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   RESULTS & DISCUSSION

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FDI POLICIES OF INDIAN GOVERNMENT SINCE ECONOMIC REFORMS – AN ANALYSIS

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ABSTRACT

FDI inflows into India have grown rapidly since the liberalization of the policy regime in the early nineties. This has been accompanied by an increase in competition amongst the developing countries to attract FDI, resulting in higher investment incentives offered by the host governments and removal of restrictions on operations of foreign firms in their countries. This paper examines the impact of fiscal incentives offered, removal of restrictions and signing of bilateral and regional investment agreements and lower tariffs attract FDI from developing countries.

KEYWORDS
Foreign Direct Investment, government policies, Bilateral Investment Treaties, Economic Reforms.FERA, FEMA.

INTRODUCTION
India was a latecomer to economic reforms, in the wake of an exceptionally severe balance of payments crisis. The need for a policy shift had become evident much earlier, as many countries in East Asia achieved high growth and poverty reduction through policies which emphasized greater export orientation and encouragement of the private sector. India took some steps in this direction in the 1980s, but it was not until 1991 that the government signalled a systemic shift to a more open economy with greater reliance upon market forces, a larger role for the private sector including foreign investment, and a restructuring of the role of government.
India's economic performance in the post-reforms period has many positive features. The average growth from 1992-93 to 2008-09 was around 8.0 percent, which puts India among the fastest growing developing countries in the 1990s. This growth record is only slightly better than the annual average of 5.7 percent in the 1980s, but it can be argued that the 1980s growth was unsustainable, fuelled by a build up of external debt which culminated in the crisis of 1991. In sharp contrast, growth in the 1990s was accompanied by remarkable external stability despite the East Asian crisis. Poverty also declined significantly in the post-reform period, and at a faster rate than in the 1980s.However, average growth performance hides the fact that while the economy grew at an impressive 8.0 percent in the first five years after the reforms, it slowed down to 5.4 percent in the next five years. India remained among the fastest growing developing countries in the second sub-period because other developing countries also slowed down after the East Asian crisis, but the annual growth of 5.4 percent was much below the target of 7.5 percent which the government had set for the period. Inevitably, this has led to some questioning about the effectiveness of the reforms.
Opinions on the causes of the growth deceleration vary. World economic growth was slower in the second half of the 1990s and that would have had some dampening effect, but India's dependence on the world economy is not large enough for this to account for the slowdown. Critics of liberalization have blamed the slowdown on the effect of trade policy reforms on domestic industry. However, the opposite view is that the slowdown is due not to the effects of reforms, but rather to the failure to implement the reforms effectively. This in turn is often attributed to India's gradualist approach to reform, which has meant a frustratingly slow pace of implementation. However, even a gradualist pace should be able to achieve significant policy changes over last years.
We review policy changes in five major areas covered by the reform program: fiscal deficit reduction, industrial and trade policy, agricultural policy, infrastructure development and social sector development. Based on this review, we consider only FDI to assess whether the reforms have created an environment which can support 8 percent GDP growth.

REVIEW OF LITERATURE
Bajpai and Sachs. (1997) in their article "India's economic reforms: some lessons from East Asia", concluded that in the current global scenario. it is possible for India to achieve very dynamic growth based up on labour intensive manufacturing that combine the vast supply of Indian labour including skilled managerial and engineering labour ,with foreign capital technology and markets. However from the long term development point of view, we are of view, that India has tremendous growth prospectus through export lead growth involves a broad range of sector, both traditional and new. The most interesting and new sector is software and information technology.
Asiedu Elizabeth. (2001) in his article "On the Determinants of Foreign Direct Investment to Developing Countries: Is Africa Different?", He analyzes the determinants of Foreign Direct Investment (FDI) to developing countries and examines why Sub-Saharan Africa (SSA) has been relatively unsuccessful in attracting FDI despite policy reform. The results indicate that the factors that drive FDI have a differential impact on FDI flows to SSA. Specifically, infrastructure development and a higher return on capital promote FDI to non-SSA countries. In contrast these factors have no effect on FDI to SSA. Openness to trade promotes FDI to both SSA and non-SSA countries, however, the marginal benefit from increased openness is less for SSA suggesting that trade liberalization will generate more FDI to non-SSA countries than SSA countries. Another important finding is that there is an "adverse regional effect" for SSA: a country in SSA will receive less FDI by virtue of its geographical location. These results suggest that Africa is different.
Campus and Kinoshita. (2003) in his article " Why does foreign direct investment go where it goes ,new evidence from the transition economics", reached the conclusion that for said set of countries FDI is influenced by economy clusters, market size, the low cost of labour and abundant natural resources. Besides all these factors, the following variables presented significant results: second institutions, trade openness and lower restrictions to FDI inflows.
Dutta M.K. & Sarma G.K. (2005) in his article "Foreign Direct Investment in India since 1991: Trends, Challenges and Prospects", says that with the initiation of new economic policy in 1991 and subsequent reforms process, India has witnessed a change in the flow and direction of foreign direct investment (FDI) into the country. This is mainly due to the removal of restrictive and regulated practices. However, the country is far behind in comparison to some of the developing countries like China. However, negative growth rate is noticed during the period 1998-2000 primarily due to falling share of major investor countries, steep fall of approval by 55.7% in 1998 compared to 1997 and slackening of fresh equity. However, traditional industrial sectors like food processing industries, textiles, etc. which were once important sectors attracting larger FDI, have given way to modern industrial sectors like electronics and electrical equipments, etc. In this paper analysis on the factors affecting potentiality and challenges of FDI in the country is discussed and open a room for future discussion. .
Firoz Alam. (2005) in his article "Impact of foreign direct investment on Indian Economy since economic liberalisation", reveals that FDI is an important avenue through which investment takes place in the country .The importance of FDI extends beyond the financial capital that flows in to the country. It is clear from the above discuss that FDI flows can induce economic activity and growth in various ways.
Dr. S. Sinha Swapna, Dr.H Kent David and Dr.Shomali Hamid. (2007) in his article " Comparative analysis of FDI in China and India"**,** Expressed that what lessons emerging markets that are laggards in attracting FDI, such as India, can learn from leader countries in attracting FDI, such as China in the global economy. This study fills the gap in the literature by analyzing the Indian data at the relevant micro state level for the period 1992-2005 and comparing it with the Chinese data for period of 1978-2005 at the relevant economic zone level. Indian FDI attraction model was tested using OLS and autoregressive models and it was found that India has grown due to its human capital, size of the market, rate of growth of the market, and political stability. For China, congenial business climate factors comprising of making structural changes, creating strategic infrastructure at SEZs, and taking strategic policy initiatives of providing economic freedom, opening

up its economy, attracting Diaspora, and creating flexible labour laws were identified as drivers for attracting FDI. The model using these variables was tested with OLS regression and autoregressive regression analysis and was found significant. There are lessons that India can learn from China Privatizing oil sector and banks to reduce government intervention and provide economic freedom, opening economy to level playing field to TNCs by reduced tariff and taxes, proactively engaging Diaspora, and flexible labour laws to permit free entry and exit to TNCs will help India attract higher FDI.

Gustavsson Thomas Cociu Sergiu.(2007) in his thesis “Determinants of Swedish and German FDI– The case of Baltic and CEE Countries”, tries to determine some of the driving force behind Swedish foreign direct in-vestments into the Baltic counties. The analysis is performed in three steps, first we analyze global FDI into transitional economies, and afterwards we look at Swedish FDI and com-pair it with German FDI. The determinants examined are index of economic freedom, R&D intensity, trade balance, wage level and proximity. The analyzed period is form 1995 to 2005. The analysis use data on the following transition countries Latvia, Lithuania, Esto-nia, Poland, Hungary, Czech Republic, Slovak Republic, Slovenia, Croatia, Romania and Bulgaria. The results show that the determinants vary across the countries. The motives of Swedish and German investors differ. Thus, for Swedish investors R&D, economical freedom and trade balance are the influencing factors, but for Germany only trade balance and wage level are important. The conclusion is that different determinants triggers foreign direct investment in transitional economies in different ways.

Suri Nitti. (2008) in his article “Determinants of foreign direct investment in India”, He examines the impact of GDP, taxes, trade openness, labour cost and political stability on FDI inflows. Using alternative specifications (based on differences in dependent and independent variables used), FDI inflows into India are found to be significantly determined by expected national income, tax rate, and trade openness and labour cost for the period under study.

OBJECTIVES

To analyze the various FDI policies of Indian govt. since 1991.

RESEARCH METHODOLOGY

HYPOTHESIS

That the FDI policy of China and Malaysia are much better than the India.

SOURCES OF DATA

The present study relates to period 1991 to 92 to 2008 to 09. Secondary sources of data have been adopted for the study. The required figures will be collected from Economy Surveys of the different years, RBI Bulletin, Direction of trade statistics year book, IMF, Economic survey of India, Annual report of ministry of commerce, different websites, Journal and News papers. The necessary data have been collected and compiled from both national and international sources i.e. world investment report (WIR), World investment directory (WID), economic survey, reports of department of industrial policy promotion (DIPP) and reports of committee on compilation of FDI in India.

POLICY OF GOVERNMENT OF INDIA WITH REGARD TO FOREIGN DIRECT INVESTMENT

Prior to independence, British Government in India had no definite policy regarding foreign direct investment. Capital invested by the Britshers was given preference over the capital invested by other countries. However, during that period foreign capital made a significant contribution to the development of railway, electricity, jute industry, tea and coffee plantation and coal and other mines in India. A.K Bagchi while writing about British capital in India’s wrote, “The British capital invested in India was in reality miniscule. The new mercantile banking and plantation enterprise which arose in the first half of the nineteenth century were mostly financed by British officials in India out of their savings”.

After independence, the role of foreign capital in the economic development of the country was duly recognised in the first industrial policy of 1948.On 6th April 1949, Late Prime Minister Jawaharlal Nehru, clarifying policy regarding foreign capital declared that India welcome heartily economic assistance and technical cooperation from any corner of the world. It was also clarified that no discrimination policy will be exercised against foreign capital.

After independence India’s foreign capital policy can divided into following phases:

(A) Precautionary incentive policy (1948-67)
(B) Rigid selective policy (1968 to middle of 1991)
(C) Open incentive and liberalized policy (since 1991)

OPEN INCENTIVE AND LIBERALIZED POLICY SINCE 1991

Economic liberalization process, which was introduced under structural adjustment programme (SAP) with support of IMF and World Bank culminated into a series of economic reforms in July 1991. Along with a host of industrial policy reforms that came with the announcement of NIP 1991, policies concerning FDI marked a new dawn that significantly divide the FDI policies evolved during the entire period from post independence era till 1990 and the period beginning 1991 and thereafter, NIP 1991 recognised the role of FDI in the process of industrial development in India in terms of bringing greater competitiveness, efficiency and also modernisation, technological up gradation, creation of sound base for exports promotion and above all integrating India with rest of the world.

Liberalizing foreign direct investment was important part of India’s reforms, driven by the belief that this would increase the total volume of investment in the economy, improve production technology, and increase access to world markets. The policy now allows 100 percent foreign ownership in a large number of industries and majority ownership in all except banks, insurance companies, telecommunications and airlines. Procedures for obtaining permission were greatly simplified by listing industries that are eligible for automatic approval up to specified levels of foreign equity (100 percent, 74 percent and 51 percent). Potential foreign investors investing within these limits only need to register with the Reserve Bank of India. For investments in other industries, or for a higher share of equity than is automatically permitted in listed industries, applications are considered by a Foreign Investment Promotion Board that has established a track record of speedy decisions. In 1993, foreign institutional investors were allowed to purchase shares of listed Indian companies in the stock market, opening a window for portfolio investment in existing companies.

The major highlights of policy changes of 1991 are as under:-

(1) Abolition of industrial licensing system except for 18 industries under strategic and environmental concerns.
(2) Ceiling of 40 % foreign equity under FERA.
(3) Removal of registration under MRTP act.
(4) Introduction of dual approval system for FDI proposals viz, (i) Through an automatic approval channel for FDI in 35 priority sectors by Reserve Bank of India (RBI) up to an equity participation of 51%. (ii) Through formal government of India channel via foreign investment promotion Board (FIPB/secretariat for Industrial Assistance (SIA). (iii) Existing companies were allowed to hike their foreign equity up to 51% in priority sector. (iv) Liberalization of the use of brands name. (v) Abolition of phased manufacturing programme (PMP) for high local content.(vi) Dilution of dividend balancing conditions and its related exports obligations except in case of 22 consumer goods industries. (vii) Removal of restrictions of FDI in low technology sectors. (viii) Liberalization of technology imports. (ix) Permission for non- resident Indians (NRIs) and overseas corporate Bodies (OCBs) under automatic role with repatriation of capital income to invest up to 100 percent equity in high priority industries. (x) India became a signatory to the convention of the multilateral investment Guarantee Agency (MIGA) for protection of foreign investments.

All these measures adopted during 1991 marked a major departure of FDI policies adopted before 1991 and ushered a new era for FDI in India. These initial measures underwent revision and further liberalization in the contents of the above measures was introduced subsequently under after 1991 to project India as one of the top hosts for FDI. Following are the subsequent reform measures that came into being specifically in 1997, 2000 and post- 2000. The major policy changes of 1997 are as:

(i) Industrial licensing requirement in industries of strategic and environmental concerns pruned further.(ii) In January 1997, another 13 industries were brought under 51% foreign equity participation and 9 other high priority industries were earmarked in metallurgical and infrastructure sectors where equity participation has been raised up to 74% and 100% for NRIs in select industries. A total 111 sectors were put under automatic approval with equity cap of up to 100/74/51/50 percent. (iii) Further, procedural simplification was brought in the automatic FDI approval channel. Earlier practice of obtaining prior approval was excluded. Companies were allowed to inform RBI after shares were issued to non- resident companies (iv) Relocation of FIPB from prime Minister's office to secretariat for industrial approval, Ministry of commerce and industry, Government of India.

FOREIGN DIRECT INVESTMENT POLICIES OF 2000 AND AFTER

The Government of India has introduced a number of policy measures to attract highest inflows of foreign direct investment, these policy changes are as: (i) A list of industrial licensing in industries of strategic, environmental and locational factors further curtailed to a minimum number. (ii) Opening up new sectors, such as mining, banking, insurance, telecommunication, constructions and management of parts, harbours, roads and highways and defence equipment subject to equity caps. (iii) Sectors earmarked for automatic approval of FDI expanded to include almost all sectors and equity capital raised to 100 %, barring a few negative list, such as, industries requiring industrial licensing in strategic, environmental and locational grounds. (iv) 100% FDI is permitted in most manufacturing sectors with automatic approval, such as, Textiles, paper, basic chemicals, drugs and pharmaceuticals, rubber, Plastic, non- metallic mineral products, metal products, ship/ boat building, machinery and equipment and automobiles. FDI limit of 24 % continues for small scale industries (SSIs) and 26 % for defence equipment.(v) Dividend balancing conditions and its related exports obligation on foreign investors were completely withdrawn in case of 22 consumer goods industries.

Recently in the beginning of 2009, the government of India further relaxed the norms for foreign direct investment (FDI) in various sectors. As per new norms, various sectors such as commodity exchanges, credit information and aircraft maintenance are opened for overseas investors while hiking the ceiling for investment in public sector oil refineries. Revised FDI policy would now permit 100 per cent foreign investment in maintenance, repair and overhauling (MRO) facilities for aircraft as also aviation training units. 100% foreign investment will henceforth be permitted in mining of titanium bearing minerals and up to 49 per cent in credit information companies. However, for investment in credit information companies, the permission of the Reserve Bank of India (RBI) will be necessary. The new FDI policy has also done away with the norms of 26 percent compulsory equity divestment in fuel and gas trading ventures. Hitherto, 100 per cent FDI was allowed on the automatic approval route, subject to the condition that 26 per cent equity in such ventures is disinvested within five years in favour of an Indian partner. FDI in public sector refineries has also been raised to 49 per cent from its existing cap of 26 per cent. In order to strengthen the industrial sector, the Cabinet also decided to exempt foreign investors from certain regulatory norms such as minimum capitalization and the three-year lock-in period. Alongside, for construction development projects, investments by registered foreign institutional investors (FIIs) under the portfolio investment scheme are also to be treated as distinct from FDI. In effect, the investments by FIIs would now be outside the purview of certain restrictive norms applicable to FDI. However, the Government is to provide a detailed clarification in this regard.

MAJOR RECOMMENDATIONS OF THE STEERING COMMITTEE ON FOREIGN DIRECT INVESTMENT SET UP BY THE PLANNING COMMISSION

The steering committee on FDI set up by the planning commission in August 2001 has submitted its report which is currently being considered by the Government. The main recommendation of the committee are **:** (i) Enactment of a foreign Investment promotion law incorporating and integrating relevant aspects for promoting FDI. (ii) Urge states to enact a special investment law relating to infrastructure for expediting investment in infrastructure and removing hurdles to production in infrastructure.(iii) Empower the foreign investment promotion board (FIPB) for granting initial central-level registrations and approvals wherever possible, for speeding up the implementation process.(iv) Empower foreign investment implementation authority for expediting administrative and policy approvals.(v) Disaggregating FDI targets for the tenth plan in terms of sectors, and relevant administrative ministers/ departments, for increasing accountability.(vi) Reduction of sectoral FDI caps to the minimum and elimination of entry barriers. Caps can be taken- off for all manufacturing and mining activities (except defence), eliminated in advertising, private banks, and real estate, and hiked in telecom, civil aviation, broadcasting, insurance and plantations (other than tea).(vii) overhauling the existing FDI strategy by shifting from a broader macro- emphasis to a targeted sector specific approach.(viii) informational aspects of the FDI strategy require refinement in the light of India's strengths and weaknesses as an investment destination and should use information technology and modern marketing techniques.(ix) The special economic Zones (SEZs) should be developed as internationally competitive destinations for export-oriented FDI, by simplifying laws, rules, and procedures, and reducing bureaucratic rigmarole on the lines of China.(x) domestic policy reforms in power, Urban infrastructure, and real estate, and decontrol/ de-licensing should be expedited for attracting more FDI.

REPLACEMENT OF FOREIGN EXCHANGE REGULATION ACT (FERA) WITH FOREIGN EXCHANGE MANAGEMENT ACT (FEMA)

The foreign exchange management act, 1999 (FEMA) has been enforced w.e.f 01-06-2000, thus replacing the FERA, 1973. This is widespread belief that with the enforcement of FEMA, all restrictions and controls relating to foreign exchange transactions shall be abolished and foreign exchange dealings shall be allowed to be freely made. This is rather a miss-belief. While switching over from FERA to FEMA, what exactly has changed is the outlook with which the law of FEMA has been made. Following are the highlights of FEMA and FERA:

Highlights of FEMA, 1999: With the enactment of foreign exchange management act,1999 (FEMA) and its enforcement w.e.f 01-06-2000, we have ushered into a less fearsome and more liberalized era compatible to the ongoing process of economic liberalization relating to foreign investment and foreign trade for closer interaction with the world economy.

ADVENT OF FEMA: The enactment of FERA was done when there was scarcity of 'foreign exchange' and to conserve such a 'scarce and precious' commodity, a strict control was needed. The changed scenario, however, has outlived the utility of strict restrictions. The FERA, thus became in its existing form increasingly incompatible with the changes in the economic policies, announced from time to time. In August 1994, a notice was given to IMF that the country had attained article viii states which meant that no restrictions will be imposed on remittances of foreign exchange in so for as the current account transactions were concerned. These developments, paved the way for promulgation of foreign exchange management act, 1999 (FEMA) and its enforcement w.e.f 01-06-2000. The main provisions of FEMA are following:

(A) Application of the act on the basis of residential status: FERA applied to a person who was a citizen of India, making it a beautiful as to how the provisions of an Indian law could be applicable and effectively enforceable against the act of a person permanently outside India, though retaining citizenship of India. FEMA brings about a change in the approach to let the provisions apply to a person resident in India and also to all branches, offices and agencies outside India owned or controlled by such a person.

(B) Current and capital account transactions: section 5 and 6 of the act, regulate "current account transaction" and "capital account transaction" loans, investments and all such transactions which alter or create new liabilities, including contingent liabilities, outside India of a person 'resident in India' are capital account transactions. Acquisitions of assets in India will also be treated in the same manner.

As per sub sections (2) and (3) of section 6, Reserve Bank is authorised to specify the permissible classes of capital account transactions and also limit up to which foreign exchange is admissible for such transactions. Specific regulations have been made in respect of certain transaction by the RBI. Further, it has been provided that the interests of a resident holding foreign currency, foreign security or immovable property abroad which he acquired while he was non-resident or inherited from a non-resident person and a non- resident holding Indian currency, security or any immovable property in India which he acquired while being resident in India or inherited from a resident person, shall not be jeopardized. Regulations have been made for establishment of a branch office or place of a business in India by a non- resident. It is worth mentioning that the Reserve Bank shall not impose any restriction on the drawl of foreign exchange for payments due on account of amortisation of loans or for depreciation of direct investments. Transactions other than capital account transactions or current account

transactions' and include specifically payments due in connection with in foreign trade, short term banking and credit facilities, interest on loans, net income from investment, remittances for living expenses of parents, spouse, and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children, as set out in section 2(j).

According to section 5, a resident Indian may sell or draw foreign exchange to or from an authorised person if such sale or drawl is a 'current account transaction' subject to any reasonable restrictions prescribed for such transactions by the central Government in consultation with the Reserve bank. The central Government has accordingly framed rules for current account transactions.(C)Exports of Goods and services: Section 7 of the act includes 'services' also as an exportable item besides usual goods- a feature which was not covered under section 18 of FERA. Exporters of goods and services are required to furnish detailed information of the exports, include full export value. if the value is not ascertainable at the time of export of goods the value which the exporter expects to receive, keeping in view the prevailing market conditions concerning such goods, outside India, so that monitoring as to the realization of export proceeds by such exporter can be ensured and the Reserve Bank may, satisfy itself broadly, that the export value of the goods and services has not been understated so as to obviate the possibility of resorting to the malpractices like 'compensatory payments' Regulations have been framed by the RBI in relation to 'export of goods and services'.

(D) Compounding of penalty: Section 15 provides for compounding of penalty whereby the accused person is relieved from further proceedings for that contravention. Section 15 entrusts the work of compounding to the officers of the Reserve Bank also, besides, the officers of Enforcement Directorate. A reference may be made to the Foreign Exchange Management (compounding Proceedings) Rules, 2000 framed by the central Government.

(E) Exemption from realisation and Repatriation: By virtue of section 9, Reserve Bank is authorised to specify regulations prescribing that a person may hold or deal in foreign currency, foreign exchange, etc up to the specified limits and subject to the compliance of certain conditions. Basically, the provisions of section 4 providing that 'save as provided under the act, no resident shall acquire, hold, own, possess, transfer, any foreign exchange, any foreign security or immovable property situated outside India' and that of section 8 which covey that all reasonable steps shall be taken to realise and repatriate to India, any foreign exchange that is due or has acquired to any person resident in India within such period and in such manner as may be specified, shall not be applicable to the transactions enshrined in section 9.

(F) Transnational provisions: FEMA provides for a two year sunset clause for offences committed under FERA which may be taken as the transition period granted for moving from one 'harsh' law to the other 'industry friendly' legislation.

(G) Major provisions of FERA Dropped: The provisions of FERA dropped in the present FEMA basically relate to power to arrest, power to stop and search conveyances, power to search premises, power to seize documents, power to examine persons, power to police officers and other officers to enter, search, etc. Section 30 of FERA which provided for obtaining prior permission of Reserve Bank if foreign nationals wanted to practice any profession in India has also been dropped. The concept of 'blocked accounts' has gone. The presumption regarding mental culpable state, enshrined in FERA which meant that the court had to presume the existence of guilty mind unless the accused proved otherwise, has also been dropped in the new enactment. Section 62 providing for certain offences to be non-cognisable has also been done away with.

(H) FEMA and prevention of money Laundering law (PML): There is a widespread apprehension that FEMA and PML Bill are two inter-connected legislations. PML Bill proposes to prevent entry of 'proceeds of crime', i.e. proceeds obtained out of a crime specified in the proposed law, into the economy. The offences committed under FEMA are not listed in the PML Bill and as such, gains of such an offence are not 'Proceeds of crime'. It can, therefore, be maintained that FEMA is in no way connected with the PML Bill.

FEMA: A MAJOR DEPARTURE FROM FERA: As it is clear from the name of the act itself, the emphasis under FEMA is on 'exchange management' whereas under FERA the emphasis was on 'exchange regulation' or exchange control. Under FERA it was necessary to obtain Reserve Bank's permission, either special or general, in respect of most of the regulations there under. FEMA has brought about a sea change in this regard and except for section 3 which relates to dealing in foreign exchange, etc., no other provisions of FEMA stipulate obtaining Reserve Bank's permission. The demand for new legislation was basically on the following counts:

(A) FERA was introduced in 1974 when India's foreign exchange reserve position was not satisfactory. Accordingly, stringent controls were required on the use of foreign exchange. With improvement in foreign exchange position, it is argued that such stringent controls are not now required.

(B) India had given notice to the IMF in August 1994 that it had attained Article VIII status. This notice meant that no restrictions will be imposed on remittances of foreign exchange on account of current account transactions.

(C) The private corporate sector had been complaining for long against, what is termed, the 'draconian provisions' of FERA which gave unbridled powers to the Enforcement Directorate to arrest any person, search any premises, seize documents and start proceedings against any person for contravention of FERA. The contravention under FERA was treated as a criminal offence and the burden of proof was on the guilty.

FEMA has changed all this the purpose of FEMA is to 'facilitate external trade and payments' and 'promote the orderly development and maintenance of foreign exchange market in India.' As for as the promotion of orderly concerned, FEMA is silent. However, as for as facilitating external trade is concerned, section 5 removes the restrictions on drawls of foreign exchange for the purpose of current account transactions. As external trade, i.e. imports and exports of goods and services, involves transactions on current account. There will be no for seeking the permissions of Reserve Bank of India in connection with remittances involving external trade. However, section 5 confers powers on the central Government to impose reasonable restriction on current account transactions, in consultation with the Reserve Bank. But this seems to be just an 'enabling provision 'added keeping in view the experiences of some East Asian countries during the 1997-98 crises which required stricter exchange controls. As for as the 'draconian provisions' are concerned, FEMA has reduced their rigour significantly. According to Biswajit Dhar and Mritunjay Mohanty, FEMA represents major departures from the past policies in two other important respects: "First, it can be seen as an initial step towards capital account convertibility. Secondly, by removing the FERA from the statute book and replacing it with the FEMA, the Government seems to have finally decided to give up even the bare intention of regulating foreign capital in the country.

RECENT CHANGES IN FDI POLICY

FDI up to 100 % is allowed under the automatic route from foreign/NRI investor without prior approval in most of the sectors including the services sector. FDI in sectors/activities under automatic route does not require any prior approval either by the Government or RBI. The investors are required to notify the Regional office concerned of RBI within 30 days of receipt of inward remittances and file the required documents with that office within 30 days of issue of shares to foreign investors. All activities which are not covered under the automatic route require prior Government approval. Areas/sectors/activities hitherto not open to FDI/NRI investment shall continue to be so unless otherwise notified by Government.

All proposals for foreign investment requiring Government approval are considered by the Foreign Investment Promotion Board (FIPB). The FIPB also grants composite approvals Involving foreign investment/foreign technical collaboration. For seeking the approval for FDI other than NRI Investments and 100% Export Oriented Units (EOUs), applications in form FC-IL should be submitted to the Department of Economic Affairs (DEA), Ministry of Finance. Plain paper applications carrying all relevant details are also accepted. No fee is payable. The following information should form part of the proposals submitted to FIPB: -

(a) Whether the applicant has any existing financial/technical collaboration or trade mark agreement in India in the same field for which approval has been sought; and

(b) If so, details thereof and the justification for proposing the new venture/technical collaboration (including trade marks).

(c) Applications can also be submitted with Indian Missions abroad who will forward them to the Department of Economic Affairs for further processing.

(d) Foreign investment proposals received in the DEA are generally placed before the Foreign Investment Promotion Board (FIPB) within 15 days of receipt. The Decision of the Government in all cases is usually conveyed within 30 days.

PROCEDURE FOR OBTAINING GOVERNMENT APPROVAL-FIPB

Procedure for FDI under automatic route government approval route:
FDI applications with NRI Investments and 100% EOU should be submitted to the Public Relation & Complaint Section (PR&C) of Secretariat of Industrial Assistance (SIA), Department of Industrial Policy & Promotion.
The extant policy does not permit FDI in the following cases:

1. Gambling and Betting, or
2. Lottery Business, or
3. Business of chit fund
4. Nidhi Company
5. Housing and Real Estate business except for the development of townships, housing, built-up infrastructure and construction development project.
6. Trading in Transferable Development Rights (TDRs)
7. Retail Trading
8. Atomic Energy
9. Agricultural or plantation activities or Agriculture (excluding Floriculture, Horticulture, Development of Seeds, Animal Husbandry, Pisiculture and Cultivation of Vegetables,

Mushrooms etc. under controlled conditions and services related to agro and allied sectors) and Plantations (other than Tea plantations)

GENERAL PERMISSION OF RBI UNDER FEMA

RBI has granted general permission under FEMA in respect of proposals approved by the Government. Indian companies getting foreign investment approval through FIPB route do not require any further clearance from RBI for the purpose of receiving inward remittance and issue of shares to the foreign investors. The companies are, however, required to notify the concerned Regional office of the RBI of receipt of inward remittances within 30 days of such receipt and to file the required documents with the concerned Regional offices of the RBI within 30 days of issue of shares to the foreign investors or NRIs. Besides new companies, automatic route for FDI/NRI investment is also available to the existing companies proposing to induct foreign equity. For existing companies with an expansion programme, the additional requirements include
(I) The increase in equity level resulting from the expansion of the equity base of the existing company without the acquisition of existing shares by NRI/foreign investors,
(ii) The money to be remitted should be in foreign currency.
(iii) Proposed expansion programme should be in the sector(s) under automatic route.

FDI PROHIBITED GENERAL PERMISSION OF RBI UNDER FEMA INVESTMENT BY EXISTING COMPANIES FDI FROM NRI & FOR 100% EOU

Government approval through the FIPB. For this the proposal must be supported by a Board Resolution of the existing Indian company. For existing companies without an expansion programme, the additional requirements for eligibility for automatic approval are
(i) That they are engaged in the industries under automatic route,
(ii) The increase in equity level must be from expansion of the equity base and
(iii) The foreign equity must be in foreign currency.
The earlier SEBI requirement, applicable to public limited companies, that shares allotted on preferential basis shall not be transferable in any manner for a period of 5 years from the date of their allotment has now been modified to the extent that not more than 20 per cent of the entire contribution brought in by promoter cumulatively in public or preferential issue shall be locked-in. Equity participation by international financial institutions such as ADB, IFC, CDC, DEG, etc. in domestic companies is permitted through automatic route subject to SEBI/RBI regulations and sector specific cap on FDI. In case of listed companies, according to RBI/SEBI guidelines, the issue price shall be either at:
(a) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the six months preceding the relevant date.
(b) The average of the weekly high and low of the closing prices of the related shares quoted on the stock exchange during the two weeks preceding the relevant date. The stock exchange referred to is the one at which the highest trading volume in respect of the share of the company has been recorded during the preceding six months prior to the relevant date. The relevant date is the date thirty days prior to the date on which the meeting of the General Body of the shareholder is convened. In all other cases a company may issue shares as per the RBI regulation in accordance with the guidelines issued by the erstwhile Controller of Capital Issues. Other relevant guidelines of Securities and Exchange Board of India (SEBI)/ and RBI including the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997,

PARTICIPATION BY INTERNATIONAL FINANCIAL INSTITUTIONS ISSUE AND VALUATION OF SHARES IN CASE OF EXISTING COMPANIES

An Indian corporate can raise foreign currency resources abroad through the issue of American Depository Receipts (ADRs) or Global Depository Receipts (GDRs). Regulation 4 of Schedule I of FEMA Notification no. 20 allow an Indian company to issue its Rupee denominated shares to a person resident outside India being a depository for the purpose of issuing Global Depository Receipts (GDRs) and/ or American Depository Receipts (ADRs), subject to the conditions that:
(i) The ADRs/GDRs are issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Central Government there under from time to time.
(ii)The Indian company issuing such shares has an approval from the Ministry of Finance, Government of India to issue such ADRs and/or GDRs or is eligible to issue ADRs/ GDRs in terms of the relevant scheme in force or notification issued by the Ministry of Finance, and
there are no end-use restrictions on GDR/ADR issue proceeds, except for an express ban on investment in real estate and stock markets.
(iii) The FCCB issue proceeds need to conform to external commercial borrowing end use requirements; in addition, 25 per cent of the FCCB proceeds can be used for general corporate restructuring, Is not otherwise ineligible to issue shares to persons resident outside India in terms of these Regulations.
(iv) There is no limit up to which an Indian company can raise ADRs/GDRs. However, the Indian company has to be otherwise eligible to raise foreign equity under the extant FDI policy.
(v) A company engaged in the manufacture of items covered under Automatic route, whose direct foreign investment after a proposed GDRs/ADRs/FCCBs issue is likely to exceed the percentage limits under the automatic route, or which is implementing a project falling under Government approval route, would need to obtain prior Government clearance through FIPB before seeking final approval from the Ministry of Finance.

FDI IN EOUS/SEZS/INDUSTRIAL PARK/EHTP/STP

100% FDI is permitted under automatic route for settings up of Special Economic Zone (SEZ) Units in SEZ qualify for approval through automatic route subject to sectoral norms.Details about the type of activities permitted are available in the Foreign Trade Policy issued by Department of Commerce. Proposals not covered under the automatic route require approval by FIPB. 100% FDI is permitted under automatic route for setting up 100% EOU, (export oriented units) subject to sectoral norms. Proposals not covered under the automatic route would be considered and approved by FIPB. 100% FDI is permitted under automatic route for setting up of Industrial Park. All proposals for FDI/NRI investment in EHTP Units (Electronic hardware technology parks) are eligible for approval under automatic

route subject to some parameters. For proposals not covered under automatic route, the applicant should seek separate approval of the FIPB. All proposals for FDI/NRI investment in STP Units are eligible for approval under automatic route subject to parameters. FDI inflows are required to be under the following mode: I. By inward remittances through normal banking channels or (ii). By debit to the specific account of person concerned maintained in an authorized dealer/authorized bank. Issue of equity to non-residents against other modes of FDI inflows or in kind is not permissible. However, Issue of equity shares against lump sum fee, royalty and External Commercial Borrowings (ECBs) in convertible foreign currency are permitted under the automatic route subject to meeting all applicable tax liabilities and sector specific guidelines. A foreign company planning to set up business operations in India has the following options:

Ii) By incorporating a company under the Companies Act, 1956 through, Joint Ventures; or Wholly Owned Subsidiaries Foreign equity in such Indian companies can be up to 100% depending on the requirements of the investor, subject to equity caps in respect of the area of activities under the Foreign Direct Investment (FDI) policy.

ii) As a foreign Company through, Liaison Office/Representative Office, Project Office Branch Office Such offices can undertake activities permitted under the Foreign Exchange Management (Establishment in India of branch or office of other place of business) Regulations, 2000. For registration and incorporation, an application has to be filed with Registrar of Companies (ROC). Once a company has been duly registered and incorporated as an Indian company, it is subject to Indian laws and regulations as applicable to other domestic Indian companies. The role of the liaison office is limited to collecting information about possible market opportunities and providing information about the company and its products to prospective Indian customers. It can promote export/import from/to India and also facilitate technical/financial collaboration between parent company and companies in India. Liaison office can not undertake any commercial activity directly or indirectly and cannot, therefore, earn any income in India. Approval for establishing a liaison office in India is granted by Reserve Bank of India (RBI).

ENTRY OPTIONS FOR FOREIGN INVESTOR

Foreign Companies planning to execute specific projects in India can set up temporary project/site offices in India. RBI has now granted general permission to foreign entities to establish Project Offices subject to specified conditions. Such offices can not undertake or carry on any activity other than the activity relating and incidental to execution of the project. Project Offices may remit outside India the surplus of the project on its completion, general permission for which has been granted by the RBI. Foreign companies engaged in manufacturing and trading activities abroad are allowed to set up Branch Offices in India for the following purposes:

(i) Export/Import of goods
(ii) Rendering professional or consultancy services
(iii) Carrying out research work, in which the parent company is engaged.
(iv) Promoting technical or financial collaborations between Indian companies and parent or overseas group company.
(v) Representing the parent company in India and acting as buying/selling agents in India.
(vi) Rendering services in Information Technology and development of software in India.
(vii) Rendering technical support to the products supplied by the parent/ group companies.
(viii) Foreign airline/shipping company. Branch Offices established with the approval of RBI may remit outside India profit of the branch, net of applicable Indian taxes and subject to RBI guidelines Permission for setting up branch offices is granted by the Reserve Bank of India (RBI). Such Branch Offices would be isolated and restricted to the Special Economic Zone (SEZ) alone and no business activity/ transaction will be allowed outside the SEZs in India, which Include branches/subsidiaries of its parent office in India. No approval shall be necessary from RBI for a company to establish a branch/unit in SEZs to undertake manufacturing and service activities subject to specified conditions.

NON- RESIDENT INDIAN INVESTMENT

Coupled with liberalization of the foreign direct investment policy, attractive investment packages have been put in place for Non-Resident Indian (NRIs)/person of Indian origin (PIOs)/overseas corporate bodies (OCBs). NRIs include: (i) Indian citizen who stay abroad for employment, carrying any other business indicating an indefinite period of stay outside India. (ii) Indian citizens working abroad on assignment with foreign Governments, Government agencies like United Nations, IMF and World Bank. (iii) officials of central/ state Government/ public sector undertakings deputed abroad on temporary arrangements with foreign Government agencies ,organisations.etc. OCBs include: overseas companies, firms, societies and other corporate bodies which are predominantly owned directly or indirectly to the extent of at least 60 percent by the NRIs. IPOs include: (i) Foreign citizens who at any time held Indian passport. (ii) A spouse (not being the citizen of Pakistan and Bangladesh) of an Indian citizen or of a person of Indian origin. (iii) Any person whose parents/ grandparents were an Indian citizen.

The main incentives for NRIs/OCBs/PIOs are as follows:

The RBI permits the sale/transfer of shares/bonds /debentures by NRIs/OCBs/PIOs with repatriation rights through stock exchanges to an Indian citizen/PIOs resident in India/company subject to these conditions that are, the transferor had purchased or acquired such share, bonds, debentures in accordance with the terms, conditions of permission granted by the RBI. Second the shares, bonds, debentures, are sold in a recognised stock market through a member and the sale transaction is affected at the ruling market price determined on the floor of the exchange by normal bid/offer method. The non- resident persons of Indian origin can transfer by way of gift shares, bonds, debentures of a company registered in India to PIO and resident in India or to a charitable trust if they were held with RBIs permission, transfer is between relatives and provision of any applicable law duly complied with in case of transfer to a charitable trust. Similarly immovable property can be gifted to relatives' charitable trusts on the conditions that provisions of any other applicable law including foreign contribution (regulation) act are duly compiled with and gift tax liability, if any is discharged.

There is general permission to NRIs/PIOs to invest in public deposits in rupees of proprietorship concerns and partnership firms on non- repatriation basis. A company (including NBFCs) can accept rupee deposits from NRIs, OCBs, and PIOs on non repatriation basis. NRIs and overseas corporate bodies (OCBs) predominantly owned by them, have been allowed to invest up to 100 percent equity in high priority industries. These investments through the automatic approval route of RBIs have full benefits of capital repatriation. NRI investment up to 100 percent of equity is also allowed in export houses, trading houses, star trading houses, hospitals, EOUs, sick industries, hotels, etc foreign citizens of Indian origin are now permitted to acquire house property without the permission of the Reserve Bank of India. The RBI has granted general permission to NRIs to invest by way of capital contribution, up to 100 percent, in any partnership concern in India engaged in any industrial, commercial or trading activity, or non repatriation basis, subject to the conditions that the amount invested should be received either by a remittance from abroad through normal banking channels or by transfer of funds held in the investors bank account in India. The concerns or the NRI does not engage in any agriculture/ plantation activity or real estate business that is, dealing in land and immovable property with a view to earning profit or income there. Neither the amount invested nor the income accruing there on is eligible for repatriation to any place outside India and is payable only in non- convertible Indian rupee.

INDIA- AN IDEAL DESTINATION FOR FOREIGN DIRECT INVESTMENT

P.Chidambram Ex- Finance and commerce Minister presented following four reasons which makes India an ideal destination for foreign direct investment.

First, India remains perhaps the world's pre-eminent development frontier. India is among the handful of countries which simply have to expand at a furious place. India is not just an expanding consumer market. It is a place where infrastructure has to be built to meet the needs and aspirations of over a billion people, and that is where there is an unprecedented opportunity for American Business and Industry.

Second, India is not just a low- wage country. It is a country that produces technicians, scientists, engineers, and technical persons of world-class. A survey of expatriate managers reported in the London Economist had placed India at the very top on the availability of skilled manpower at competitive rates. Jack Welch of G.E has described India as a developing country with the intellectual infrastructure of a developed country.

Third, India has a preponderance of entrepreneurial skills and entrepreneurs who are taking on multinationals and global brands and are competing effectively with the increasing availability of venture capital and the freeing of licensing restrictions, there has been a mushrooming of new small and medium- sized companies, started and managed by professionals. American companies will find them enthusiastic partners.

Fourth, a market economy is founded on a system of honouring contracts, enforcing property rights and respecting legal obligations. India has a well developed judicial infrastructure that has time and again demonstrated its independence, as in the Enron case. A number of independent regulatory authorities are also being set-up in sectors that are being restructured.

The advantages of India as an investment destination rest on strong fundamentals which include a large and growing market, world- class scientific, technical and managerial manpower, abundance labour and natural resources, independent judiciary, etc. This is now recognised by a number of global investors who either has already established a base in India or in the process of doing so. Ongoing initiatives such as further simplification of legislation, de- licensing, setting up regulatory authorities such as central/state Electricity Regulatory Commission, etc is expected to provide necessary impetus to accommodate enlarged FDI inflows in future. In the final analysis, large volume inflows .of FDI would depend on domestic economic conditions and the FDI policy, World economic trends, and strategies of global investors. Government, on its part is fully committed to create strong economic fundamentals and an increasingly, proactive FDI policy regime.

FINDINGS

It has been found that Liberal investment climate has been created only since 1991, which paved the easy way to foreign investors to invest in India. In addition, various types of incentives are being offered to attract FDI. Greater attention is also being paid to making the macroeconomic environment more conducive to foreign investors. Provision of infrastructure and other support services is being targeted, financial sector reforms are being undertaken to facilitate financial flows in various forms.

CONCLUSION

In the present chapter, it is seen that the policy frame work in India dealing with foreign private investment has changed from cautious welcome policy during 1948-66 to selective and restrictive policy during 1967 to 1979. In the decade of eighties, it was the policy having partial liberalisation with many regulations. Liberal investment climate has been created only since 1991. The period from 1991 till date characterised by transparency and openness and is intended to seek more foreign investment inflows. However, there are some specific aspects, (e.g. Lack of transparency in the approval of FIPB/SIA cases, regulations at the levels of state Governments for accessing operating facilities and rates of taxes and tariffs especially with regard to corporate taxation, capital gains tax and custom duty) which need detailed review and revisions for rendering the Indian environment relatively more competitive for FDI Inflows than before. A cross- sectional comparison of the various aspects of the current Indian policy regime on foreign capital indicates that in terms of the openness of the policy environment, India does not rank much below the other foreign capital seeking countries in Asia.

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