluding an evolutionary study of partnership law. However, a sequence suggested by Jolly[3] appears to be widely accepted:

Manu Smriti	2nd or 3rd century A.D.
Yajnavalkya Smriti	4th century A.D.
Narada Smriti	6th century A.D.
Brhaspati and Katyayana Smritis	7th century A.D.

This paper uses Jha's[4] collection of translated excerpts from the Smriti literature relating to partnership law. These excerpts include chapter and paragraph references to the original Sanskrit texts. Jha uses two digests (written in Sanskrit), the *Smritichandrika* and the *Vivadaranatkara,* in his interpreted translation into English which, in the main, is found to agree with other authoritative and more literal translations (for example, see Buhler, Derrett (1975), Dutt, Jolly and Kane (1933)).

Priestly Associations

Manu provided the earliest rules governing partnership type arrangements in the context of priests jointly officiating at a sacrifice:[5]

> Among a number of priests officiating at a sacrifice, the chief men shall receive half of the fee; those belonging to the second grade shall receive half of that; those of the third grade, the third part of that; and those of the fourth grade, the fourth part. (Manu, 8.210).
>
> Where specific fees have been prescribed for particular parts of the sacrifice, the priest who performs the particular part shall receive the fee specifically prescribed for that part. (Manu, 8.208).
>
> If a priest appointed to officiate at a sacrifice abandons his work, his associates shall pay him out of the fee only such shares as may be in keeping with the work actually done by him. (Manu, 8.206).
>
> If a priest abandons his work after the fees have been paid, he should receive his full share; the work left unfinished should be got done by another. (Manu, 207).

Manu's sharing rule is somewhat ambiguous. Kane[6] understands the rule to imply that the total fee, usually of cows, was to be given to the chief priests to be shared out in such a way that the second, third and fourth grade of priests received, respectively, one-half, one-third and one-fourth of what the chief priests received. Thus a fee of a hundred cows would be shared between the four ranks of priests: forty-eight, twenty-four, sixteen and twelve cows respectively.[7] The value of such a rigid rule would presumably have lain in the avoidance of indecorous conflict among men of god. After specific fees had been allocated, the balance of the fees was to be shared equally by the priests.[8] Manu's exposition of a concept of sharing the fruits of joint labour at a time when joint enterprise was unknown in Indian law[9] is of significance because, although clearly not intended to apply to commercial partnerships, it laid the foundations of partnership law as expounded by later writers.

Trading Partnerships and Profit Sharing

A basic definition of commercial partnership was provided by Narada:

> When traders and others carry on business jointly it is called a partnership *(sambhuya samutthanam).* (Narada, 3.1).

Here, and in subsequent excerpts, the business (profit) motive will be seen to have been explicit in the Smriti partnership. This contrasts with the Roman Societas which included any joint undertaking formed whether or not for commercial reasons.[10] The profit-seeking objective was emphasised in a later passage by Narada where he indicated the importance of capital and the desirability of each partner having a financial stake in the enterprise:

> When several partners are jointly carying on business for the purpose of making profits, the supplying of capital forms the basis of such business; each should therefore contribute his proper share towards the capital. (Narada, 3.2).

(Since the contributed funds form the *adhara,* the substratum, or the sustaining power, of the partnership each member would pay in accordance with how he wishes to stand in the partnership.)

Capital appears to have been considered the most, if not the only, significant input as it was the sole determinant of the profit sharing ratio:

> The expenses, the loss and the profit of all the partners are either equal or more or less, in accordance with the share of capital contributed by each. (Narada, 3.3).
>
> In the case of persons investing gold, grains, liquids or other things, the profit of the partners shall be in accordance with the share of capital contributed by each. (Brhaspati, 14.4).
>
> When a number of tradesmen carry on business jointly for the purpose of making profit, the profit or loss of each shall be either in proportion to the share of capital contributed by each, or as has been agreed upon among themselves. (Yajnavalkya, 2.259).

In the above passages the writers did not explicitly allow for unequal profit sharing on the basis of non-capital inputs, such as effort and skill, although Yajnavalkya appears to have considered this possibility. Brhaspati acknowledged labour as an input but made the curious suggestion that this should be contributed in proportion to the partners' capital introductions:

> An an equal, larger or smaller share of the capital has been contributed by a partner, in the same proportion he shall pay the expenses, do the work and take the profit. Brhaspati, 14.3).

Only Katyayana considered the possibility and the problems of a partnership being formed without an express profit sharing agreement:[11]

> This is the rule of decision as regards all, who engage in a joint undertaking without previously defining their shares such as merchants, husbandmen, robbers or artisans. (Katyayana, 637).

The rule being referred to here is possibly that for profit sharing mentioned in preceding passages by Katyayana in the context of artisans, adventurers (plundering in enemy territory with their King's consent) and dancers.[12] The formula suggested in those passages involved determining profit shares in accordance with four levels of competence, responsibility or skill contributed to the joint undertaking; thus, four shares each were to be paid to individuals of the highest level and three, two, and one share each (respectively) were to be awarded to participants at the second, third, and fourth levels.[13]

The above device does seem to acknowledge, although in a simplistic way, that rewards should somehow be related to non-capital inputs. It is also possible that Katyayana intended these rules to apply only to partnerships associations which were labour intensive. The Societas arrangement, on the other hand, clearly permitted contributions by partners of "capital, skill or labour"[14] and shares of profit and losses were not necessarily based exclusively on capital contributions.[15]

Rights, Liabilities and Third Party Relationships

The rights and liabilities of partners *inter se* were specfied by the writers with some consensus:

> When any one partner, acting without the assent of other partners, or against their express instructions, injures the joint property, through negligence, that loss has to be made good to all the partners by that same man. (Brhaspati, 14.9).

> Each partner is responsible for any loss incurred through his want of care, or through his acting against the instruc-

> tions of, or without authorisation from, all the other partners. (Narada, 3.5).
>
> When a loss has been caused by any one partner having acted through negligence, against the instructions of other partners, or without their assent, he should make it good. (Yajnavalkya, 2.265).

The requirements for obtaining the necessary authorisations and instructions would suggest that the partners were in frequent consultation with each other at partnership meetings.[16]

Yajnavalkya referred to partners making private profits:

> If any one of them is found to be crooked, the other partners should turn him out, depriving him of any profits that he may have earned. (Yajnavalkya, 2.265).

It is not clear whether this covered private gain from the partnership business or the profits of a competing business, or both.[17]

Partnership rules governing third parties' relations are absent from the Smriti literature, with the possible exception of a passage from Brhaspati which may be construed as touching on this aspect of law:

> If any one of the partners has been so authorised by several partners, whatever property he may give or lend, and whatever written contract he may enter into, shall be regarded as having been done by all the partners. (Brhaspati, 14.5).

Even if "several partners" is understood to imply partnership majority[18] it is not clear whether Brhaspati intended the rule to determine partners' rights and liabilities *inter se* or to encompass rights conferred on third parties against all the partners. The former appears to be more consistent with the level of legal sophistication of the Smriti rules.

Roman law, in this context, considered the authorisation of a partner to be a matter of contract between the partners involved and *only* partners granting the mandate were bound by it. Third parties, on the other hand, had no rights against the other partners, even though they might have expressly authorised the contract. Similarly, Jewish law in the first century displayed extreme aversion to the risks of agency by exempting partners from unauthorised acts of co-partners leading to a loss. In the case of such acts turning a profit, however, all the partners were entitled to share in it.[19]

In summary, it would appear that a third party in a Vedic partnership transaction could look only to the partner he contracted with, although the latter had recourse to *all* members of the partnership. In the absence of bankruptcy provisions in those times, each partner would have been liable, without limit, for his debts with the result that, even under these rudimentary rules, joint liability of partners could be achieved by a third party although in an indirect way.

Duties and Diligence

Duties of partners are referred to only in the context of partners' duties in the recovering of a partnership loan:

> That which has been lent by several persons conjointly should also be demanded by them conjointly; any such lender who fails to demand the loan together with his partners,—or otherwise to co-operate with them in the carrying on of the business—shall forfeit his share of the profit. (Brhaspati, 14.19).

There are two modes of default, both punishable by forfeiture of profit, referred to here:

1. not participating in the demand for the recovery of a jointly made loan, and
2. not co-operating with other partners in the running of the business.

It should be noted that in the first case forfeiture of the defaulter's share of the loan is not intended. In the passage, "profit" may refer to interest due on the loan or, less likely, the agreed share of profits from the borrower's undertaking financed by the loan. The word used by Brhaspati is *"labha"* which means "profit"—although one would expect the word *"vriddhi"* (literally "the increase") to mean "interest" as was the more usual usage in the Smritis and thereafter.

Participation in the partnership business appears to have been seen by Brhaspati as a *duty* as opposed to a *right* as in present law.[20] Although the degree of a partner's involvement necessary to meet the requirements of Brhaspati's rule cannot be quantified, it is nevertheless of economic significance in that it constrained an idle or obstructive partner, thereby encouraging greater partnership efficiency.[21]

Diligence over and above the normal call of duty was to be rewarded:

> If a partner has saved the merchandise from dangers (due to the king or to robbers and so forth),—he should receive the tenth part of that merchandise as his reward. (Yajnavalkya, 2.265).
>
> That partner, who by his own efforts, saves the merchandise from dangers due to the act of God or of the king, shall receive the tenth part of that merchandise; the remainder being distributed among the other partners according to their respective shares. (Brhaspati, 14.10).
>
> If a partner has saved a commodity from thieves, or from floods or from fire, he should receive its tenth part; this rule applies to all commodities. (Katyayana in *Smritichandrika).*

Although the preoccupation of the Smriti writers with a fixed 10% reward may be attributed to a lack of originality of thought, or a reluctance to deviate from a well-established practice, the rule does provide an early recognition of the need to make some special provisions for partnership emergencies, an aspect which is covered in present Indian law.[22]

Disputes and Deceit

It would appear as if disputes among partners were to be settled internally without recourse to litigations:

> Partners in a joint concern shall be their own auditors[23] and witnesses in all cases of dispute or cheating,—if there is not previous enmity between them. (Brhaspati, 14.6).

The consequences of a lawsuit taken to the king may not, however, have been as drastic for the Societas, where litigation among partners was held to be against "brotherly" spirit and any action terminated the contract, action was therefore for general winding up rather than remedy for a particular breach.[24]

There is another reference to partnership misdemeanour:

> When any one among the partners is found to have practised deceit in purchasing or selling, he should be cleared by oaths (ordeals);[25]—this same rule should be followed in all disputes. (Brhaspati, 14.7).

It is not clear whether this relates to fraud on third parties or on co-partners or both. Given that the rule mentions "partners" and is

found with other partnership rules, one is led to conclude that this rule relates to partnership transgressions which are of a more serious nature than covered by the previous rule.

An Evaluation

Two major problems are recognized in establishing the legal status of the Smriti texts. Firstly, there is an unmistakable confounding of commendatory rules *(niyama)*[26] and rules which were meant to be positive and imperative in character *(vidhi).* The second problem, one which the Smriti writers themselves commented upon, relates to the resolution of conflict between the various sources of law. Derrett[27] interprets Narada as saying "that (all) litigation rests on four feet (or moves on four feet), as it were, namely *dharma* (righteousness), *vyavahara* (practice), *caritra* (actual usage in the sense of custom) and *raja-sasana* ('royal decree'), . . ."—in case of conflict, Derrett observes that the latter sources would take precedence over the former.

Partnership rules which constitute a very minor part of the Smritis have, understandably, received only a cursory attention from scholars of the wider subjects of ancient Indian law and economics. Because of this it is difficult to determine from the literature just how common the partnership form of business association was during this period. To accounting historians, however, the subject is of more direct interest and even in these primitive rules one is able to discern concepts of partnership economics and equity which contribute to the basis of partnership law as we know it today.

FOOTNOTES

[1]Prasad, p. 169.

[2]The Smritis are not comparable with the institutes of Justinian as "they cover far more than law and do not cover the whole of the law. They are manuals of conduct, but they leave large tracts to custom. These circumstances explain their failure to create a real science of law". See Prasad, p. 159.

[3]Jolly, pp. XVI—XVIII, 276.

[4]Jha, pp. 251-264.

[5]Sacrifices to the gods were widely practised in Vedic India involving offerings of food, drink, sheep, and goats. The ceremonies had to be performed in strict accordance with the Vedas by suitably qualified priests.

[6]Kane, 1941, pp. 1188-1189.

[7]Derrett (1975), p. 158.

[8]Buhler, p. 291.

[9]Sengupta, p. 244.

[10]Buckland and McNair, p. 300. Derrett, in an oblique look at ancient partnership associations, suggests that the symbolic act of footwashing in the New

Testament established a partnership between the washers and the washed. See Derrett (1977b), p. 9.

[11]Kane (1933), p. 249. Kane's translation was preferred here, as being more literal and less ambiguous than Jha's, at the suggestion of Professor J. D. M. Derrett in personal correspondence.

[12]Kane (1933), pp. 249, 468.

[13]Note the similarities with the profit sharing rules for priests as stated by Manu.

[14]Nicholas, p. 186.

[15]Buckland and McNair, 302.

[16]Sternbach, p. 495.

[17]This distinction is made in the Partnership Act 1890 Sections 29 and 30. See, for instance, Hesketh pp. 165-166.

[18]Derrett observes that in Smriti partnerships one found a rare example of "decision by majority, which is normally anathema to Indian tradition." See Derrett (1977a), pp. 89-90.

[19]Derrett (1977b), p. 14.

[20]See Section 24 (5) Partnership Act 1890, and Section 18 (e) Uniform Partnership Act 1966. See, for instance, Hesketh p. 164 and Bromberg p. 572. Judicial interpretation has considerably extended the scope of Section 24 (5) which merely ensures through "may take part" that, unless specifically agreed, a partner cannot be excluded from participation:

> "The Act does not add (but the law implies) that each partner shall attend to and work in the business—and if he fails to do so it is a ground for dissolution and the Court may order him to make compensation to the industrious partner for the extra trouble caused by his own idleness" *Airey v. Borham* (1861). See Hesketh, p. 85.

[21]This rule would seem to preclude sleeping partners although this was permitted in an earlier period in the writings of Gautama (around 600 B.C.) for the elite Braham caste. See Spengler, p. 85. Derrett, on the other hand, holds that sleeping partner arrangements were quite common. See Derrett (1977a), p. 91.

[22]"A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm." Section 21, Indian Partnership Act, 1932. See, for instance, Pollock and Mulla p. 64. There is, however, no explicit counterpart in the Partnership Act 1890 (from which the Indian Act was derived) and the Uniform Partnership Act 1966 possibly because partnership actions in emergencies were viewed as a natural extension to normal partnership duties.

[23]The word for auditors is *"parikshaka"* which literally means "examiners."

[24]Nicholas, p. 186.

[25]Ordeals were to be resorted to when the veracity of an important item of evidence was in doubt. Brhaspati mentions nine ordeals which were to be administered according to strict procedural rules:

> In the ordeal by balance, a person who, when weighed a second time, retained his original weight, was declared innocent, while he who weighed heavier was adjudged guilty. It was held that the weight of sin made the difference . . . In the ordeal by water, an individual was immersed in water and three arrows were discharged (into the water, and injury was considered to be evidence of guilt). In the ordeal by poison one had to digest poison 'given to him according to rule, without the application of spells or antidotes' (the subject being

deemed guilty if he fell ill). . . . The Hindu law-givers tend to regard the oath as a kind of ordeal on the ground that it invokes supernatural agency. See Prasad, pp. 179-180.

[26]An example of *niyama* is Brhaspati's advice on the qualities to be sought in a partner:

A man shall carry on business with such persons as are of noble parentage, clever, active, intelligent, conversant with coins, expert in income and expenditure, honest and brave;—and never with such as are incompetent, indolent, diseased, unlucky or destitute. (Brhaspati, 14.1-2).

[27]Derrett (1968), p. 149.

BIBLIOGRAPHY

Brhaspati. In Jolly (below)

Bromberg, A. R. *Crane and Bromberg on Partnership.* St. Paul, Minn.: West Publishing Co., 1968.

Buckland, W. W. and McNair, A. D. *Roman Law and Common Law.* Oxford: Oxford University Press, 1965.

Buhler, G. *The Laws of Manu.* In the series The Sacred Books of the East, F. Max Muller, ed. Oxford: Clarendon Press, 1889.

Derrett, J. D. M. *Religion Law and State in India.* London: Faber and Faber, 1968.

———. *Bharuci's Commentary on the Manusmriti,* Vol. II, Wiesbaden: F. Steiner, 1975.

———. *The Development of the Concept of Property in India.* In Essays in Classical and Modern Hindu Law, Vol. II, Leiden, Brill, 1977a.

———. *The Footwashing in John XIII and the Alienation of Judas Iscariot,* Revue Internationale des Droits de l'Antiquite, 3e Serie, Tome XXIV, 1977b.

Dutt, M. N. *The Dharam Shastra,* New Delhi: Cosmo Publications, 1978.

Hesketh, G. *Underhills Law of Partnerships,* 9th ed. London: Butterworths, 1971.

Jha, G. *Hindu Law and its Sources,* Vol. I. Allahabad: The Indian Press Ltd., 1930.

Jolly, J. *Minor Law Books,* containing the Narada Smriti and the Brhaspati Smriti in the Series The Sacred Books of the East, F. Max Muller, ed. Oxford: Clarendon Press, 1889.

Kane, P. V. *History of the Dharmasastra,* Vol. III. Poona: Bhandarkar Oriental Research Institute, 1941.

———. *History of the Dharmasastra,* Vol. III. Poona: Bhandarkar Oriental Research Institute, 1960-1962.

———. *Katyayanasmriti.* Poona: Oriental Book Agency, 1933.

Katyayana. In Kane (1933, above).

Manu. In Buhler (above).

Narada. In Jolly (above).

Nicholas, B. *An Introduction to Roman Law.* Oxford: Oxford University Press, 1962.

Pollock, F. and Mulla, D. F. *Indian Partnership Act.* Calcutta: Eastern Law House, 1934.

Prasad, B. *Theory of Government in Ancient India (Post-Vedic).* Allahabad: The Indian Press Ltd., 1927.

Sengupta, N. C. *Evolution of Ancient Indian Law.* London: Arthur Probsthain, 1953.

Spengler, J. J. *Indian Economic Thought.* Durham, North Carolina: Duke University Press, 1971.

Sternbach, L. *Juridical Studies in Ancient Indian Law,* Vol. I. Delhi: M. Barnasidass, 1965.

Yajnavalkya. In Dutt (above).