

# SYNOPSIS OF LECTURES

## LECTURE II

### THE LAW OF PARTNERSHIP WITH SPECIAL REFERENCE TO BRITISH INDIA

#### Origin and Growth of the Law of Partnership up to the Passing of the Indian Contract Act

#### HINDU LAW OF PARTNERSHIP

##### Early forms of Partnership.

Partnership in the Vedic age—joint performance of sacrifices by priests. Shares in *Dakshina* and perquisites in sacrifices. Division of sacrificial animals—partnership in *Yagna* (sacrifice).

Partnership among priests according to

- (i) *Manava Dharmashastra* and
- (ii) *Kautilya*.

Applicability of the principles to other sorts of partnership in later times.

Partnership agreement between head-priest and puisne-priest<sup>1</sup>.

##### Shares

according to *Aitareya Brahmana*<sup>2</sup> and *Atharva-Veda*<sup>3</sup>. Share ratio in case of a priest having abandoned work or having performed part of the work. Share ratio according to Gautama. Nature of share proportion as between the sixteen priests of a *Yajna*—principle applicable when works done conjointly—Yagnavalkya's view.

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(1) Manu VIII. 206.  
(2) Aitareya Brahmana VIII.  
(3) Atharva Veda.

## Partnership in Egyptian and Homeric Customs.

### Partnership Rules in Earlier Smritis.

Nature of partnership according to Manu, Yagnavalkya and Kautilya.

Manu lays down "one rule governing partnerships". The fourth title in Manu "Concerns amongst partners."

Settlement of disputes regarding proxy<sup>1</sup>—retirement<sup>2</sup> from partnership. Expulsion of partners—views of Manu, Yagnavalkya and Kautilya and the latest research workers.

### Partnership in Later Smritis.

Narada and Brihaspati's views regarding—

- (i) Choice of partners.
- (ii) Necessary qualifications of partners.
- (iii) Determination of share of profit in joint-stock.
- (iv) Share proportion in case of (a) gold, (b) grains, (c) liquids or the like when jointly lent.
- (v) Recognition of the principle of (a) agency and (b) arbitration in partnership.
- (vi) Consequence of fraud on partnership in early Hindu Law—Oath or ordeal in case of fraud of partners.
- (vii) Share in losses.
- (viii) Compensation in case of damage when acts done without express instruction of partners.
- (ix) Nature of reward to the preserver of partnership property.
- (x) Claim to deceased partner's property.
- (xi) Duties of partners in case of accidental loss.
- (xii) Apportionment of work amongst partners.

### Their Views regarding Different Classes of Partnership.

1. Partnership in money-lending.
2. Partnership in agriculture :
  - (a) reimbursement of a partner,
  - (b) rules applicable to cultivators in partnership.

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(1) Manu VIII. 207.

(2) Manu VIII. 206.

3. Partnership amongst goldsmiths and artisans.
4. Partnership among
  - (i) architects, (ii) builders, (iii) manufacturers of leather articles, and (iv) diggers.
5. Ratio of share in case of joint performance by
  - (i) musicians and (ii) singers.
6. Mode of division of booty or spoils of war amongst
  - (i) freebooters and (ii) soldiers.

Extent of conqueror's share.

### **Consequence of Non-Observance of Partnership Rules.**

Rules regarding (a) failure to observe agreement, (b) neglect of work and (c) quarrel with partners.

Dispute regarding partnership—duty of the King—King's decision—punishment to partners—(a) injunction, (b) banishment, (c) imposition of fines.

### **Miscellaneous Provisions regarding Partnership.**

Gift to a partner—claim of other partners—"Eternal law of partnership" according to Brihaspati.

### **Contracts analogous to Partnership Agreements in Early Hindu Law.**

Contracts of service with (i) menials, (ii) herdsmen, and (iii) milkmen—if those constitute partnership.

Contracts of service with weavers, if partnership<sup>1</sup>.

Contract of service with sailors in early Hindu Law, if partnership—loss due to negligence—fraud of sailors in commercial adventure—views of Manu and Kautilya thereon.

### **Partnership by Implied Contract.**

Implied partnership—obedience to the decision of majority and agency amongst partners essential. Manava Dharmashastra, Kautilya and Hindu Polity of Mr. Jayaswal.

#### **Agency**

- (a) Liability of partners for torts.
- (b) Partner's right to insurance-fee benefit.
- (c) Liability of partners for illegal acts.

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(1) Manu VIII. 397.  
Arthashastra IV. 1.

Growth of the contractual relations in business—sanctity of contract—views of Manu<sup>1</sup>, Yagnavalkya<sup>2</sup>, Kautilya<sup>3</sup> and Bishnu<sup>4</sup>.

### **Origin and Development of Business Guilds analogous to Partnerships**

*Ganas and Vratas in Rig-Veda.*

Existence of guilds in Hindu law—difference between a partnership and a guild—views of the codes—partnership amongst craftsmen in villages—partnership in industry in cities—economic development—Rhys David's views—nature of guilds, their organisation and importance regarding partnership business. Comparison of the Indian guilds with those of the Romans, the French, the Germans and the English and their respective influences on the law of partnership.

Meaning of "*Sambhuya Samutthana*."

Recognition of trade-custom in the 4th century B. C.—Kautilya. Sea-borne trade and growth of new laws—Yagnavalkya and Mr. Jayaswal.

### **Hindu Law regarding Partnership Property.**

Partnership in mining—views of Manu, Kautilya and Gautama.

Partnership and Corporation property—its appropriation "theft in law"—Yagnavalkya.

Dissolution of partnership in Hindu law—succession to the assets of a dead partner—Kautilya.

### **Social Incorporation of Merchants as a Class in India.**

Merchant class—the word "Vanij"—its meaning—"Vaisyas",—"Panis",—their nature in Rig-Veda and Arthasastra—modern views.

"Centre of the law of partnership shifted from 'priests to trade' " explained.

Social changes and their influence upon the law of partnership. Growth of castes and crafts and the rise of the mixed castes and their influence upon the formation of the law of partnership.

Economic condition of the people and the influence of capital on partnership agreements in case of (i) milkmen, (ii) agriculturists (iii) labourers, and (iv) traders in hoofs and horns of animals.

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- (1) Manu VIII. 215-216.
  - (2) Yagnavalkya II. 173.
  - (3) Kautilya.
  - (4) Bishnu.
  - (5) Yagnavalkya II. 259.

### Views of Western Savants regarding Indian Partnership.

Partnership if founded on early "brotherhoods"—views of Manu and Sullivan.

Law of partnership in Buddhistic Sutras, Jatakas and inscriptions.

Influence of the Indian law of partnership upon the laws of Burma, Siam, Malaya, Tibet and Japan.

### Mahommedan law of partnership—*Sherkat*.

Islam's sympathy towards commercial contracts.

Kinds of partnership in Mahommedan law *e.g.*

- (a) *Sherkat-al-abdan* (personal)—its peculiarities.
- (b) *Sherkat-al-Mofawada* (universal)—its characteristics.
- (c) *Sherkat-al-wuja* (commercial)—its essentials. The above three null and void.
- (d) *Sherkat-al-inan* (particular) a legitimate partnership—its essentials and difficulties.

### Partnership Funds.

- (i) How constituted.
- (ii) Consideration of share capital and labour.
- (iii) Applicability of the rules to conventional partnership.
- (iv) Question of profit and loss and the share proportion.
- (v) Validity of stipulations to the contrary.
- (vi) Authorisation

Share in profit and loss when to be determined.

*Salary*—

- (a) Partners when entitled to salary.
- (b) Modern law thereon.

Modes of termination of partnership in Mahommedan law. Termination by (i) death, (ii) lunacy or (iii) disappearance of partners.

### Rights.

- (i) The rights of a partner with regard to termination.
- (ii) Rights of disposal of common funds.
- (iii) Formalities.

### Obligations.

- (i) Obligations as between partners.
- (ii) Good-faith in the 'word' of partner.
- (iii) Onus of proof and presumption in case of conflict between partner's claims.

**Muzaribut—**

- (a) Its characteristics.
- (b) Its advantages and disadvantages.
- (c) Reason of its importance.
- (d) *Muzaribut* contract compared with the French *Commandite*.

Injunctions of the Koran as to the applicability of the Moslem law to non-Moslems and their result on the law of partnership. Views of (i) *Baillie* and (ii) *Mr. Khuda Bux* thereon.

English law as administered during Mahommedan rule in English settlements—in Presidency towns and in Muffussil.

**Importance of the Regulation III of 1773—**

Application of the principles of justice, equity and good conscience.

**The Indian Law of Partnership up to the passing of Act IX of 1872—**

- (a) The First Statutory Law on partnership in British India, Act XV of 1866.
- (b) Its repeal.
- (c) Provisions in the Indian Contract Act IX of 1872.
- (d) The Act not a complete code.
- (e) Application of the rules of English jurisprudence.