

“Sambhuya Samutthana” – Partnership as discussed in the Smrtis

Introduction:

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. The Smritis, which were essentially codifications of custom, tradition and practice, constituted the law books of ancient India (Choudhary, 1983).

Smrtis:

श्रूयते अनेन इति श्रुतिः i.e., That which is heard is Shruti. It recollects the important points of the Vedas and provides a summary of the same.

Purpose of Smrtis:

Vedas contain विधि and निषेध i.e., ordained actions and prohibited actions. The Smrtis are the commentaries by the Rishis on the Vedic injunctions. श्रुतिस्तु वेदो विज्ञेयो धर्मशास्त्रं तु वै स्मृतिः | Manu Smriti states that it is to be known that Veda is Shruti and Dharma Shastras are Smrtis. Gautama refers to Smriti as the essence of Dharma.

These scriptures explain how to practice Dharma, the importance of adhering to it, and the ill-effects of not following the principles of Dharma.

The need for Smrtis:

The Vedas are the Srthi. They are the most authoritative of all the scriptures. While the Vedas are अपौरुषेय – not written by man, the Smrtis are written by Rishis. This being the case, it is very important to understand the need for creating these Smrtis. The roles and responsibilities of the different members of the society of that particular time are explained in the Smrtis. It provides for some changes in the actions to be performed, according to the requirement of times, without contradicting the Vedic injunctions. So, Smriti text can be written any number

of times, depending on the need of the times. But it should not be against the dicta of the Shruti, which elaborate the fundamental Dharma of the mankind.

Validity of the Smrtis:

Vedas are स्वतः सिद्धप्रमाण – these propositions are self-evident, and they do not require any external proof for their correctness. Though Smrtis are written by individuals, it is also accepted to be correct since it is based on the Vedas. आप्तवाक्यप्रमाण – It is considered to be correct because it is the words of those Rishis who are concerned with our welfare. आप्तवाक्यं शब्दः। The words of our well-wishers is to be taken as the truth as per Shabda Pramaana. When there is वक्तानुकूल्य, श्रोतानुकूल्य and प्रसङ्गानुकूल्य i.e., when the disposition of speaker, the disposition of the listener and the atmosphere are conducive, whatever is being said has to be taken as आप्त वाक्यम् – the well-wisher's advice and they ought to be followed.

Characteristics of the Smrti Authors:

The Smrti authors explain the Vedic ideals without any misinterpretations. The Smrtikaaras had the intention to lead their disciples in the right path and elevate them to higher levels. आचिनोति आचरत्यपि आचार्यः – An Aacharya acquires knowledge and carries out his actions based on the acquired knowledge. He has unity in thoughts, words and action. ऋषिः is a gnaani. He sees oneness in humanity – सर्वखल्विदं ब्रह्म | He shows the direction to all the human beings. मार्गदर्शी महर्षिः | There is no selfish interest in him. He is concerned about everyone. Since each person's life is unique, the Rishi considers the good for everyone and provides the appropriate guidance.

The Tone of the Smrtis:

The Smrtis contain the advice of a guru to his disciples. So, these are considered as शासन – the rules that need to be adhered to.

Among the three types of classification of the scriptures as **Prabhu Sammita** (stated with an authority), **Mitra Sammita** (stated in a friendly manner) and **Kaantaa Sammita** (stated in a loving way), the Smrtis come under Prabhu Sammita as these are like the orders of the master

that need to be obeyed, failing which there would be punishment. So, whether one likes or not, the injunctions stated in the Smritis are to be carried out, at least due to the fear of the punishment. भयादिन्द्रश्च वायुश्च मृत्युर्धावति पंचमः |

Important Smrtis:

There are 37 important Smrtis. Some of the popular Smrtis are - Manu Smriti, Yagnavalkya Smriti, Narada Smriti, Parashara Smriti, Brihaspati Smriti and Katyayana Smriti.

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.

The Subject Matter of the Smrtis:

Dharma is the theme and soul of smritis. It is difficult to define Dharma. It can be understood as the privileges, duties and obligations of a man, standard of conduct as a member of the Aryan community, as a member of a particular varna and stage of life. It can be understood as a synonym of law in modern terms. It includes one's duties and social, religious, legal, political, and ethical obligations of a man.

Dharma is King of kings and far more rigid than the king. It guides the individuals as well as the communities. A king is primarily expected to uphold the Dharma. King is never the Lawmaker but an authority to enforce law.

Subject matter of smritis is divided into 3 namely, **Achaara**, **Vyavahaara** and **Prayaschitta**. Achaara and Prayaschitta deal with religious observances and their expiation rites. Vyavahaara deals with civil law.

The increase in the number of smriti texts show the importance of subject matter and also the willingness to accommodate changes required by the contemporary society.

Importance of Smrtis:

General laws that govern humanity are covered in these Smrti literatures. It is based on the Vedas, and these were written by recollecting the Vedic literature. The duties and responsibilities to be carried out at different phases of life and in different circumstances are covered in the Smrtis. It elaborates the activities to be performed as per the phases of life or the four Ashramas. If we want to have an integrated society and work in a united manner, a set of common principles that are respected by all people is required. These literatures were not written for a specific community. These were written for the Maanava Dharma and are applicable to the entire humanity.

If Vedas are the solid gold, the Smrti texts are the golden jewels minted at different times to suit the trend of the present times. This flexibility in undergoing change according to the changing times is the beauty of the Vedic literature. This is the reason that Vedas and the Sanaatana Dharma have stood the test of time. It would have been a dead literature if it had been rigid. There is scope of change in the Smrtis according to the current needs of the people.

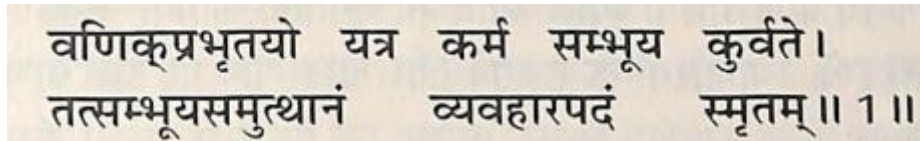
Thus, the greatness of Smrtis is that they are important for the protection of the human race. The adherence to Smrti is a wonderful concept that has to be preserved and practiced in the society for the sake of humanity. As suggested by Vivekananda we need a new Smrti for the present century. “As time rolls on, more and more of the Smrtis will go, sages will come, and they will change and direct society into better channels, into duties and into paths which accord with the necessity of the age, and without which it is impossible that society can live.” Swami Sivananda also conveys the same point when he says, “Our present society has considerably changed. A new Smriti to suit the requirements of this age is very necessary. Another sage will place before the Hindus of our days a new suitable code of laws. Time is ripe for a new Smriti. Cordial greetings to this age”. (nivedita2015.wordpress.com, n.d.)

Origin of Partnership (Sambhuya Samutthana):

Though a specific topic in law under the heading **Sambhuya Samutthana** (Partnership) is incorporated in Manusmrti it is only concerned with distribution of fees or income among priests whenever occasion for such distribution arose. Therefore, it appears that the concept of joint undertaking or partnership for carrying on trade or business was of a later origin than the

period of time ascribed to the Dharmasutras and Manusmrtis, because in the Dharmasutras of Gautama, Apastambha and Boudhayana also there is no reference to partnership. It is for the first time, a few provisions relating to partnership of traders, craftsmen etc. were incorporated in Yajnavalkya smrti. Probably by the time Yajnavalkya Smrti was composed partnerships for purposes of joint business ventures must have come into existence.

Narada gave a precise definition of partnership as:



वणिक्प्रभृतयो यत्र कर्म सम्भूय कुर्वते।
तत्सम्भूयसमुत्थानं व्यवहारपदं स्मृतम् ॥ १ ॥

Source: (Rama Jois, 2010)

Where tradesmen or the like join together to carry on any business or enterprise, that is known as 'Sambhuya Samutthanam' (partnership) – a topic of law. Joint undertakings were termed as Sambhuya Samutthanam. The word Sambhuya means several persons coming together and Samutthana means undertaking. The expression is the equivalent of 'partnership' (Rama Jois, 2010).

In Narada, Brihaspati, and Katyayana Smrti, we find some detailed provisions relating to partnership.

In this paper an attempt is made to list out and understand provisions relating to partnership from the Smrtis such as **Manu Smrti, Narada Smrti, Brihaspathi Smrti, Yajnavalkya Smrti.**

Manusmrti:

Manusmrti is usually translated as "code of Manu", but it literally means "reflections of Manu". It presents itself as a document that compiles and organises the code of conduct for human society. Manusmrti is the first book on the law in the world, which deals with the social and moral conduct of a person. It falls in the Smriti category of Hindu scriptures and hence, it is less authoritative than the Vedas and the Upanishads. There are 12 chapters in Manusmrti (www.hinduismfacts.org, n.d.)

As discussed above, the following verses of Manusmṛiti discusses the distribution of fees or income among priests whenever occasion for such distribution arose under the heading **Sambhuya Samutthana** (Partnership):

ऋत्विग् यदि वृत्तो यज्ञे स्वकर्म परिहापयेत् ।
तस्य कर्मानुरूपेण देयोऽंशः सहकर्तृभिः ॥ २०६ ॥

If a priest appointed at a sacrifice abandons his work, his associates shall pay him only such share as may be in keeping with the work actually done by him. — (8-206)

दक्षिणासु च दत्तासु स्वकर्म परिहापयन् ।
कृत्स्नमेव लभेतांशमन्येनैव च कारयेत् ॥ २०७ ॥

He who abandons his work after the fees have been paid, should receive his full share; and the work should be got done by another. — (8-207)

यस्मिन् कर्मणि यास्तु स्युरुक्ताः प्रत्यङ्गदक्षिणाः ।
स एव ता आददीत भजेरन् सर्व एव वा ॥ २०८ ॥

In connection with a rite, when specific fees are prescribed for its several parts, —will one man take all these, or shall they all share them? — (8-208)

रथं हरेत् चाध्वर्युर्ब्रह्माऽधाने च वाजिनम् ।
होता वाऽपि हरेदश्वमुद्गाता चाप्यनः क्रये ॥ २०९ ॥

At Fire-laying, the Adhvaryu shall take the chariot, and the Brahman the horse; or the Hotṛ shall take the house: and the Udgātṛ shall take the cart at the Soma-purchase. — (209)

सर्वेषामर्धिनो मुख्यास्तदर्धनार्धिनोऽपरे ।
तृतीयिनस्तृतीयांशाश्चतुर्थांशाश्च पादिनः ॥ २१० ॥

From among all, the chief men shall receive half; the next shall receive half of that; the ‘thirders’ the third part and the ‘fourthers’ the fourth part of it. — (210)

सम्भूय स्वानि कर्माणि कुर्वद्भिरिह मानवैः ।
अनेन विधियोगेन कर्तव्यांशप्रकल्पना ॥ २११ ॥

Among men carrying on their business jointly, the allotment of shares should be done by the application of these principles. — (211)

(Source: All the verses and translation is taken from wisdomlib.org)

Naradasmṛti:

Narada is one of the most prolific writers and one of the foremost authorities on ancient Indian Dharmasastras. Narada seems to be a pseudonym of a brilliant jurist of ancient India. It is estimated by Mahamahopadhyaya Dr. Pandurangavaman Kane, the author of the Classical History of Dharmasastras, that, he arrived between 100 A.D.-400 A.D. Naradasmṛti shows unmistakable evidence of the fact that its author lived in a period later than Manu & Yajñavalkya. Narada-smṛti, as it has come down to us, deals prominently with the Vyavahara portion of Dharmasastra. (www.exoticindiaart.com, 2015)

It is the only text of Dharma sastra that does not cover areas like righteous conduct and penance. As the text is very focussed it has been highly valued by rulers and their governments. (www.indianetzone.com, n.d.)

The structure of the Narada Smṛti is based on the eighteen titles of law which is mentioned in Manu smṛti. The text starts with a brief introduction into law and the courts before delving into these 18 titles.

Vyavaharapada (18 Titles of Law)

1. Rnadana
2. Niksepa
3. Sambhuyasamutthana
4. Dattapradanika
5. Abhyupetyasusrusa
6. Vetanasyanapakarma
7. Asvamivikraya
8. Vikriyasampradana
9. Kritanusaya
10. Samayasyanapakarma
11. Ksetrajavivada
12. Stripumsayoga

13. Dayabhaga
14. Sahasa
15. Vakparusya
16. Dandaparusya
17. Dyutasamahvaya
18. Prakirnaka (www.indianetzone.com, n.d.)

Laws Relating to Joint Commercial Undertaking or Trading by Partnership as discussed in Naradasmṛti is presented below:

Meaning of Partnership:

वणिक्प्रभृतयो यत्र कर्म सम्भूय कुर्वते ।
तत्सम्भूयसमुत्थानं व्यवहारपदं स्मृतम् ॥ 1 ॥

When traders, or others, jointly carry on business, it is called a Concern among Partners, a head of dispute.

Basis of Partnership:

फलहेतोरुपायेन कर्म सम्भूय कुर्वताम् ।
आधारभूतः प्रक्षेपस्तेनोत्तिष्ठेयुरंशतः ॥ 2 ॥

'The junction of stock is the basis of the transactions of men carrying on business jointly with a view to gain; therefore each should contribute his share to the common exertion.

Sharing of Profit and Loss:

समोऽतिरिक्तो हीनो वा तत्रांशे यस्य यादृशः ।
क्षयव्ययौ तदा वृद्धिस्तत्र तस्य तथाविधाः ॥ 3 ॥

The charges, loss, and profit of each partner are either equal % those of the rest or smaller or greater than theirs, according as his share is equal or more or less.

Duty to act honestly:

भाण्डपिण्डव्ययोद्धारभारसारान्ववेक्षणम् ।
कुर्युस्तेऽव्यभिचारेण समये स्वे व्यवस्थिताः ॥ 4 ॥

Let the partners, faithful to their agreement, duly contribute to the stock to the charges of living and of trade, to the deductions and weights, and the care of valuable articles.

One partner is the agent of all other partners:

प्रमादान्नाशितं दाप्यः प्रतिषिद्धकृतं च यत्।
असन्दिष्टश्च यत् कुर्यात् सर्वसम्भूयकारिभिः ॥ 5 ॥

Each member has to make good what has been lost by his want of care, and if he has acted against the will of, or without authorization from, all partners.

Loss caused by act of God or king:

देवतस्करराजभ्यो व्यसने समुपस्थिते।
यस्तत्स्वशक्त्या रक्षेत तस्यांशो दशमः स्मृतः ॥ 6 ॥

He who preserves, by his own effort, the goods of the partnership, when a calamity arises from Fate, through a gang of robbers, or through the king, the tenth part of the goods shall belong to him who has preserved them through his own exertion.

Liability of all partners in respect of expenses:

शुल्कस्थानं वणिक् प्राप्तः शुल्कं दद्यात् यथोदितम्।
न तद्व्यतिहरेद्राजो बलिरेष प्रकीर्तितः ॥ 12 ॥

A merchant should in passing by a toll-house pay the toll, which has been , fixed ; no wise man should neglect to do so, it is called the King's due.

Liability of each partner in case of negligence:

शुल्कस्थानं परिहरन्नकाले क्रयविक्रयो।
मिथ्योक्त्वा च परीमाणं दाप्योऽष्टगुणमत्ययम् ॥ 13 ॥

He who avoids a toll-house, he who buys or sells at any other than the ordinary time, and lie who makes a wrong estimate in declaring the value of his property, shall pay eight times the amount of his gain.

Devolution of right in case of death of a partner:

कश्चिच्चेत् सञ्चरन्देशान् प्रेयादभ्यागतो वणिक् ।
राजास्य भाण्डं रक्षेत यावदायाददर्शनम् ॥ 16 ॥

Should a travelling merchant, who has come from abroad, meet his death, the king shall keep his goods and chattels till the heir makes his stance.

दायादेऽसति बन्धुभ्यो जातिभ्यो वा समर्पयेत् ।
तदभावे सुगुप्तं तद्वारयेद्दशतीः समाः ॥ 17 ॥

On failure of an heir, he must make them over to his relatives or connections. On failure of them, he shall keep them well guarded for a period of ten years.

अस्वामिकमदायादं दशवर्षस्थितं ततः ।
राजा तदात्मसात् कुर्यादेवं धर्मो न हीयते ॥ 18 ॥

Such property without and owner and without a claimant as heir to the deceased, let the king, when it has been kept for ten years, appropriate to his own use : thus justice will not be violated.

(Sanskrit verses are taken from Dr.Ram Kumar Verma Shastry, Dynamic Publication India, n.d. and

English translations from Naradiya Dharmasastra of the Institutes of Narada, by JOLLY, JULIUS. <https://archive.org/details/naradiyadharmasa021669mbp/page/n11/mode/thumb> and <https://www.sacred-texts.com/hin/sbe33/sbe3335.htm>)

Yajnavalkya Smṛti:

A Treatise on Dharma, written in the fourth or fifth century, is the finest example of the genre of Dharmaśāstra--texts on religious, civil, and criminal law and the duties of rulers--that informed Indian life for a thousand years. It illuminates major cultural innovations, such as the prominence of documents in commercial and legal proceedings, the use of ordeals in resolving disputes. It became the most influential legal text in medieval India, and a twelfth-century interpretation came to be considered "the law of the land" under British rule. (www.searchworks.stanford.edu)

Yajnavalkya Smṛti consists of 1010 verses with 55 chapters, divided into 3 parts, Achaaraadhyaya, vyavahaaraadhyaya and prayaschittaadhyaya. Vyavahaaraadhyaya has 21

chapters. It deals with civic laws. How to run a judicial system, to hear a case, the witness, loan, partition, boundary disputes, disputes between master and the herdsmen, sale without ownership, non-payment of wages, gambling, betting, abuse, defamation, slander, assault, theft, adultery, review of judgement, Partnership agreement etc.
(www.nivedita2015.wordpress.com, n.d.)

Verses relating to Partnership as per Yajnavalkya Smṛti is presented below:

Meaning of Partnership:

**सम्भूयसमुत्थानप्रकरण ।
सामवायेन वणिजां लाभार्थं कर्म कुर्वताम् ।
लाभालाभौ यथाद्रव्यं यथा वा संविदाकृतौ ॥६३॥**

A number of traders, carrying on a trade for making profit, shall share profit and loss according to their respective shares, or according to the compact made {between themselves.]

(262)

Basis of Partnership:

**प्रतिषिद्धमनादिष्टं प्रमादाद्यच्च नाशितम् ।
स तद्दद्याद्विप्लवाच्च रक्षिताद्दशमांशभाक् ॥ ६४ ॥**

[If any member of a company] does an act, forbidden [by the general body], or without their permission, or carelessly, and thereby causes a loss, he shall have to make good the same. [If one] protects (its interests) at a time of imminent danger, he shall be entitled to {an additional share of] one-tenth of the profit as his reward. (263)

Sharing of Profit and Loss:

**अर्धप्रक्षेपणाद्विशं भागं शुल्कं नृपो हरेत् ।
व्यासिद्धं राजयोग्यं च विक्रीतं राजगामि तत् ॥६५॥**

The king shall levy a twentieth part [of the profit] as his royalty, because it is he who rules the market as the appraiser [of commodities]. What has been forbidden for sale and what is worthy of the royalty, even when sold, should go to him (264)

Liability of each partner in case of negligence.

**मिथ्यावदन्परीमाणं शुल्कस्थानादपासरन् ।
दाप्यस्त्वष्टगुणं यश्च सव्याजक्रयविक्रयी ॥ ६६ ॥**

He, who makes a false statement regarding the quantity of articles {in order to evade payment of proper duty], or he, who goes away from the place where duty is collected,—such a deceitful seller or buyer.—should be punished [with a fine] eight times the value [of the article]. (265)

**तरिकः स्थलजं शुल्कं गृह्णन् दाप्यः पलान्दश ।
ब्राह्मणप्रातिवेश्यानामेतदेवानिमन्त्रणे ॥ ६७ ॥**

If a person, engaged in the collection of customs duty, collects the same on articles carried on land, should be made to pay a fine of ten fanas. {Similar should be the punishment of a person,] who, renouncing a neighbouring Bréhmana, invites another. (266)

**जिह्वां त्यजेयुर्निर्लाभमशक्नोऽन्येन कारयेत् ।
अनेन विधिराख्यात ऋत्विक्कार्षककर्मिणाम् ॥ ६८ ॥**

They (i.e the members of a company) should drive away a deceitful partner, after having deprived him of his share, and should appoint, for an incapable one, another to conduct the business [on his behalf]. This law is, also, applicable to priests, cultivators and artisans. (268)

Devolution of right in case of death of a partner.

**देशान्तरगते प्रेते द्रव्यं दायादवान्धवाः ।
ज्ञातयो व्याहरेयुस्तदागतास्तैर्विना नृपः ॥ ६९ ॥**

{If one of the partners,}}] after going to a foreign country, dies there, 'His share shall revert to his sons, relatives, kinsmen, or to his other partners who have returned ; and, in their absence, to the king. (267)

(Source: Sanskrit verses sourced from:
<https://www.onlinesanskritbooks.com/2020/06/yagyavalkya-smriti-with-hindi-pdf.html> and
English translation taken from: Dutt, M. N. The Dharam Shastra, New Delhi: Cosmo Publications, 1978)

Brihaspathi Smrti:

Brihaspati smrti is one of the legal literatures of ancient India. Brihaspati assigns premier place to the code of Manu, yet it explains amplifies and does not hesitate to modify rules on various topics wherever found necessary. Brihaspati made an important land mark in the history of Hindu law by classifying Manu's eighteen title of law under two broad heads, Civil and Criminal law. Under Civil law were listed such titles as money lending, deposits, concerns of partnership, non-payment wages, land dispute, sale without ownership, sale and purchase, breach of contract, relation between husband and wife, theft and inheritance gambling which spring out wealth.” The two kinds of insult, violence and criminal connection with another's wife which spring out injury to others came under Criminal law (Kundu, 2022). Some principle of Brihaspati is embodied in section 95 of Indian penal code. Brihaspati is one of the basic law in Hindu law (<https://brah.ma/granth/brihaspati-smriti/.com>, n.d.).

अशक्तालसुरोगार्तमन्दभाग्यनिराश्रयैः^३ ।
वणिज्याद्याः^१ सहैतैस्तु न कर्तव्या बुधैः^४ क्रियाः ॥ ३

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.

प्रयोगं^४ कुर्वते ये तु हेमधान्यरसादिना ।
समन्यूनाधिकैरंशैर्लाभस्तेषां^५ तथाविधः ॥ ४

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.

समो^१ न्यूनोऽधिको वांशो येन क्षिप्तस्तथैव^२ सः ।
व्ययं दद्यात्कर्म कुर्याल्लाभं गृहीत चैव हि ॥ ५

As an equal, smaller, or larger share (of joint stock) has been contributed by a partner, in the same proportion shall he defray charges, perform labour, and obtain profit.

यः^३ कश्चिद्वचकस्तेषां विज्ञातः क्रयविक्रये ।
शपथैः स विशोध्यः^४ स्यात्सर्ववादे त्वयं विधिः ॥ ७

Whatever property one partner may give (or lend), authorized by many, or whatever contract he may cause to be executed, all that is (considered as having been) done by all.

परीक्षकाः^२ साक्षिणश्च त एवोक्ताः परस्परम् ।
सन्दिग्धेऽर्थेऽवश्चनायां^{*६} न चेद्विद्वेषसंयुताः ॥ ६

They are themselves pronounced to be arbitrators and witnesses for one another in doubtful cases, and when a fraudulent act has been discovered, unless a (previous) feud should exist between them.

दैवराजभयाद्यस्तु^{३ ६} स्वशक्त्या परिपालयेत् ।
तस्यांशं दशमं दत्वा^{८*} गृहीयुस्तेऽंशतोऽपरम् ॥ ११

When a loss or diminution has occurred through fate or the king, it is ordained that it should be borne by all (partners) in proportion to their respective shares.

शुल्कस्थानं^४ वणिक् प्राप्तः शुल्कं दद्याद्यथोचितम् ।
न तद्व्यभिचरेद्राज्ञां बलिरेष प्रकीर्तितः ॥ १२

When (a single partner acting) without the assent (of the other partners) or against their express instructions injures (their joint property) through his negligence, he must by himself give a compensation to all his partners.

नैवं^५ नस्करराजाग्निव्यसने समुपस्थिते ।

यस्तु स्वशक्त्या रक्षेत्तु तस्यांशो दशमः स्मृतः ॥ १३

That (partner), on the other hand, who by his own efforts preserves (the common stock) from a danger apprehended through fate or the king, shall be allowed a tenth part of It (as a reward), the remainder being distributed among the other (partners), according to their shares
(In the stock).

यदा^६ तत्र वणिक्कश्चित्प्रमीयेत प्रमादतः ।

तस्य भाण्डं दर्शनीयं नियुक्तैराजपूरुषैः ॥ १४

Should any such partner in trade happen to die through want of proper care, his goods must be shown (and delivered) to officers appointed by the king.

यदा^१ कश्चित्समागच्छेत्तदा^३ रिक्थहरो नरः ।

स्वाम्यं^२ विभावयेदन्यैः स तदा लब्धुमर्हति ॥ १५

And when anyone comes forward claiming that man's property as heir (to the deceased partner), he shall prove his right to it by (the evidence of) other men, and then let him take it.

राजाऽऽददीत^{३*} षड्भागं नवमं^६ दशमं तथा ।

शूद्रविद्वक्षत्रजातीनां[†] विप्राद्गृहीत विंशकम् ॥ १६

The king shall take a sixth, a ninth, and a twelfth part respectively from the property of a Sudra, Vaisya, and Kshatriya ; and a twentieth from the property of a Brahman.

त्र्यब्दादूर्ध्वं^{४८} तु नागच्छेद्यत्र^८ स्वामी कथञ्चन ।

तदा गृहीत तद्राजा ब्रह्मस्वं ब्राह्मणान् श्रयेत् ॥ १७

But after the lapse of three years. If no owner should come forward by any means, the king shall take that property; the wealth of a Brahman he shall bestow on (other) Brahmins.

एवं^{५८} क्रियाप्रवृत्तानां^१ यदा^९ कश्चिद्विपद्यते ।
तद्वन्धुना^{११} क्रिया कार्या^१ सर्वेषां सहकारिभिः ॥ १८

So, among (several) persons jointly performing a ceremony. If any one should meet with an accident, his (part of) the ceremony shall be performed by a kinsman of his, or by all his associates (in work).

आगन्तुकाः^३ क्रमायातास्तथा चैव स्वयंकृताः ।
त्रिविधास्ते समाख्याता वर्तितव्यं तथैव तैः ॥ २१

They (the officiating priests) are pronounced to be threefold: coming (of their own accord), hereditary in the family, and appointed by (the sacrificer) himself; their business should be performed by them accordingly.

ज्ञातिसम्बन्धिसुहृदामृणं^९ देयं सबन्धकम् ।
अन्येषां लग्नकोपेतं लेख्यसाक्षियुतं तथा ॥ २३

To a kinsman, relative, or friend one may lend money with a pledge (only); a loan to others must be guaranteed by a surety, or there must be a written contract or witnesses.

स्वेच्छादेयं^{११} हिरण्यं^{११} तु रसधान्यं तु सावधि ।
देशस्थित्या प्रदानव्यं गृहीतव्यं तथैव तत् ॥ २४

Gold or silver may be lent according to one's own choice ; liquids and condiments, and grain, for a specified period only ; it is by local custom that both the loan and its recovery should be regulated.

बहूनां^१ सम्मतो यस्तु दद्यादेको^{११} धनं नरः ।
करणं कारयेद्वापि^{११} सर्वैरेव कृतं भवेत् ॥ २२

That, however, which has been lent by several persons in common, must be recovered by them jointly; any (such lender) who fails to demand (the loan together with his partners) shall forfeit interest.

वाह्यवाहकबीजाद्यैः^{३d} क्षेत्रोपकरणेन^e च ।

ये^f समाः स्युस्तु तैः सार्धं कृषिः कार्या विजानता ॥ २७

Tillage should be undertaken by a sensible man jointly with those who are his equals in point of cattle, workmen, seeds, and the like, as well as implements of husbandry.

पर्वते^g नगराभ्यासे तथा राजपथस्य च ।

उषरं^h मूषिकव्याप्तं क्षेत्रं यत्नेन वर्जयेत् ॥ २९

They should refrain anxiously from cultivating an enclosed pasture-ground, land adjacent to a town, or to the king's highway, barren soil, and ground infested by mice.

कृशातिवृद्धंⁱ क्षूद्रं च रोगिणं प्रपलायिनम् ।

काणं खञ्जं^j विनाऽऽद्यात् वाह्यं प्राज्ञः कृषीवलः ॥ ३१

A sensible cultivator must not admit cattle which is lean, very old, tiny, diseased, apt to run away, blind of one eye, or lame.

गतौनूपं^k सुसेकं च^l समन्तात्क्षेत्रसंयुतम् ।

प्रकृष्टं^m च कृतं काले वापयन् फलमश्नुते ॥ ३०

That man will enjoy produce who sows fertile land, which has many holes and is wet, capable of irrigation, surrounded by fields on all sides, and cultivated in due season.

हिरण्यकुप्यसूत्राणांⁿ काष्ठपाषाणचर्मणाम् ।

संस्कर्ता^o तु कलाभिज्ञः शिल्पी^p प्रोक्तो मनीषिभिः ॥ ३३

One able to work up gold, silver, thread, wood, stone, or leather, and acquainted with the articles to be manufactured (with such materials), is called Silpin (an artizan or artist) by the wise.

हेमकारादयो^६ यत्र शिल्पं सम्भूय कुर्वते ।
कर्मानुरूपं^१ निर्वेशं^५,^४ लभेरंस्ते यथांशतः ॥ ३४

When goldsmiths or other (artists) practice their art jointly, they shall share the profits in due proportion, corresponding to the nature of their work.

हर्म्यं^१^४ देवगृहं^५ वाऽपि^६ धार्मिकोपस्कराणि च ।
सम्भूय कुर्वतां^४ चैषां^५ प्रमुखो द्व्यंशमर्हति ॥ ३६

The headman among a number of workmen jointly building a house or temple, or digging a pool or making articles of leather, is entitled to a double share (of the remuneration).

नर्तकानामेष^२ एव^१ धर्मः सद्भिरुदाहृतः ।
तालज्ञो^५ लभतेऽध्यर्धं^४ गायनास्तु समांशिनः ॥ ३७

The same rule has been declared by virtuous men for musicians; he who knows how to beat the time shall take a share and a half, but the singers shall take equal shares.

स्वाम्याज्ञया^३ तु^४ यश्चौरैः परदेशात्^५ रमाहृतम् ।
राज्ञे दत्त्वा तु षड्भागं^४ भजेयुस्ते यथांशतः ॥ ३८

When anything has been brought from a hostile country by freebooters, with the permission of their lord, they shall give a sixth part to the king and share (the remainder) in due proportion.

चतुरोऽंशांस्ततो^४^५ मुख्यः शूरस्यंशं^४ समाप्नुयात् ।
समर्थस्तु हरेद् द्व्यंशं^५ शेषाः^५ सर्वे समांशिनः ॥ ३९

Four shares shall be awarded to their chief; he who is (specially) valiant shall receive three shares; one (particularly) able shall take two; and the remaining associates shall share alike.

(Sanskrit verses taken from Brihaspatismṛti (reconstructed) by K V Rangaswami Aiyangar, Baroda Oriental Institute, 1941 and English translations taken from Jolly, J, Minor Law Books, Oxford, at the Clarendon Press, 1889)

Indian Partnership Act ,1932:

The Indian Partnership Act was enacted in 1932 and it came into force on 1st day of October, 1932[1]. The present Act superseded the earlier law relating to Partnership, which was contained in Chapter XI of the Indian Contract Act, 1872. The Act is not exhaustive. It purports to define and amend the law relating to Partnership.[2] (akberahmad, n.d.).

Prior to 1932, Chapter XI (sections 239 to 266) of the Indian Contract Act, 1872 (Act IX of 1872) contained the law relating to partnership in India (www.advocatekhoj.com, n.d.).

The development of trade and commerce in the country and the rise and growth of a separate business class spurred the necessity of implementing another partnership agreement. As a result, the above-mentioned sections were repealed as they were regarded as inefficient, and the new Partnership Act was introduced in 1932. It is stated to be based on the English Partnership Act of 1890 with certain modifications.

Indian Partnership Act.1932: Preamble

Preamble:

The preamble is an admissible aid to construction. It throws light on the intent and design of the legislature and indicates the scope and purpose of the legislation itself.[4] But it cannot be used to control or qualify precise and unambiguous language of the enactment. It is only when there is a doubt as to the meaning of a provision, that recourse may be had to the preamble to ascertain the reasons for the enactment and hence, the intention of Parliament.[5]

Scope and Purpose:

The scope of a partnership is primarily a question of the intention of the partners. There is no restriction on the exercise of such powers as it chooses at any time to exercise, except such prohibitions on illegal, immoral or fraudulent conduct as apply equally to individuals.

1- A partnership may itself be a member of another firm if the partners of the constituent firm consent thereto.

2- If it appears that all the partners have either authorized or ratified the contract, no further question as to its validity ordinarily remains. The cases where the question of the validity of partnership contract arises is where one partner has made the contract without specific authority from his co-partners. As to their implied scope partnerships may be divided into the classes of the non-trading and the trading. Some powers can be exercised by partners in partnership of either type. Thus, a partner may retain an attorney to protect the interests of the firm (Akberahmad, n.d.).

Limited Liability Partnership Act 2008:

Keeping in view the international business trends where a range of services is being offered by professionals and businesses in the form of Limited Liability Partnerships, the Indian legislature enacted the 'Limited Liability Partnership Act' in the year 2008. The LLP Act is broadly based on the UK LLP Act, 2000 and the Singapore LLP Act, 2005. In India there is a gap in the business structure which needs to be filled so as to enable high growth in the service sector especially that related to professionals. The purpose of the Act is to bridge this gap (Deep, 2012).

The Limited Liability Partnership Act, 2008 (the LLP Act), except for certain sections, became operative from 31st March, 2009. The Rules made under the LLP Act have been notified on 1st April, 2009. First LLP was registered on 2-4-2009. Sections 55 to 58 pertaining to conversion of a firm or a company to LLP and Rules pertaining to such conversion became operative from 31st May, 2009. Section 51 and sections 63 to 65 pertaining to winding up of an LLP have become operative from 10th July, 2012 (www.bcasonline.org, n.d.).

The concept of the Limited Liability Partnership (LLP) came to India in the year 2008. An LLP has the characteristics of both the partnership firm and company. It is the most preferred form of organization among entrepreneurs as it incorporates the benefits of both partnership firm and company into a single form of organization. LLPs in India are regulated by the Limited Liability Partnership Act, 2008 (Jain, 2021).

Comparable provisions in the Indian Partnership Act:

The definition given in section 4 of the Partnership Act and the concept of partnership as found in the provisions of Smritis is similar. Ancient Indian law or Smritis and Partnership Act share the same view on the basis of partnership that is partnership arises out of agreement and not out of status. The concept of each partner is the agent of all the other partners which is discussed in section 18 and 19 of the Partnership Act was also laid down in Brihaspati Smriti. Smritis and the Act share a common view with regard to the liability of partners for acts done by a partner.

Smritis' view on the death of a partner did not allow the automatic dissolution of the firm and instead it provided continuation of the firm with the legal heirs of the deceased partners which is also possible under the present law through an inclusion clause.

Thus, we find a striking similarity on all fundamental aspects between the Smritis on the Partnership nature of business and the Indian Partnership Act (Rama Jois, 2010).

Conclusion:

Hence, it can be understood that in Manusmriti was the first smriti to talk about Sambhuya Samutthana as partnership venture where the rule discussed about the distribution of fees at a sacrifice to secular joint undertakings. Partnership of traders and artisans assumed greater importance in the later periods and hence we can find the rule of partnership being dealt in detail in other smritis such as Narada, Brihaspati, Yajnavalkya and Katyayana smriti (Kane, 1946). It is also seen that there is a lot of similarity on the basic aspects in the rules discussed in the Smritis with that of the Act passed later on in India.

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About the reference: The History of Dharmaśāstra, with subtitle Ancient and Medieval Religious and Civil Law in India, is a monumental seven-volume work consisting of around 6,500 pages. It was written by Bharat Ratna Pandurang Vaman Kane, an Indologist. The first volume of the work was published in 1930 and the last one in 1962.

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Another characteristic of the ancient penal system was simplicity. At that time there was no mediation of lawyers, the parties used to make their own statements and present evidence. It would have cost less. In the present system, from time to time, the one who has the money, wins, sells justice to the highest bidder. In antiquity he had little chance.

Sanskrit verses of Yajnavalkya Smriti sourced from:
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About the reference: It is a blog which provides materials to people who are aspiring to learn Sanskrit and ancient Indian texts by Ms. Niveditha. The material posted here could benefit those who are learning Sanskrit. There is material related to the correspondence course conducted by Samskrita Bharati and many other Sanskrit courses.

Choudhury, N. (1983) "Vedic partnership rules," Accounting Historians Journal: Vol. 10: Iss. 2 , Article 9. Available at: https://egrove.olemiss.edu/aah_journal/vol10/iss2/9

About the reference: This article highlights the 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 hence, it is difficult to determine from the literature as to how common the partnership form of business association was during those 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.

<https://www.hinduismfacts.org/hindu-scriptures-and-holy-books/manusmriti/>

About the reference: hinduismfacts.org was first indexed by Google more than 10 years ago. It's a platform which discusses facts about Hinduism.

<https://taxguru.in/corporate-law/limited-liability-partnership-act-2008-llp-act-2008.html>

About the reference: This website provides free updates to Chartered Accountants, Company Secretaries, Tax Professional, Cost Accountants and other Account Professional on Amendments in Income Tax, Wealth Tax, MVAT, DVAT, PVAT, Company Law, Service Tax, ICAI Regulation, FEMA, RBI, Custom Duty, Excise, DGFT, SEZ, ICSI Regulation, CMA Regulation, Labour laws, Corporate Law , Goods and Service Tax etc. We update our reader with latest News on these which includes recent Circular, Notification, Amendments, and Case Laws etc.

<https://www.bcasonline.org/>

About the reference: BCAS is a voluntary organisation established on 6th July 1949, BCAS has presently more than 9,000 members from all over the country. BCAS is a principle-centered and learning-oriented organisation promoting quality service and excellence in the profession of Chartered Accountancy. The organisation is a catalyst to bring out better and more effective Government policies & laws in order to have clean & efficient administration and governance.

Ray, Deep and Ray, Deep, The Emergence of Limited Liability Partnerships (July 25, 2012).

Available at SSRN: <https://ssrn.com/abstract=2117240> or <http://dx.doi.org/10.2139/ssrn.2117240>

About the reference: The paper principally deals with the emergence of LLP's. The author takes a look at the history of LLP's and how the concept came into being. The author also examines the benefits of LLP's and how it helps in conducting business in modern times. The laws regarding LLP's in India have also been discussed in the paper.

<https://www.legalservicesindia.com/article/158/Indian-Partnership-Act,1932.html>

About the reference: Legal Service India is the premier and leading Indian Legal portal focused on law and government. It provides access to an extensive and fast-growing online library of free legal resources for use by Legal Professionals, Students, Consumers and Businesses.

<https://www.advocatekhoj.com/library/lawreports/partnershipact/1.php?Title=Partnership%20Act,%201932&STitle=History%20of%20the%20legislation>

About the reference: AdvocateKhoj communication platform bridges the gap between clients and advocates by providing an avenue for talk. Anyone who needs legal assistance can present a case (answer some simple questions about their legal situation) "free of cost" on the AdvocateKhoj website without revealing his or her identity.