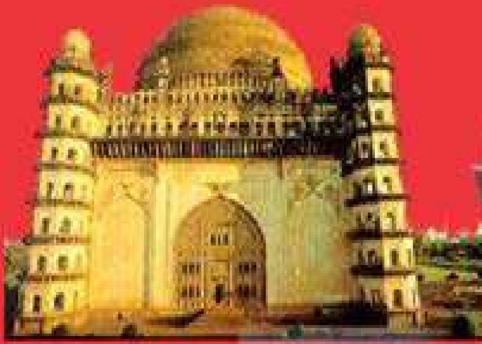
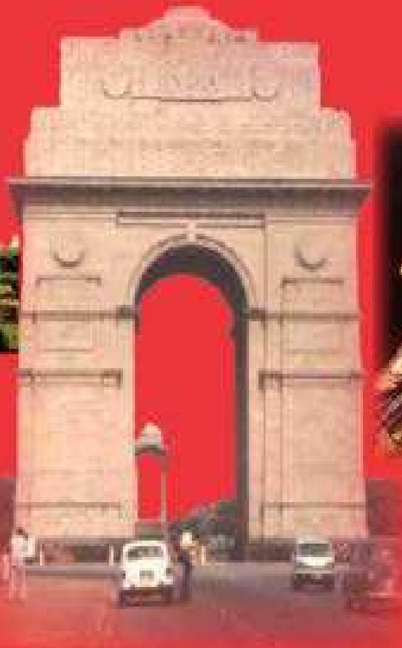
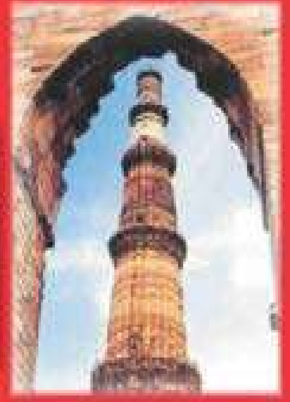
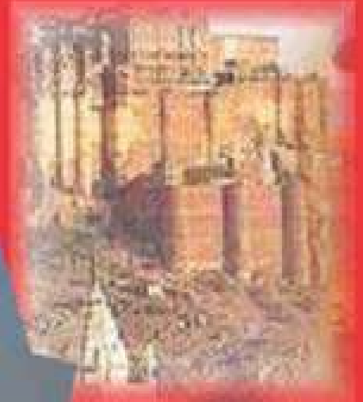
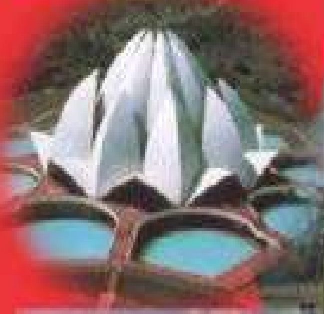
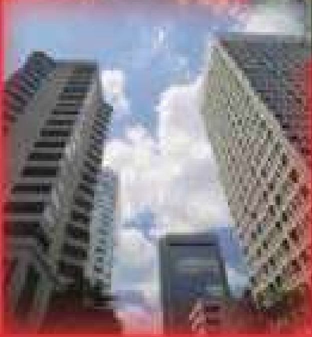







Investing in India

FM

FOXMANDAL

# Investing in India

(Regulations and Incentives)
2022-2023

**Published by:**

**FoxMandal**

FM House

A-9, Sector 9,

Noida-201 301

NCR of Delhi

Tel: 91-120-4305555

*DISCLAIMER*

The information contained in this book is not offered as professional advice on any particular matter and should not be taken as such. The editor, authors and publisher disclaim all and any liability to any person or entity in respect of the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of this book. Opinions expressed in this book do not necessarily reflect the views of the publisher of this book.

# Table of Contents

AUTOMOTIVE INDUSTRY ........ 5

AVIATION ........ 9

BANKING ........ 14

BIOTECHNOLOGY ........ 18

CAPITAL MARKET ........ 21

COMPETITION LAW ........ 25

DIRECT TAX ........ 28

DISPUTE-RESOLUTION ........ 33

EDUCATION LAW ........ 39

ENVIRONMENT LAW ........ 46

ENTRY OPTIONS IN INDIA FOR FOREIGN ENTERPRISE ........ 54

EXTERNAL COMMERCIAL BORROWING ........ 59

FOREIGN DIRECT INVESTMENT ........ 65

FOREIGN INSTITUTIONAL INVESTMENT ........ 72

GOODS AND SERVICES TAX ........ 81

HEALTHCARE ........ 84

INFRASTRUCTURE ........ 88

INSOLVENCY LAW ........ 94

INSURANCE ........ 97

INTELLECTUAL PROPERTY REGIME IN INDIA ........ 100

INFORMATION TECHNOLOGY AND SOURCING TO INDIA ........ 113

LABOUR AND EMPLOYMENT ........ 118

MAKE IN INDIA ........ 122

MEDIA AND ENTERTAINMENT ........ 126

OIL AND NATURAL GAS ........ 132

PHARMACEUTICALS AND CHEMICALS ........ 138

POWER........................................................................................................143
REAL ESTATE ...............................................................................................150
SPECIAL ECONOMIC ZONES ....................................................................161
TELECOMMUNICATION ...........................................................................167
TRADING.....................................................................................................171
TRAVEL AND TOURISM ............................................................................175
VENTURE CAPITAL ...................................................................................179
WHOLESALE AND RETAIL TRADE ..........................................................188
FOOD PROCESSING LAWS ........................................................................194

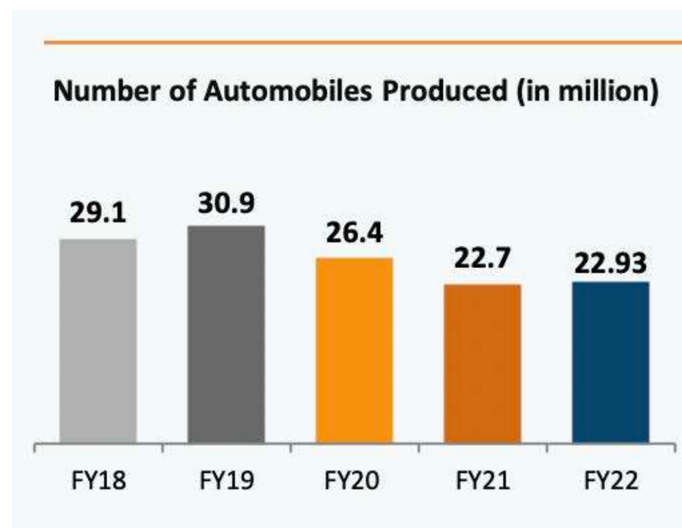
# AUTOMOTIVE INDUSTRY

## INTRODUCTION

The Indian automobile sector is becoming increasingly quality-conscious and for the past several years, the growth curve of India's automobile sector has been on the rise. The total number of automobiles produced in India during the fiscal year 2023 was approximately 25.93 million units (Source: Statista), an increase over the previous year. The production value had its first decline over time in 2020. This was partly caused by the April 1, 2020 implementation of the new Bharat Stage VI (BS-VI) emissions requirements and the general scaling back of manufacturing to reduce the stock of outdated BS-IV vehicles. The coronavirus outbreak in India contributed to a further fall in production.

Due to a growing middle class and a large part of India's population being young, the two-wheeler category dominates the market in terms of volume. Furthermore, the increased interest of businesses in investigating rural markets boosted the sector's expansion.

India is a notable vehicle exporter with this sector contributing 8% of country’s total export and thus have excellent export growth prospects in the near future. In addition, many initiatives by the Indian government and major vehicle manufacturers are expected to propel India to the forefront of the global two-wheeler and four-wheeler markets in the coming years.




Source: IBEF

Automobile export totalled 4.6 million vehicles in fiscal year 2023, wherein two-wheelers accounted for 79.09 percent of all vehicles shipped, with traveller/passenger vehicles accounting for 10.2 percent, three-wheelers accounting for 8.89 percent, business/commercial vehicles accounting for 1.6 percent and quadricycles accounting for .07 percent.

According to NITI Aayog and Rocky Mountain Institute (RMI), India's electric vehicle finance market would likely reach Rs. 3.7 lakh crore (about US$ 50 billion) by 2030. According to research by the India Energy Storage Alliance, the EV industry in India is

expected to grow at a CAGR of 36% until 2026. In addition, the EV battery market is expected to develop at a CAGR of 30% during the same time period. Overall 3,29,190 electric vehicles (EVs) were sold in India in 2021, clocking a 168 percent YoY (Year over Year) increase over the 1,22,607 units sold in the previous year. EV Sales grew by 82% in March, 2023 with 1,39,789 units compared to 77,128 in March, 2022-Vahan Data.

**INVESTMENT**

Several automakers have started making significant investments in various sectors of the business over the past few months in order to keep up with the escalating demand. The cumulative FDI equality inflow in the Automobile Industry is USD 33.53 billion during the period April 2000 to March 2022. This constitutes 5.58% of the total FDI inflow received across sectors. In FYI 2023, automobile sector saw FDI equity inflow worth approx 1.9 million US dollars and ranged between 2-3 billion USD between 2015-2021 (source Statista.com)

The following are some recent or upcoming investments and advances in India's automotive industry:

- A memorandum of understanding (MoU) for the installation of 1,000 rapid charging stations throughout Karnataka was signed in February 2022 by the electric two-wheeler business Ather Energy and the state's electric supply companies (ESCOMs).
- Tata Power and Apollo Tyres Ltd. announced a strategic cooperation in February 2022 for the construction of 150 public charging stations around India.
- To meet the expectations of a sustainable future, renowned commercial vehicle manufacturer Ashok Leyland partnered with AI drivers, a world leader in AI-enabled autonomous solutions for industrial mobility, in January 2022.
- To increase its capacity for producing electric vehicles, two-wheeler EV manufacturer HOP Electric Mobility, a diversified business venture of Rays Power Infra, plans to invest Rs. 100 crore (US$ 13.24 million) during the next two years.
- With ambitions to launch their first electric two-wheeler within the following two years, TVS Motor Company and BMW Motorrad announced a collaboration in the two-wheeler EV space in December 2021.
- Hyundai announced intentions to invest Rs. 4,000 crores (US$ 530.25 million) in R&D in India in December 2021 with the intention of releasing six EVs by 2028.
- Indian Oil Corporation (IOC) and two other public sector oil companies declared in November 2021 that they would set about 22,000 EV charging stations in India over the following three to five years.
- Skoda Auto announced intentions to produce electric vehicles domestically in India in November 2021. Before committing to domestic manufacturing, the company may bring its first EV, the Enyaq via the CBU method.
- To produce electric motors for e-bikes for the international market, Hero Motor (HMC), the parent company of Hero Cycles, and Yamaha, a prominent Japanese two-wheeler manufacturer, announced a joint venture collaboration in November 2021.

- Tata Motors stated in October 2021 that the private equity firm TPG and ADQ of Abu Dhabi have agreed to invest Rs. 7,500 crore (US$ 1 billion) in the company's EV sector.
- To achieve India's EV goals, an overall expenditure of Rs. 12.5 trillion (US$ 180 billion) in car manufacturing and charging infrastructure is needed until 2030.

## GOVERNMENT INITIATIVES

The Indian government promotes foreign investment in the auto industry and has opened the automatic route to 100% FDI.

The Indian government has recently taken several initiatives, including:

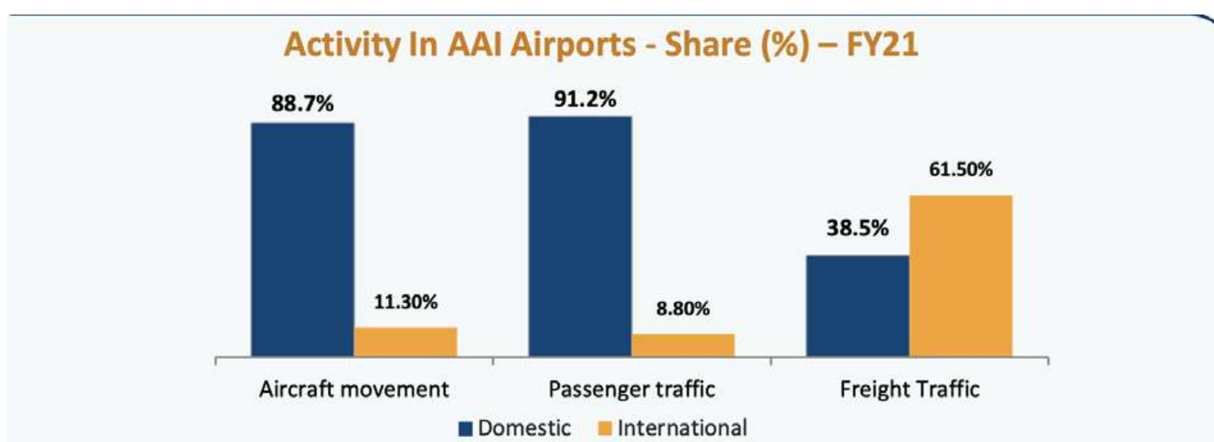
- The launch of Bharat New Car Assessment Program (NCAP), India's own programme for evaluating vehicle safety, was announced by Mr. Nitin Gadkari, Minister of Road Transport and Highways, in February 2022.
- Twenty automakers were selected in February 2022 to receive production-linked incentives (PLI) as part of the government's strategy to boost domestic vehicle production and draw in new capital. These automakers included Tata Motors Ltd, Suzuki Motor Gujarat, Mahindra and Mahindra, Hyundai, and Kia India Pvt. Ltd. A total investment of about Rs. 45,000 crore (US$ 5.95 billion) has been proposed by the 20 automakers.
- To make electric vehicles (EVs) more appealing to potential buyers, the government approved a battery-swapping policy that will allow depleted batteries to be switched out for charged ones at specific charging stations.
- According to the Prime Minister's Gati Shakti Plan, India's National Highways would be increased by 25,000 km between 2022–2033.
- In November 2021, the Union Government expanded the PLI programme for automobiles to include more than 100 cutting-edge technologies, such as alternative fuel systems like compressed natural gas (CNG), flex fuel engines that comply with Bharat Stage VI, electronic control units (ECU) for safety, advanced driver assistance systems, and e-quadricycles.
- After receiving the necessary approvals from the Supreme Court of India, the government intends to make it essential for automobile manufacturers to create flex-fuel engines, according to an announcement made in September 2021 by Mr. Nitin Gadkari, the Union Minister for Road, Transport, and Highways.
- A PLI scheme for automobiles and auto parts worth Rs. 25,938 crore ($3.49 billion) was announced by the Indian government in September 2021. By 2026, this programme is projected to attract investments totalling more than Rs. 42,500 ($5.74 billion) and generate 7.5 lakh new employment opportunities in India.
- The Vehicle Scrappage Policy, introduced by Prime Minister Mr. Narendra Modi in August 2021, aims to gradually phase out obsolete, environmentally hazardous vehicles in a safe manner.
- Under a revised programme to promote the production and export of clean technology vehicles, the Indian government has planned US$ 3.5 billion in incentives over a five-year period through 2026.

- Incentives have supported 87,659 electric automobiles, and 6,265 electric buses have been approved for usage by various state/city transportation undertakings as of June 2021, totalling Rs. 871 crores (US$ 117 million).

# AVIATION

## INTRODUCTION

The aerospace sector in India is under the control of the Government through the Ministry of Civil Aviation (MOCA), which is responsible for the formulation of national policies and programmes for development, regulation of civil aviation, for devising and implementing schemes for orderly growth and expansion of civil air transport. The aviation industry in India has emerged as the leading and fastest growing industries in the country. India is set to surpass the UK and become the third largest aviation market around 2024. The domestic air passenger traffic stood at 100.7 million for Jan-Aug 2023(The Hindu) as compared to 770.70 lakhs during January-August 2022. Also, the international air traffic to and from India in the 1st quarter of 2022 stands at 3.63 million and 4.34 million respectively. The freight traffic grew at a CAGR of 7.5% during this period and is expected to grow at a CAGR of 9.04 percent (2023-2029)(MODOR INTELLIGENCE). Investments worth US$ 6 billion are expected in the country's airport sector in 5 years.




The expenditure of Indian travellers is expected to grow up to USD 410 Billion by 2023 (Business Today). There are 141 operational airports in India as of August 2022. India has already planned to open more than 100 additional airports by 2024. Under Union Budget 2021-22, the government lowered the custom duty from 2.5% to 0% on components or parts, including engines, for manufacturing of aircrafts by public sector units of the Ministry of Defence.

## INITIATIVES TAKEN BY THE CENTRAL GOVERNMENT

To make flying affordable for the common man, the Government of India has launched a regional connectivity scheme named UDAN (Ude Desh ka Aam Nagrik). It has opened the airport sector for private participation; six new airports across major cities are being developed under the Public Private Partnership (PPP) model.

Investment to the tune of (US$ 12 Billion) is expected in India's airport infrastructure in next two years.

The government has allowed 100 per cent FDI under automatic route in scheduled air transport service, regional air transport service and domestic scheduled passenger airline. However, FDI over 49% requires government approval.

The Government of India (Ministry of Civil Aviation) is planning to invest US$ 2 billion in airport infrastructure development along with aviation navigation services by 2026. The aviation industry is expecting US$ 5 billion investment by 2026.

The Government of India will promote aircraft financing and leasing activities to make the aviation market self-reliant. It sanctioned the development of a new greenfield airport in Hirasar, Gujarat, with an estimated investment of Rs 1,400 crore (US$ 195 million).

The Government of India will be promoting domestic manufacturing of aircrafts and aircraft financing within the country. The Government of India approved a proposal under PPP in Ahmedabad, Jaipur, Lucknow, Guwahati, Thiruvananthapuram and Mangalore. Recently, Navi Mumbai Airport construction has been launched by the Prime Minister of India.

In August 2018, Noida International Airport Limited was formed. Furthermore, land acquisition, finalization of contractor and master plan has been approved as on March 2021. It will be the India's largest and will compete among the world's largest airport as well. The construction will be completed by 2023-24.

In October 2021, the Union Minister of Civil Aviation, Mr. Jyotiraditya M. Scindia, virtually flagged off the first direct flight along the Shillong–Dibrugarh route, under the RCS-UDAN (Regional Connectivity Scheme – Ude Desh Ka Aam Naagrik) scheme.

The government is planning to start 14 more water aerodromes across the country, after Prime Minister, Mr. Narendra Modi's successful launch of seaplane service between the Statue of Unity near the Statue of Unity Kevadiya in Gujarat's Narmada district and Sabarmati Riverfront in Ahmedabad in October 2020.

In February 2022, the Airports Authority of India (AAI) and other airport developers have set a capital outlay target of Rs. 91,000 crore (US$ 12.08 billion) for the development of the airport industry.

In July 2022 Prime Minister inaugurated Deoghar Airport. The flight operations at Kurnool airport commenced on March 28, 2021, under the Regional Connectivity Scheme – Ude Desh Ka Aam Nagrik (RCS-UDAN). UDAN flights carried 34,38,955 passengers till 7th November 2021.Number of Airports rose from 74 to 140 since 2014.

Regional Connectivity Scheme (RCS) has also been launched to increase air connectivity by providing affordable, economically viable and profitable travel on regional routes.

## ACHIEVEMENTS BY THE CIVIL AVIATION MINISTRY

Around 55 Airport Authority of India (AAI) airports were declared as Single-Use Plastic Free Airport Terminals. India has already achieved the largest number of aircraft flying. In 2018, Pakyong Airport was Sikkim's first airport and AAI's first Greenfield airport construction. India's aviation industry is generally undiscovered with tremendous development openings.

The partners of the aviation sector have drawn in and teamed up with strategy creators to execute effective and objective choices that will support India's considerate civil aviation industry.

Due to the high demand, India will need 4000 commercial aircrafts by 2040.

3,13,668 domestic passengers flew on February 28, 2021—the highest number since resumption of domestic flights on May 25, 2020.

Under the RCS-Udan scheme, approximately 34,74,000 passengers were flown and 335 routes were awarded during 2019, covering 33 airports (20 unserved, 3 underserved, 10 water aerodromes).

As of November 29, 2021, 1.83 crore Indians have been repatriated under the Vande Bharat Mission (VBM). The Vande Bharat Mission operated about 2,17,000 flights.

**REGULATORY AGENCIES FOR AVIATION IN INDIA**

- **Directorate General of Civil Aviation (DGCA)** - DGCA established under the Ministry of Civil Aviation is the main regulatory body that supervises civil aviation in India. The functions of the DGCA include regulation of air transport services to and from and within India in compliance with the Aircraft Rules, 1937, licensing of pilots, aircraft maintenance engineers and monitoring of flight crew standards registration of civil aircrafts and certifying their airworthiness, investigation of minor air incidents and providing technical assistance to Courts / committees of Inquiry appointed by the Government; supervision over Flying / Gliding Clubs, licensing, safety oversight and surveillance of aerodromes and air carriers, advising the Government on matters relating to air transport including bilateral air services agreements with foreign countries.
- **Airports Authority of India (AAI) –** AAI was established by the Airports Authority of India Act, 1994 formed by the merger of International Airports Authority of India and National Airports Authority of India. AAI Act came into existence on 1st April 1995 with a view to accelerate the integrated development, expansion and modernization of the operational, terminal and cargo facilities at the airports in the country conforming to international standards AAI is entrusted with the task of regulating airports all over India.
- **Bureau of Civil Aviation Security (BCAS) -** BCAS was initially set up as a cell of the DGCA in 1978. It coordinated, monitored, inspected and trained personnel in civil aviation security matters. The BCAS is the regulator for civil aviation security in India. Currently, its functions include laying down standards and measures in respect of security of civil flights at international and domestic airports in India and Indian aircraft operators at foreign airports and standards for pre-embarkation security and anti-sabotage measures in respect to civil flights and ensuring their compliance.
- **Airports Economic Regulatory Authority(AERA)**- AERA regulates tariffs and other aeronautical charges and monitors airport performance standards. It creates a level playing field and fosters healthy competition amongst all major airports (government owned, public private partnership based, private), encourage investment

in airport facilities, regulation of aeronautical services' tariffs, protection of user's reasonable interests, operation of efficient, economic and viable airports.

- Other important industry associations are- Federation of Indian Airlines, Air Cargo Agents Association of India, Indian Commercial Pilots' Association, Aeronautical Society of India.

**KEY LEGISLATION IN THE AVIATION INDUSTRY**

- The Aircraft Act, 1934 and the Aircraft Rules, 1937 - These legislations were enacted to control the manufacture, possession, use, operation, sale, and the import and export of aircrafts. They stipulate parameters for determining airworthiness, maintenance of aircrafts, general conditions for flying and safety, registration of aircrafts and conduct of investigations.
- The Aircraft (Carriage of Dangerous Goods) Rules, 2003 - It regulates air carriage of dangerous goods like explosives, radioactive material etc. and also provides for the establishment of training programs by or on behalf of shippers of dangerous goods, operators, ground handling agencies, freight forwarders and agencies involved in the security screening of passengers, their baggage and cargo.
- The Air Corporations Transfer of undertakings and Repeal Act, 1999- It provides for the transfer & vesting of the undertakings of Indian Airlines and Air India respectively to and in the companies formed & registered as Indian Airlines Ltd. and Air India Ltd. and for matters connected / incidental thereto.
- The AAI Act and Rules 1994 - It established the AAI to administer and manage airports and aeronautical communication stations. The AAI Act was enacted to constitute and formulate the framework within which an airport infrastructure authority would be established. The AAI Act vests the AAI with the mandatory function of managing the airports, civil enclaves, aeronautical communication stations, eviction of unauthorised occupants of airport premises, and providing air traffic and air transport services at any airport and civil enclave.
- The Carriage by Air Act, 1972 (as amended by The Carriage by Air Amendment Act 2009) - The act seeks to implement the provisions of the Warsaw Convention relating to international carriage by air, which lays down rights and liabilities for international carriage of persons, luggage or goods performed by aircraft.
- The Tokyo Convention Act, 1975 - This legislation was enacted to implement the provisions of the Tokyo Convention. It applies the penal law of India to an act or omission committed on board an Indian-registered aircraft while in flight elsewhere than in or over India.
- The Anti-Hijacking Act, 1982 - The Anti-Hijacking Act implements the Convention for the Suppression of Unlawful Seizure of Aircraft and provides for punishment for the offence of hijacking.
- The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 - This Act implements the above-mentioned Convention and provides for punishment of various offences like committing violence on board an aircraft in flight, offences at

airports, causing destruction of or damage to navigation facilities etc. The objective of the Convention is achieved through both these legislations.

- The Airports Economic Regulatory Authority of India Act, 2008 ("AERA Act") - AERA regulates tariffs and other aeronautical charges and monitors airport performance standards. The Act also established the Appellate Tribunal which adjudicates disputes between the service providers inter se or between service providers and consumer groups.
- The Aircraft (security) Rules 2011
- The Aircraft (Investigation of Accident & incidents) Rules 2017
- The Drone Rules, 2021
- Amendment to Aircraft Rules, 1937

# BANKING

Reserve Bank of India is the administrative body for banking operations. It supervises foreign exchange control and banking regulations and administers the government's monetary policy. The Indian banking industry is made up of public and private banks. Since the economic liberalization initiated in 1991-92, the industry has witnessed increased participation of private and multi-national banks. Today, in India, the private sector is allowed 100 percent equity in banks. Further, the sectoral cap on foreign investment in private sector banking has been increased to 74 percent (FDI+FII) subject to guidelines for setting up branches/subsidiaries of foreign banks issued by RBI.

**SCHEDULED AND NON-SCHEDULED BANKS**

As per section 42(6) of the RBI act, subject to the fulfilment of conditions stated below, RBI allows the inclusion of banks in the list of scheduled banks provided under Scheduled II of the RBI Act. The conditions to be satisfied for a scheduled bank are as follows:

I. The bank has paid-up capital and reserves of an aggregate value of 500,000;

II. The bank satisfies RBI that its affairs are not being conducted in a manner detrimental to the interests of its depositors; and

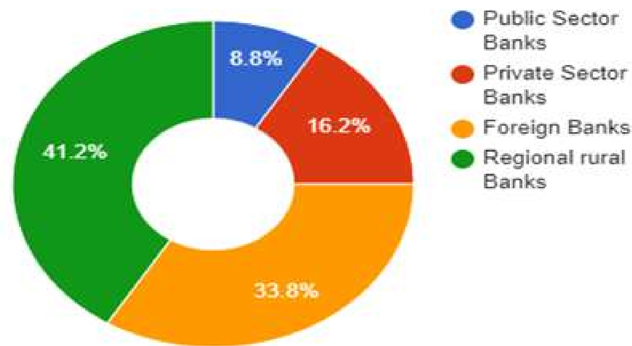
III. The bank maintains an average daily CRR (Cash Reserve Ratio) balance with the central bank at the rates set by it;

IV. The bank is a state co-operative bank or a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), or an institution notified by the Central Government on this behalf or a corporation or a company incorporated by or under any law in force in any place outside India.

V. All banks other than scheduled banks are non-scheduled banks. The scheduled banks comprise scheduled commercial banks and scheduled cooperative banks. The scheduled commercial banks in India are categorized into five distinct groups according to their ownership and/or nature of the operation: -

- Nationalized Banks;
- State Bank of India;
- Regional Rural Banks;
- Foreign Banks; and
- Other Indian private sector banks.

VI. Scheduled Co-operative Banks consist of State and Urban Co-operative Banks.




Banking Regulation Act of 1949 is the primary legislation for the regulation of banking companies and governing their management. RBI is the administrative entity ensuring banking laws are followed uniformly.

Section 12 of the Banking Regulation Act authorizes subscribed and paid-up share capital. Before the 2012 amendment, the bank had the permission to issue only equity shares, the post-2012 Banking Regulation Act, as per Section 12(ii), allows the banks to issue preference shares also subjected to guidelines framed by the RBI.

Local Financing is available to all the foreign participating companies who incorporate in India, regardless of the extent of foreign participation. Under foreign exchange regulations, foreigners and residents, including foreign companies, require the permission of the RBI to borrow from a person or a company resident in India.

Regulation on Private and Foreign Banks: The entry of foreign banks is based on reciprocity and economic and political bilateral relations. The International Departmental Committee approves applications for entry and expansion. Foreign banks are subjected to the same regulations and guidelines.

**ESTABLISHING A FOREIGN BANK**

Any foreign bank with an expectation of operating in India needs to obtain a banking license from RBI for which the RBI takes into consideration the following:

- The company should be able to pay claims to its present and future depositors in full.
- To ensure the affairs of the company are being conducted in such a way that it may not become detrimental to the interest of its depositors.
- To ensure the company has enough capital structure and earning prospects.
- The bank should work to serve the interest of the public.
- Having regard to the banking facilities available in the proposed principal area of the operations of the company, the potential scope for expansion of the banks already in existence in the area, and other relevant factors, the grant of the license would not be prejudicial to the operations and consolidation of the banking system consistent with monetary stability and economic growth.
- And any other condition, that in the opinion of RBI needs to be fulfilled.

Both Indian Banks and Foreign banks are allowed to establish branches by following the conditions laid down in the Master Circular of the RBI dated July 1, 2010, on Branch authorization-

- Foreign Banks are required to bring in an assigned capital of USD 25 million upfront at the time of opening their branch in India;
- Foreign Banks have to submit their expansion plan on an annual basis;
- The RBI is considering the application submitted by a foreign bank, in addition to the parameters laid down for Indian banks, considers the following additional parameters-
- RBI may also seek reports from home country supervisors, if necessary;
- Weightage is given to the even distribution of home countries of foreign banks having a presence in India;
- The treatment extended to Indian banks in the home country of the application is taken into consideration.

The RBI has the power to cancel the license by the powers granted by the Banking Regulation Act, 1949. Any foreign bank already established in India representing the desire to establish additional branches would have to apply to RBI and comply with directions as provided under Section 3.3 of the RBI Master Circular on Bank Authorisation 2014-15.

A request of the bank will be kept in mind while examining:

- History of the bank;
- Financial soundness of the bank;
- The general character of its management;
- Adequacy of its capital structure and earning prospects;
- Public interest dimensions such as banking facility.

**CORPORATE GOVERNANCE**

The composition of the board of directors of the Wholly Owned subsidiaries should meet the following requirements:

- No less than 50% of the directors should be Indian national resident in India;
- No less than 50% of the directors should be non-executive directors;
- Minimum one-third of directors should be independent of the management of the subsidiary in India;
- The director shall conform to the fit and proper criteria as laid down in RBI's existing guidelines dated June 25, 2004;
- RBI's approval for the directors may be obtained as per the procedure adopted in the case of the erstwhile Local Advisory Boards of foreign bank branches.

**BANKING OMBUDSMAN SCHEME 2006**

The dissatisfaction of a consumer or public by the conduct of a banking company subjected to regulating affairs needed a medium through which a complaint could be filed, so RBI came up with a mechanism, under Section 35A of the Banking Regulation Act, 1949, to ensure customer protection in the banking industry, known as the Banking Ombudsman Scheme 2006 which runs directly under RBI.

The Banking Ombudsman, appointed by the RBI, is a senior official who will address the complaints by the customers with regards to deficiencies in banking services as per the grounds mentioned in Clause 8 of the Banking Ombudsman Scheme 2006 (As amended up to July 1, 2017).

The scheme covers all the Scheduled Commercial Banks, Regional Rural Banks, and Scheduled Primary Co-operative Banks. RBI has addressed various banking deficiencies where a customer has the right to file a complaint. Ombudsman ensures that a customer is heard.

**Banking Ombudsman Scheme for Digital Transactions, 2019**

RBI has introduced this scheme for Digital Transactions. This scheme is being introduced under Section 18 of the Payment and Settlement Systems Act, 2007. This scheme has been introduced to provide a cost-free, apex-level efficient mechanism for the resolution of complaints about digital transactions undertaken by customers of System Participants.

**Impact of Scheme**

If the banks are violating the RBI norms on mobile or internet banking one can approach Ombudsman. Earlier the Ombudsman could penalize to the extent of Rs. 10 Lakhs but now it has been increased up to Rs 20 Lakhs. It can also award Rs. 1 lakh or below to a complainant to compensate.

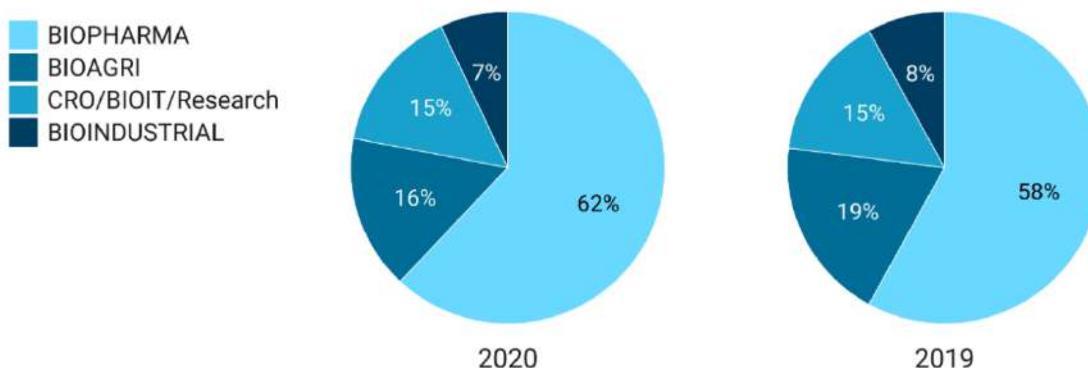
**Banking Regulation (Amendment) Act, 2020 – amended BR Act, 1949**

- It has amended the original act (Amendments can be found on PRS Legislative)
- Amendments to BR Act, Banking Companies Act & RBI Act proposes to improve Bank governance & enhance investor’s protection (PIB-MOF, GoI) 01/02/2023.
- RBI Amendment Bill (2022)

# BIOTECHNOLOGY

**INTRODUCTION**

Biotechnology can be comprehensively characterized as technological applications of biological and organic processes. With the passage of time, biotechnology has its rising application in agriculture, medicine, energy, industry and environment sectors too. It has also come to rescue the challenge of exponential population growth while guaranteeing the survival and security of the country's large cultivating population. The biotechnology sector is rising uniformly, and thus developing and regularly updating the drafts regulating biotechnology, is the need of the time.




In 1986, the setting up of a separate Department of Biotechnology (DBT) under the Ministry of Science & Technology gave a new impetus to the development of modern biology and biotechnology in India. The DBT has promoted and accelerated the pace of development of biotechnology in the country. The phenomenal growth in the Indian biotech industry is attributable to a robust platform provided by quality R&D along with a favourable regulatory mechanism. India has substantially amended its patent laws to comply with its obligations under the Agreement of Trade Related Aspect of Intellectual Property Rights (TRIPS).

Establishment of a self-governing, statutory, and professionally led 'National Biotechnology Regulatory Authority' (NBRA) as a first national biotech authority was suggested by a 2004 Report on the Application of Agri-Biotech. This proposed NBRA to be designed to have two separate departments−one for resolving food and Agri-biotech related issues, while the other for managing medical and pharmaceutical biotechnology. The NBRA was given the responsibility of creating essential public, professional and commercial trust in the science-based regulatory mechanism in India. This roadmap would include multi-stakeholder consultations and conference to achieve its target by keeping in mind all important and relevant issues of the biotechnology community.

Establishing a 'National Biotechnology Regulatory Authority' (NBRA) with divided departments for (i) agricultural products/transgenic crops (ii) pharmaceuticals/drugs and

industrial products (iii) transgenic food/feed and (iv) transgenic animal/aqua culture was suggested in the 2005 Report of the Task Force for regulatory mechanisms.

India's biotechnology regulatory governance is relatively autonomous and exercises independently; however, it is partially under the ambit of Ministry of Science and Technology. Some risk-management institutions within or outside the Ministry also exercise their influence in regulating this sector. There are various other local level bodies to manage biotechnology sector in individual states of India. Some states in India are actively accepting and reaping benefits of biotechnological applications while some other states are still cautious of this new-age technology. Thus, the adoption of pro-biotechnology attitude and associated regulations differ from state to state.

The new methodology would flawlessly expand on the prior framework and regulations to accelerate the growth of biotechnology sector at par with worldwide pre-requisites. The guiding principles of the National Biotechnology Development Strategy (2021-2025) are as follows:

- To build and nurture a vibrant start-up, entrepreneurial and industrial base in the country, connecting the academia and industry.
- To make India a global player for the development and deployment of new and emerging technologies
- To position India as a strong bio-manufacturing hub for innovative, affordable and accessible products for the society and also for global markets.
- To build and strengthen a strong education, research, and translation ecosystem across the country.

India is in the top 12 in biotech destinations in the world and 3rd in Asia. India is the world's biggest maker of recombinant Hepatitis B immunization / vaccine. It has the highest number of United States Food & Drug Administration (USFDA) approved plants outside the USA. Target is to get USD 150 billion Biotech Industry and USD 100 billion Bio-manufacturing.

While a global biotech industry expansion has resulted in an accelerated productivity, it has also resulted in abundance of high quality, low-cost, technical human capital and a relatively advanced commercial biotech sector. With this, India could become a smart choice among the global stakeholders. Though intellectual property rights still present a big hindrance, given that many western biotech companies do not consider the Indian IP regime sufficiently protective of their proprietary rights, but despite this many Indian companies have been able to dodge this hindrance and work with international partners. The target is to create an environment that pushes India to regularly advance and take forward its domestic capabilities in collaboration with the global partners strengthening its control over global regulations and shaping the road ahead.

Today, Biotechnology has emerged out as an alternative to the conventional methods of farming, making of Genetically Modified Organisms (GMO) and produce genetically modified bio-pesticide. India also made the first indigenous vaccine for COVID-19, with the help of Bharat Biotech (Hyderabad) and ICMR (Indian Council of Medical Research). India is going to be next hub of Biotechnology in the next 5 years and it will have a great part to play for USD 3 Trillion.

- Bio Pharmaceuticals – 68%
  - Diagnostics – 33%
  - Therapeutics – 13%
  - Vaccine – 22%
- Bio Agriculture – 13%
  - Bt. Cotton – 12%
  - Bio Fertilisers Bio Pesticides, Bio Stimulants – 1%
- Bio Industry – 12%
  - Bio Fuels – 7%
  - Enzymes – 5%
- Bio IT & Bio Services – 7%

# CAPITAL MARKET

## INTRODUCTION

The Indian capital market is a growing hub of investment. It is a market for long term loan funds as distinct from money market which deals in short-term funds. In capital market, industries use market loans for fixed investment and raising money capital. The capital market in India is classified into the following institution-

i. Commercial Banks;
ii. Insurance Companies (LIC and GIC);
iii. Specialised financial institutions like IFCI, IDBI, SIDCS, SFCS, UTI etc.;
iv. Provident Fund Societies;
v. Merchant Banking Agencies;
vi. Credit Guarantee Corporations;

The capital market is constituted of those who demand funds (borrowers) and those who supply funds (lenders). An ideal capital market attempts to provide sufficient capital at rational rate of return for any business, or industrial proposition which offers a prospective high yield to make borrowing worthwhile.

The capital market of India is divided into (i) gilt-edged market which refers to the market for government and semi-government securities backed by the RBI and (ii) the industrial securities market alludes to the market for shares & debentures of old and new organizations/ companies. This market is further subdivided into the new issues market and old capital market which refers to the stock exchange. The raising of new capital in the form of shares and debentures is referred as new issue market, whereas the old capital market deals with securities already issued by companies.

There are majorly two types of capital markets, i.e., primary capital market and secondary capital market. The essential /primary market means the new issue market in which the securities are created for the first time for purchasing by the investors; this process is known as Initial Public Offering (IPO). The optional/secondary market is the one where the securities created under the primary market are traded. It basically means that the secondary market comprises of the stock trade market.

The firm trend in the market is basically affected by two important factors: (i) operations of the institutional investors in the market; and (ii) the excellent results flowing in from the corporate sector.

## NEW FINANCIAL INTERMEDIARIES IN CAPITAL MARKET

Since 1988, financial sector in India has been undergoing a process of structural transformation. Some important new financial intermediaries introduced in Indian capital market are-

### Merchant-Banking

Merchant bankers are financial intermediaries among business visionaries and financial investors. Merchant banks are also subsidiaries of business banks or may have been founded by private financial service companies or may have been founded by firms and individuals

intricate together in financial up-gradation by firms and individuals engaged in financial advisory business. Merchant banks in India manage and underwrite new issues, undertake proclamation of credit, guide corporate clients on raising funds and other financial features.

Since 1993, merchant banking has been statutorily brought under the regulatory framework of the Securities Exchange Board of India (SEBI) to ensure greater transparency in the operation of merchant bankers and make them accountable. The RBI supervises those merchant banks which were subsidiaries, or are affiliates of commercial banks.

**Mutual-Funds**

It refers to the consolidation of savings by a number of investors. The corpus of fund thus collected becomes substantial which is managed by a team of investment specialists supported by critical evaluation and supportive data. At present SEBI has authority to lay down guidelines and to supervise and regulate working of mutual funds.

The guidelines issued by the SEBI in January 1991, are related in advertisements and disclosure and reporting requirements etc. The investors have to be informed about the status of their investments in equity, debentures, government securities etc.

The Narasimhan Committee has made the following recommendations regarding mutual funds: (i) creation of an appropriate regulatory framework to promote sound, orderly and competitive growth of mutual fund business; (ii) creation of proper legal framework to govern the establishments and operation of mutual funds (the UTI is governed by a special statute); and (iii) equality of treatment between various mutual funds including the UTI in the area of tax concessions.

**Leasing and Hire-Purchase Companies**

Leasing has proved to be favourable financing technique for obtaining plant and machinery especially for small and medium sized enterprises. The increasing development of leasing companies has been due to edge that is provided by speed, informality and flexibility to suit individual demands and requirements. The Narasimhan Committee has recognised the importance of leasing and hire-purchase companies in financial intermediation process and has recommended that: (i) a minimum capital requirement should be stipulated; (ii) prudential norms and guidelines in respect of conduct of business should be laid down; and (iii) supervision should be based on periodic returns by a unified supervisory authority.

**Venture Capital Companies (VCC)**

The main objective of venture capital companies is to provide financial support and stability to new ideas and to introduction and adaptation of new technologies. Financial institutions generally insist on greater contribution to the investment financing, in which technocrat entrepreneurs can depend on venture capital companies. Venture capital financing involves high risk. According to the Narasimhan Committee the guidelines for setting up of venture capital companies are too restrictive and unrealistic and have impeded their growth. The committee has recommended a review and amendment of guidelines. Knowing the high risk involved in venture capital financing, the committee has recommended a reduction in tax on capital gains made by these companies and equality of tax treatment between venture capital companies and mutual funds.

**Global Depository Receipts (GDR)**
The Government of India has authorized foreign investment in the Indian securities through the issue of Global Depository Receipts (GDRs) and Foreign Currency Convertible Bonds (FCCBs) since the year 1992. Initially the Euro-issue proceeds were to be utilized for approved end uses within a period of one year from the date of issue. Since there was continued accumulation of foreign exchange reserves with RBI and there were long gestation periods of new investment the government required the issuing companies to retain the Euro-issue proceeds abroad and repatriate only as and when expenditure for the approved end uses were incurred.

**Other New Financial Intermediaries**

- Technology Development and Information Company of India (TDICI) Ltd., is a technology venture finance company which has been authorizing project finance to new technology venture since 1989.
- Risk Capital and Technology Finance Corporation (RCTFC) Ltd. has been supplying risk capital to new entrepreneurs and recommending technology finance to technology - oriented ventures since 1988.

Infrastructure Leasing and Financial Services (IL&FS) Ltd. set up in 1988 focuses on leasing of equipment for infrastructure development.

- The credit rating agencies namely Credit Rating Information Services of India (CRISIS) Ltd., established in 1988; Investment and Credit Rating Agency (ICRA) formulated in 1991, and Credit Analysis and Research (CARE) Ltd., instituted in 1993 provides credit rating services to the corporate sector. Credit rating promotes and encourages investor’s interests by providing them information on assessed comparative risk of investment in the listed securities of different companies.
- Stock Holding Corporation of India (SHCIL) Ltd. was established in 1988 with the aim of instituting a book entry system for transfer of shares etc. thereby avoiding the voluminous paper work involved and thus minimizing delays in transfers.

**GOVERNING LEGISLATION AND AUTHORITIES**
It has been well established that there is a growing network of financial intermediaries that operate in a highly competitive environment while being directed by strict norms. India has one of the most refined new equity issuance markets. Disclosure requirements and the accounting policies followed by listed companies to offer financial information are comparable to the best systems in the world. In Indian scenario, the securities market is regulated by various agencies such as Department of Economic Affairs, Ministry of Company Affairs, and the Reserve Bank of India. The capital markets and protection of investor's interest is now primarily the responsibility of the Securities and Exchange Board of India (SEBI), which is located in Bombay. The activities of these agencies are coordinated by high level committee on capital and financial market. The high-level co-ordinated committee for financial market discusses various policy level issues which require inter regularity coordination between the regulators in financial market such as RBI, SEBI, Insurance, Regulatory and Development Authority (IRDA) and Pension Regulatory and Development Authority (PRDA). The committee is chaired by Governor of RBI and Secretary - Minister of

Finance, Chairman-SEBI, Chairman- IRDA and Chairman - PRDA are members of committee.

**The securities market in India is governed by four main legislations, which are as follows:**

1. **The Securities and Exchange Board of India (SEBI) Act, 1992**: This Act has been enacted to protect the interests of investors and promote and regulate the securities market.
2. **The Companies Act, 1956 (Old) and The Companies Act, 2013 (New)**: This Act deals with issue, allotment and transfer of securities and provides for disclosure of relevant information in the public issue. It also regulates underwriting, use of premium and discount on issues, rights and bonus issues, payment of interest and dividends, supply of annual report and other information.
3. **The Securities Contracts (Regulation) Act, 1956**: This Act provides for direct and indirect control of virtually all aspects of the securities trading including the running of stock exchanges to prevent undesirable transactions in securities.
4. **The Depositories Act, 1996**: This Act lays down the provisions for the establishment of depositories to ensure fast, accurate and secure transfer of securities. It envisages transfer of ownership of securities electronically by book entry without physical transfer of securities. National Securities Depository Limited and Central Depository Services (India) Limited have been established under the Depositories Act.

In addition to the above, listed Indian companies are also governed by the bye laws of stock exchanges where they are listed and the provisions of the listing agreement with such stock exchange.

**FUNCTIONS OF SEBI**

- Governing the business in stock exchange and any other securities markets.
- Registering and administering the working of collective investment schemes, including mutual funds.
- Prohibiting fraudulent and unfair trade practices in regards with securities markets.
- Encouraging investor's education and training of intermediaries of securities markets.
- Barring insider trading in securities, with the imposition of monetary penalties, on offending market intermediaries.
- Regulating substantial purchase of shares and takeover of companies.
- Calling for information from, carrying out assessment, conducting investigations and audits of the stock exchanges and intermediaries and self-regulatory organizations in the securities market.
- The capital market is dominated by financial supervisors and their own governance organization. Financial regulatory organizations are also charged with minimizing the loss of finances, providing licenses to financial service providers and implementing applicable regulations.

# COMPETITION LAW

India in the late 80's and 90's was undergoing globalisation and liberalisation the need for a newer and better economic policy facilitating competition was required. India's first competition legislation was the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP), it was centred on monopolistic attitude and economic concentration. In light of the changing economic situation and initiation of economic reforms in the country post-1991, a need for a comprehensive legislation that fostered and promoted competition was felt.

The Raghavan Committee of 1999, named after its chairman Mr. SVS Raghavan was established to recommend an appropriate legislative framework related to competition law for the country. The MRTP Act as it existed was found to be incompetent as, compared with the competition laws of many countries, it was not enough to promote commercial market competition and reduce or even eliminate anti-competitive practices in the country's domestic and international trade.

The Raghavan Committee deliberated between the revision of the existing MRTP Act and the promulgation of the new competition law. It was believed that drafting a new law would be most beneficial. Therefore, the Competition Act, 2002 was drafted and enacted. Following this, the Competition (Amendment) Bill, 2007 was passed in September 2007. The Amendment inter alia divided the competition authority, as envisaged in the original Act, into two:

- Competition Commission of India (CCI) as an administrative expert body; and
- Competition Appellate Tribunal to carry out adjudicatory functions.

The Competition Act, 2002 provides for the establishment of a Competition Commission having its head office in New Delhi, India. Under the terms of this Act, this Commission is a body corporate by the aforementioned name, with perpetual succession, a common seal, and is bestowed with the authority to enter into contracts, acquire, hold, and dispose of real estate (both movable and immovable), and to sue or be sued.

**The objectives of the Act are:**

- To prevent practices having adverse effects on competition;
- To promote and sustain competition in markets;
- To protect the interest of the consumers;
- To ensure freedom of trade carried on by other participants in markets in India and for matters connected therewith or incidental thereto.

**The Act with view to ensure that there is no adverse effect on competition in India:**

- Prohibits Anti-competitive agreements (Section 3) and Abuse of dominant position by enterprises (Section 4); and
- Regulates Combinations (consisting of mergers, amalgamations and acquisitions) (Section 5 and 6)

The most notable feature of the Act is its extra-territorial applicability, i.e. power of the Commission to enquire into any agreements referred in Section 3 that has been entered into outside India or any enterprise abusing its dominance outside India or Combination taking

place outside India or any other matter or practice or action arising out of such agreement or dominant position or Combination outside India, which has or is likely to have an appreciable adverse effect on competition in the relevant market in India.

India's Competition Commission was founded in October 2003. The Competition Act's actual provisions, however, came into effect in two stages, in May 2009 and June 2011, respectively. The provisions relating to anti-competitive agreement and abuse of dominance were notified first on May 20, 2009 and the Competition Act's merger control rules didn't go into effect until June 2011, for another three years.

The Constitution of India stipulates that the state shall strive to promote the welfare of the people as effectively as possible to guarantee and protect the social order in which justice - social, economic and political, shall inform all the institutions of the national life, especially the state, must guide their policies to ensure (a) the distribution of property and control of the material resources of the community to better serve the public services.

The competition law is very much a product of trade union legislation, and there is no corresponding law enacted at the state/provincial level. The Competition Act is drafted in a fashion to include provisions relating to prohibition of Anti-Competitive Agreements, abuse of dominant position by enterprises and regulation of combinations. The provisions of this act are at par with the existing competition laws of other countries and have been adjusted according to the needs of the Indian economy.

The Act is fashioned comprehensively in a way that ensures unfair entry level barriers don't exist in the market while also allowing healthy competition in the market. Section 4 of the Act expressly states that a mere dominant position is not bad but when the dominating company/party abuses its position in a way that deprives the market for others, leverages its position in one market to another etc., then a dominant company cannot take advantage of customers or competitors as it violates the basic aim of the Competition Act, which strives to protect the interest of consumers and to make the competition among the competitors healthier.

The Act also Section 27 of the Act provides remedies for violation of Section 3 and 4 of the Competition law. The CCI can issue a "stop" order, or impose a fine of not more than "10% of the average turnover" during the preceding three years. In cartel cases, CCI can impose a fine higher than 10% of average turnover or thrice the profit deprived from the cartel agreement. With regard to "contravention by companies", the CCI may, in accordance with the provisions of Section 48 of the Competition Law, deals with the person in charge of the company at the time of the violation unless such person can prove that the violation was committed "without his knowledge or awareness" or that he had implemented "all due diligence to prevent the violation or made every effort to prevent violations."

Section 43A also allows the commission to impose a fine of 1% subject to the matter of the total assets or turnover of the combination in case of failure to notify a combination. Section 42A of the competition Act provides compensation for any damage or loss suffered by the company for violating the instructions of CCI under sections 27, 28, 32, 33 and 41 of the Competition Act.

Despite the pandemic, competition law in India has witnessed significant developments in the financial year 2020-2021 including the counselling for businesses in the wake of COVID-19 and the market study report on the telecom sector in India. Several technological companies were investigated and claimed anti-competitive and abusive practices in India. For instance, Google is facing an inquiry for alleged abusive conduct by unfairly mandating the use of its payment app. The CCI has also instigated an investigation against WhatsApp (Harshita Chawla vs WhatsApp) in regards with its updated privacy policy.

**In 2022-231 the following Major Developments were seen:**

- Competition amendment Act, 2023 (Source – Mondaq)
- Google penalised 1337 Crore upheld by NCLAT (Source - The Hindus)
- CCI imposes hefty penalty on MMT, Goibibo and OYO for anti – competive practice and abuse of Dominance
- SC holds that competition act will be applicable to Coal India
- Patent act will prevail over competition act
- CCI conditionally approve Zee-Sony merger

# DIRECT TAX

The tax system in India is based on two ways: Direct Tax and Indirect Tax. It comes under the ambit of Department of Revenue which is the central authority to exercise control over matters involving direct and indirect taxes.

Two statutory bodies in India govern and adjudicate upon matters relating to taxation: Central Board of Direct Taxes (CBDT) and Central Board of Indirect Taxes and Customs (CBIC).

The direct tax is governed by CBDT. This is a kind of tax which is paid directly by any individual, person or company to the government. Some of them are:

**(a) Income Tax**- It is one of the leading revenue generators for the central government. Income of an individual arising out of any professional/business or financial activity is covered under this and payable to the government under direct mode of tax. It is filed at the end of the financial year which is 31$^{st}$March. Following table shows latest tax slab rate:

- Income tax slab rate for New Tax regime- FY 2020-21 (AY 2021-22):- In this new regime, taxpayers have an OPTION to choose either:
    - To pay income tax at lower rates as per New Tax regime on the condition that they forgo certain permissible exemptions and deductions available under income tax.

Or

- To continue to pay taxes under the existing tax rates. The assessee can avail rebates and exemptions by staying in the old regime and paying tax at the existing higher rate.

**Income tax slab rate applicable for new tax regime – FY 2021-22**

| Income Tax Slab | New Regime Income Tax Slab Rates for FY 2020-21 (Applicable for All Individuals & HUF) |
|---|---|
| Rs 0.0 – Rs 2.5 Lakhs | NIL |
| Rs 2.5 lakhs- Rs 3.00 Lakhs | 5% (tax rebate u/s 87a is available) |
| Rs. 3.00 lakhs – Rs 5.00 Lakhs | |
| Rs. 5.00 lakhs- Rs 7.5 Lakhs | 10% |
| Rs 7.5 lakhs – Rs 10.00 Lakhs | 15% |
| Rs 10.00 lakhs – Rs. 12.50 Lakhs | 20% |
| Rs. 12.5 lakhs- Rs. 15.00 Lakhs | 25% |
| >Rs. 15 Lakhs | 30% |

**Important Note: -**

- Under the new regime, special exemptions have not been created for different categories i.e. Individuals, HUF, Senior Citizens up to 60 years of Age, Senior Citizens above 60 years of age up to 80 years and Super Senior Citizens above 80 years. Therefore, there is no special exemption limit for senior and super senior citizens under the New Tax Regime.
- Individuals with Net taxable income less than or equal to Rs. 5 lakh will be eligible for tax rebate u/s 87A i.e. tax liability will be nil of such individual in both – New and old/existing tax regime.
- Basic exemption limit for NRIs is of Rs. 2.5 Lakh irrespective of age.
- Additional Health and Education Cess at the rate of 4 % will be added to the income tax liability in all cases (increased from 3% since FY 18-19).
- Surcharge applicable as per tax rates below in all categories mentioned above:
    - 10% of Income tax if total income > Rs.50 lakh
    - 15% of Income tax if total income > Rs.1 crore
    - 25% of Income tax if total income > Rs.2 crore
    - 37% of Income tax if total income > Rs.5 crore

**Income tax slabs rate for old tax regime - FY 2020-21**

**Income tax slabs for Individual aged below 60 years &HUF**

| Income Tax Slab | Individuals Below the Age Of 60 Years – Income Tax Slabs |
|---|---|
| **Up to Rs 2.5 lakhs** | **NIL** |
| Rs. 2.5 lakh -Rs. 5Lakhs | 5% |
| Rs 5.00 lakh – Rs 10 lakhs | 20% |
| >Rs 10.00 lakh | 30% |

**Income tax slab for Individual aged above 60 years to 80 years**

| Income Tax Slab | Tax Slabs for Senior Citizens (Aged 60 Years but Less Than 80 Years) |
|---|---|
| Rs 0-.00- Rs. 3.00 lakh | NIL |
| Rs 3.00 lakh- Rs 5.00 Lakh | 5% (rebate u/s 87a is available) |
| Rs 5.00 lakh – Rs 10 Lakh | 20% |
| >Rs 10 Lakh | 30% |

**Income tax slab for Individual aged more than 80 years**

| Income Tax Slab | Tax Slabs for Super Senior Citizens (Aged 80 Years and Above) |
|---|---|
| Rs 0.00 – Rs 5.00 Lakh* | No tax |
| Rs 5.00 lakh – Rs 10 Lakh | 20% |
| >Rs 10 Lakh | 30% |

**Important Note: -**

- An additional 4% Health & education cess was also levied on the tax amount calculated as above.
- Surcharge applicability:
    - 10% of income tax, where total income exceeds Rs.50 lakh up to Rs.1 crore.
    - 15% of income tax, where the total income exceeds Rs.1 crore.

**Income tax slabs rate for partnership Firm/LLP -FY 2020-21**

- A partnership firm/LLP is taxable at 30%.
- For a firm which has income above Rs. 1 Crore, 12% Surcharge is also levied. Health and education cess is levied at 4%.
- The new tax regime has not introduced any concessional rates for firms. LLPs.

**(b) Capital Gains Tax**- This is a kind of tax which an individual has to pay to the government for any profit which arises out of any capital transaction which includes sale of investments or assets. For example- profit earned on purchase and sale of property, gains arising out of investments in stock market etc. are covered under this. Further it is sub-divided into STCG (short term capital gains) and LTCG (long term capital gains) which elucidates upon assets held for less than 36 months/24 Months/12 Months and more than 36 months/24 Months/12 Months respectively. The major difference between the two is that STCG is calculated on the income bracket that an individual fall in whereas LTCG is fixed at a flat 20%.

**(c) Property tax**- Also known as house tax, it is the local tax which is levied upon by municipal corporations on immovable property for the maintenance of the local surrounding of the property of that specific area. It is charged annually on the basis of the area of the plot/building/flat. Annual rateable value (ARV) is calculated and then charged. This is another direct tax which is imposed on individual/owners of immovable property.

**(d) Corporate tax-** It is the direct tax imposed on the income of businesses in India. Any organization/company incorporated in India or having operations in India is covered under this act. It is another form of income tax which is paid by the companies on the revenue earned by them. Companies which are deemed to be resident in India are under this act. If a non-resident corporation does operations in India, then tax is levied on them on the basis of

their business dealings in India or an agreement is done between the company and the government.

**Income tax slabs rate for Domestic Companies -FY 2020-21**

| Particulars | Existing / Old regime Tax rates | New Regime Tax rates |
|---|---|---|
| Company opts for section 115BAB (not covered in section 115BA and 115BAA) & is registered on or after October 1, 2019 and has commenced manufacturing on or before 31st March, 2023. | – | 15% |
| Company opts for Section 115BAA,wherein the total income of a company has been calculated without claiming specified deductions, incentives, exemptions and additional depreciation | – | 22% |
| Company opts for section 115BA registered on or after March 1, 2016 and engaged in manufacture of any article or thing and does not claim deduction as specified in the section clause. | – | 25% |
| Turnover or gross receipt of the company is less than Rs. 400 crore in the previous year 2018-19 | 25% | 25% |
| Any other domestic company | 30% | 30% |

**Note: -**

- Additional Health and Education cess at the rate of 4% will be added to the income tax liability in all cases.
- Surcharge applicable for companies is as below:
  1) 7% of Income tax where total income >Rs 1 crore
  2) 12% of Income tax where total income > Rs.10 crore
  3) 10% of income tax where domestic company opted for section 115BAA and 115BAB

**(f) Expenditure tax –** This type of direct tax is levied for the expenses one might incur while availing different services. Individuals exceeding their expenses beyond 3000 at any restaurant or hotel have to pay this tax. The government collects this tax later from the

person/manager that is operating at that particular place and is providing service under the same.

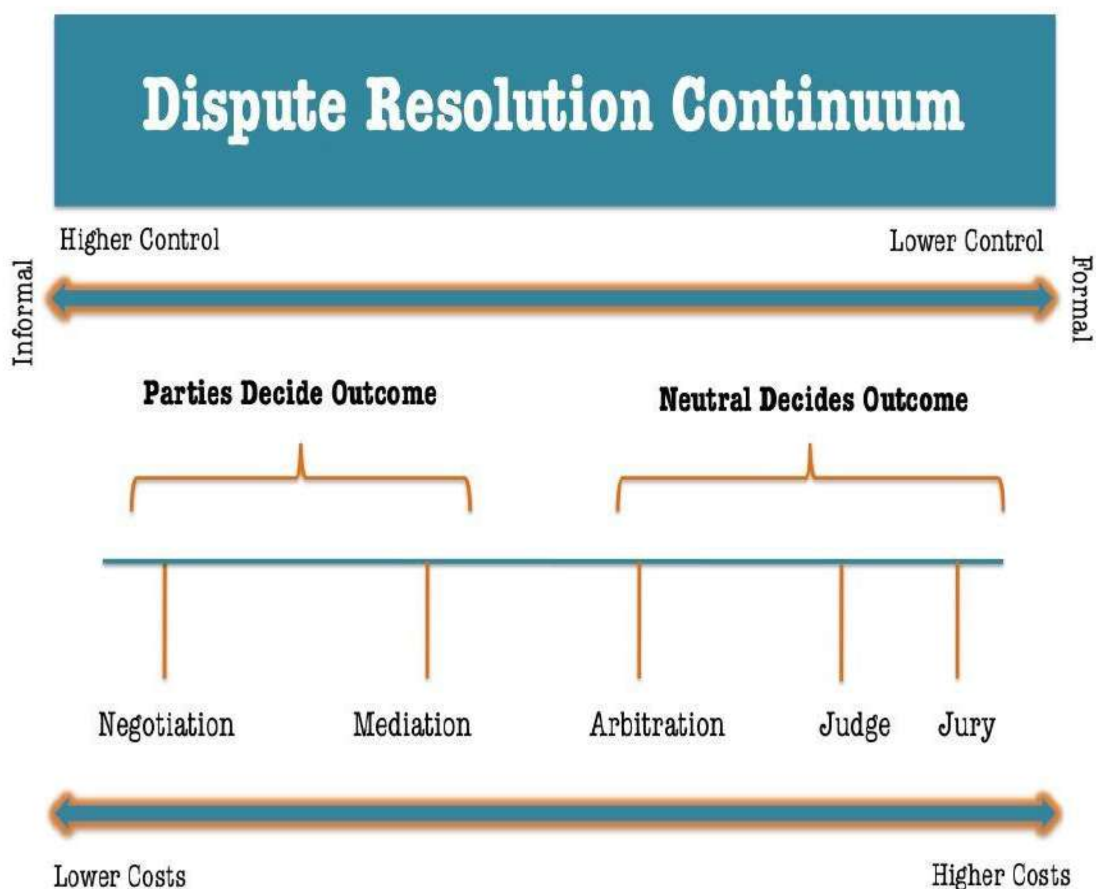
**(g) Wealth tax-** It is the tax which is collected upon the net worth of an individual or a company. This tax levies a 2% cess on individuals who earn more than 1 crore per annum to pay wealth tax. It also applies to companies that have a revenue of over 10 crore per annum.

**(h) Gift tax-** It is the direct tax which is levied on gifts given and received by people other than family or relatives. Under the Income Tax act 1961, the monetary value of the given gift if exceeds 50,000 it is covered under this type of direct taxation. It is applicable on the entire value of the gift and not just the excess beyond the threshold limit of 50,000.

# DISPUTE-RESOLUTION

## INTRODUCTION

The liberalization of the Indian economy, its integration with the world economy and the emergence of an all-pervasive and proactive WTO are significant economic events of the past decade. These events have completely transformed the form and substance of today's world trade and have thrown up previously unknown challenges thus giving rise to a plethora of cross-border disputes. In an environment where the international business community, Trans-national Corporations (TNCs) is becoming increasingly involved in India, all new contracts and agreements contain dispute resolution clauses.




In India, the most significant legal principle is the rule of law which is vital to the maintenance of the country's democracy. The Judiciary which is independent of the Legislature and Executive is entrusted with the duty of ensuring that no constitutional or legal authority acts beyond the limits of its power or indeed abuses or misuses it. Hence, the Indian judicial system (the higher courts) commonly addresses the failings of the Legislature and the Executive to the extent that the Courts often strike out State and Central government legislations, which are unjustified or violative of the fundamental rights of Indian citizens.

However, the judiciary is severely overburdened with rising backlog. Generally, litigation in India is a cumbersome, time-consuming process and consequently, an expensive affair.

Often, the parties agree to resolve any dispute, outside the judicial system of the host country in order to benefit from a level playing field. In such situations, a need arises for Alternate Dispute Resolution ("ADR") mechanisms. ADR instils confidence in parties as it has the advantages of being both neutral and speedy and is also devoid of the numerous shortcomings that plague the traditional judicial system. India, in fact, has in place, robust legislation in the form of "The Arbitration and Conciliation Act, 1996" which deals with one of the modes of ADR.

**COURT SYSTEM**

India has a three-tier Court System. A typical Indian litigation action would commence in a District Court (Trial Court) and reach its logical conclusion in the Supreme Court of India, which is the apex court of the country and its highest appellate forum. The High Courts, along with the various State level courts, situated mostly in the State Capitals, constitute the middle rung of the three-tier system.

District Courts are the courts of the first instance in India, except in cases where they are prevented from being so by virtue of lack of pecuniary jurisdiction. In addition, cases involving a violation of fundamental rights are also beyond the scope of District Courts and therefore such cases may be filed in the respective High Court or even directly in the Supreme Court of India.

A litigant's decision as to where to file a commercial dispute in a particular forum depends upon the value of the matter. Needless to say, in all areas of litigation, be it civil, criminal or commercial, the territorial jurisdiction of a court must be considered before a case is filed. In India, the place where the cause of action arose and the place of residence of the defendant, are some of the necessary determinants of territorial jurisdiction.

The court fee is payable in most civil cases and the sum payable depends on the amount at which a suit is valued, and the fee may differ from State to State.

As indicated above, the Indian Court system is bogged down by a number of issues almost all of which are related to the fact that the sheer number of cases seriously outweighs the number of judges available to deal with them and consequently, there is a huge backlog resulting in the delay in dispensation of justice. Due to delays inherent in court procedures, it has become standard practice for lawyers in India to depend heavily on the remedy of ad interim, ex-parte injunctions. It is pertinent to point out that the process for obtaining injunctions is fairly fast in India and also that parties with strong cases are likely to get favourable ex-parte injunctions from the Courts. In fact, such parties can move the Court and obtain an injunction within the same day, depending upon the urgency of the matter.

In addition, the Code of Civil Procedure (1908) provides for a "Summary Procedure" which is a faster mode for recovery of a debt or liquidated demand in money. This procedure applies to suits pertaining to negotiable instruments, bills of exchange, promissory notes etc., wherein

a party seeks to recover a debt, arising out of a written contract or an enactment or on a guarantee in respect of a debt. The essence of the summary suit is that the defendant is not, as in an ordinary suit, entitled, as of right, to defend the suit. Under this procedure, where a part of the amount claimed by the plaintiff is admitted by the defendant to be due from him, the court normally does not grant leave to defend the suit to the defendant and the plaintiff is entitled to a decree. The object underlying this procedure is to prevent unreasonable obstruction by a defendant who has no defence.

Although various quasi-judicial forums and tribunals have been set up to scale down the burden of the large volume of cases on the traditional mainstream Courts, the court system remains encumbered by the vast gap in the huge number of cases filed and the insufficient number of judges to adjudicate them.

Some of the special Courts and Tribunals in India are:-

1. Tax Tribunals such as the Income Tax Appellate Tribunal (ITAT)
2. Consumer Dispute Redressal Forums
3. Insurance Regulatory and Development Authority of India
4. Industrial Tribunal
5. Debts Recovery Tribunals and Appellate Tribunals
6. National Company Law Tribunal (NCLT)
7. Motor Accidents Claims Tribunal
8. Telecom Dispute Settlement Appellate Tribunal (TDSAT)
9. Central Administrative Tribunal (CAT)

An appeal can be filed before a District Court and Sessions Judge against an order made by a Civil Judge. A second appeal may be made in the High Court and thereafter for final adjudication, before the Supreme Court. However, the Supreme Court does not entertain every dispute and for a matter to be heard by the apex court, it is imperative that it has certain substantial questions of law, which need adjudication. The Appellant files a petition for special leave to appeal (SLP) and if the Court grants leave to appeal only then does the Supreme Court hear the said matter.

It is important to mention that under Article 141 of the Constitution of India, every judgment delivered by the Supreme Court becomes the law of the land to be followed thereafter by all lower courts, until such a time that the said decision is overruled by a larger Bench of the same Court. The Supreme Court thus sets precedents, which are to be followed by all Courts. As well as appellate jurisdiction, the Supreme Court also enjoys writ jurisdiction whereby an aggrieved person may directly approach the Court for certain writs, orders or directions.

It is important to highlight that foreign judgments and decrees are generally conclusive in India. Sections 13 of the CPC stipulates that a foreign judgment shall be conclusive as to any matter directly adjudicated upon between the same parties or between parties under whom they or any of them claim to litigate under the same title except:-

1. Where it has not been pronounced by a court of competent jurisdiction.
2. Where it has not been given on the merits of the case.

3. Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable.
4. Where the proceedings in which judgment was obtained are opposed to natural justice.
5. Where it has been obtained by fraud.
6. Where it sustains a claim founded on a breach of any law in force in India.

However, generally, a party seeking to enforce a foreign judgment must file a fresh suit based on the foreign judgment or decree. Only in the circumstance where the judgment is from a reciprocating territory as recognized under the CPC, can a foreign judgment be brought for direct execution and enforcement. Section 44A of the CPC lays down that where a certified copy of the decree of any of the superior courts (courts specified in the Central Government notification) of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it has been passed by the District Court. 'Reciprocating territory' means any country or territory outside India, that the Central Government may, by notification in the official gazette, declare to be a reciprocating territory for the purposes of that section. Some countries like Singapore, Malaysia, the United Kingdom, New Zealand, Hong Kong, and the Fiji Islands are reciprocating territories notified as such by the Government of India.

**VARIOUS TYPES OF DISPUTES RESOLUTION IN INDIA**

# Arbitration and Conciliation

An Arbitration is a consensual and compelling technique for settling business debates. It permits questioning gatherings to resolve their debates outside of a public legal framework by alluding to a private arrangement of arbitration. It furnishes the gatherings with self-rule, adaptability, and procedural opportunity to tailor the debate goal measure and to choose the standards of law to be appropriate.

The law on arbitration & mediation was significantly contained in three authorizations viz. The Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The Arbitration Act, of 1940 was widely felt to have been outdated. The Indian Arbitration and Conciliation Act, of 1996 was enacted to meet the objectives of the economic reforms taking place in the country and other contemporary requirements. The Act is currently regulating arbitration and conciliation in India. The Arbitration Act, of 1940 was repealed by this Act of 1996. The Indian Arbitration and Conciliation Act again got substantially amended by the amending act of 2015, 2019 & 2021 Act. The Act also recognizes and seeks to enforce the New York Convention on Enforcement and Recognition of foreign arbitral awards and the Geneva Convention on the Execution of Foreign Arbitral Awards. It is divided into four parts. Part I deals with the arbitration. Part II specifies with enforcement of certain foreign awards, whereas Part III deals with conciliation and the Supplementary provisions are contained in Part IV.

The growth of global trade and the delay in the disposal of cases in courts under the formal judicial system in several countries made it crucial to have in place an ADR system, particularly in commercial disputes. To secure the confidence of the international community and the growing volume of India's trade and commercial relationships with the rest of the world, after the new liberalization policy of the Government of India, the Indian Parliament enacted the Arbitration and Conciliation Act of 1996 (Arbitration Act) based on the UNCITRAL Model Law. The importance of transnational commercial arbitration has been recognized and it has been specifically provided that even when the arbitration is held in India, the parties to the contract would be free to designate the law applicable to the substance of the dispute. The main object of the Arbitration Act was to enable the expeditious resolution of a commercial dispute with minimum intervention by a court of law, thereby, not affecting trade and commerce by cumbersome and protracted litigation. All types of arbitration conducted in India are governed by Part I of the Arbitration Act, including international commercial arbitration, where the seat of arbitration is in India (leading to a domestic award). Part II of the Arbitration Act deals with the enforcement of arbitration agreements and awards under the New York Convention and the Geneva Convention, where the seat of arbitration is outside India (leading to a foreign award).

The Arbitration Act also provides for "International Commercial Arbitration" which is defined as an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered commercial under Indian law and where at least one of the parties is:

- An individual who is a national of/habitually resident in any country other than India; or
- A body corporate incorporated in any country other than India; or
- A company/association/body of individuals whose central management and control is exercised in any country other than India; or
- The government of a foreign country.

The Arbitration Act provides that in the case of an International Commercial Arbitration, the parties are free to decide on the substantive law governing the agreement/transaction, i.e., the parties can mutually decide to apply the law of any country of their choice to govern their commercial relationship. This choice of law will have to be followed and applied by the arbitrator(s). However, the Act clearly mentions that in case of conflict of laws the rules of the chosen country shall not apply.

India took several steps to adopt international standards in the field of arbitration jurisprudence as the Indian Judiciary has often been arraigned for its interference in international arbitrations and extraterritorial application of domestic laws in foreign seated arbitrations. The conditions listed in the Fifth Schedule shall describe the existence of any situations and circumstances which result in justifiable doubts as to the unbiases or impartiality of an arbitrator. The seventh Schedule specifies the criteria for a person to become eligible for being appointed as an arbitrator.

**The Arbitration and Conciliation (Amendment) Act, 2019** has been introduced to further amend and make suitable changes to the Arbitration and Conciliation Act, 1996. These amendments in the act are set to promote institutional arbitration in India and further streamline the arbitration process by removing reasonable challenges in the applicability of the first round of changes made in the Arbitration and Conciliation (Amendment) Act, 2015. This Act aims to primarily improve on or clarify various provisions.

The correction explains that the target of the changes is to advance institutional intervention by making an autonomous, legal body to oversee the whole interaction of discretion in India directly from the phase of arrangement of a judge. It further proposes to make a powerful eco framework for business intervention to prosper and flourish in India. The Amendment Act of 2019 which seeks to establish an independent body called the Arbitration Council of India (ACI) to promote the arbitration and reconciliation mechanisms in India, will be consisting of a chairperson who shall be a retired judge of the Supreme Court or High Court of India. Other members will consist of eminent experts and arbitration practitioners.

**Arbitration and Conciliation (Amendment) Act, 2021**–Parliament passed this amendment to check and prevent the misuse of provisions listed in the parent statute. The Act removes the qualification of arbitrators which specified that the arbitrator must be a registered advocate with a practice of a minimum of 10 years. This brings parity among stakeholders.

# EDUCATION LAW

## INTRODUCTION

The Constitution of India has provisions to guarantee that the state shall give education and training to each of its citizens. Education was initially defined as a state subject, but the 42nd Constitutional Amendment Act which was enacted in the year 1976, transferred it to the concurrent list.

In India, "education" is treated as a non-profiteering institution. It has been held by the Supreme Court in a plethora of decisions that "the object of establishing an educational institution is not to make a profit. Imparting education is essentially charitable in nature". Education is considered as our national wealth, essential for the nation's progress and prosperity.

To impart education, various non-profit organisations can be formed as trusts, societies, or Section 25 companies, under the Companies Act, 1956 updated 5.8 to Companies Act, 2013. These organisations are discussed below:

### (i) Trust

A 'trust' is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner. As per the Indian Trusts Act, 1882, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts an intention on his part to create thereby a trust, the purpose of the trust, the beneficiary, and the trust property, and (unless the trust is declared by will or the author of the trust himself to be the trustee) transfers the trust property to the trustee. One of the general qualifications for being a trustee is that every person capable of holding property can become a trustee, except where the trust involves the exercise of discretion in which case a trustee must be a person competent to contract. An education trust specifies that the funds of the trust are to be used for education. These are trusts for the funding, endowing and supporting of education by use of income from the trust.

### (ii) Society

Societies are governed under the Society Registration Act, 1860, a central piece of legislation. Different states in India are empowered to make specific legislation in this regard. A society may be described as a company or an association of persons (generally unincorporated) united together by mutual consent to deliberate, determine, and act jointly for some common purpose.

Individuals, excluding minors but including foreigners, partnership firms, companies, and registered societies are eligible to form a society. There is no express bar on foreigners being members or subscribers to the society. However, there is no clarity on whether foreigners can

become members of a society registered in India. As per Section 5 of the Societies Registration Act, 1860 ("SRA"), the property, movable and immovable, belonging to a society registered under SRA, if not vested in trustees, shall be deemed to be vested, for the time being, in the governing body of such society, and in all proceedings, civil or criminal, may be described as the property of the governing body of such society by their proper title.

**(iii) Section 25 Corporation**

A non-profit company formed under Section 25 of the Companies Act, 1956, is also commonly referred to as a Section 25 Company. A non-profit company registered under the Companies Act, 1956, is in all respects identical to an ordinary company, except that it is not established for profit or commercial purposes. According to Section 25 of the Companies Act, 1956, a Section 25 company can be established ‘for promoting commerce, art, science, religion, charity or any other useful object’, provided the profits, if any, or other income is applied to promoting only the objects of the company and no dividend is paid to its members. Any profit or income derived by a non-profit company is not distributed to its members. In this regard, the Government of India (concerned Regional Director) must issue a license. The licence is issued if the government of India is satisfied that an association is to be formed as a non-profit-making company for the purpose of promoting any useful object and intends to apply its profits, if any, or other income in promoting its objects and prohibits the payment of any dividend to its members.

India is also a signatory to various international covenants such as the Jomtien Declaration, the UNDHR (United Nations Declaration on Human Rights), MDG Goals, the Dakar Declaration, SAARC, the ICCPR (International Covenant on Civil and Political Rights) etc. They are committed to the cause of ensuring and providing education to all children.

**India's constitutional provisions on education laws:**

The 86$^{th}$Constitutional Amendment has made education a fundamental right. This was inserted by way of Article 21-A of the Constitution, which provides that the State shall provide free and compulsory education to all children from the age of six to fourteen years. Article 45 of the Constitution requires states to make efforts to provide free and compulsory education for all children until the age of fourteen within ten years of the Constitution's adoption. Article 30 of the Indian Constitution lays down that minorities (based on religion or language) have the right to establish and administer educational institutions of their own choosing. While providing the institution with aid, the state cannot discriminate against any particular institution or institutions. According to Article 29 (1) of the Constitution, any citizen residing in the territory of India or any part of it, having a distinct language, script, and culture of their own, shall have the right to conserve the same. The Constitution also attempts to safeguard the educational interests of various weaker sections of society via Articles 15, 17, and 46 of the Indian Constitution. Under Article 15, special provisions can be made for the advancement of any socially and educationally backward classes of citizens, or for the scheduled castes and scheduled tribes. Article 46 aims at promoting the economic and educational development of the Scheduled Castes and Scheduled Tribes. Given that India is a secular country with people of varied faiths, the Constitution provides for certain guidelines for interested authorities and private citizens to follow. Article 30 instructs that the state in granting aid to educational institutions should not discriminate against any educational

institution on the ground that it is under the management of a minority, whether based on religion or language. Article 29 (1) states that no citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language, or any of them. The Constitution also encourages the development of one's mother tongue. Article 350A directs that it shall be the endeavour of every state and every local authority to provide adequate facilities for instruction in one's mother tongue. The State has also attempted to make special provisions for women. Articles 15 (1) and 15 (3) allow this exception in the face of Article 14, which deals with equality before law.

**RIGHT TO EDUCATION ACT, 2009**

In order to effectively implement the provisions of the Constitution, the Parliament of India passed the Right of Children to Free and Compulsory Education Act, 2009, also known as the Right to Education Act.

Any child admitted in RTE supported school will not be required to pay any fee for elementary education. The word "compulsory" attaches an obligation on the government to ensure admission, attendance and completion of a child's elementary education. This Act also states that children cannot be held back or expelled from school till Class VIII. Indian Parliament has amended the Right of Children to Free and Compulsory Education Act, 2009 on January 10, 2019. The Bill seeks to amend the Right to Education (RTE) Act to abolish the "no-detention" policy in schools, under this provision of the Act (RTE - 2009) no student can be detained up to class VIII. The Act is called the Right of Children to Free and Compulsory Education (Amendment) Act, 2019.

The Act prohibits any kind of discrimination and harassment meted out by the teachers or the administration. For this, the schools must be recognised under the Act and cannot run if unrecognised. The Act aims at maintaining a proper student-teacher ratio, along with the standard of building and infrastructure, school working days and teacher working hours.

The government, as well, has undertaken some rather important initiatives for developing education and the education system in the country. Two new schemes, Skills Acquisition and Knowledge Awareness for Livelihood Promotion (SANKALP) and Skill Strengthening for Industrial Value Enhancement (STRIVE), have been approved by the Cabinet Committee on Economic Affairs (CCEA) of the Government of India with an outlay of Rs. 6,655 crore (US$ 1.02 billion) in order to improve upon the Skill India Mission. These will be supported by the World Bank.

**FDI IN THE SECTOR OF EDUCATION**

According to the Consolidated FDI Policy issued by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India, foreign direct investment ("FDI") up to 100 percent under the automatic route is permissible in Indian companies engaged in the education sector, except in cases where the foreign investor has an existing joint venture or technology transfer/technology collaboration/trademark agreement in the "same" field relating to India, in which case prior approval from the Foreign Investment Promotion Board ("FIPB") would be required.

## REGULATORY COMPLIANCES

### (A) Postsecondary Education

A foreign institution desiring to impart higher education in India shall be governed by different regulatory bodies. They are mentioned as follows:

**The University Grants Commission**

To the extent the foreign university's activities in India will lead to the award of a local "degree", they will be subject to regulation by the University Grants Commission ("**UGC**"). The UGC was set up under the University Grants Commission Act, 1956 (the **"UGC Act"**). The legislative intent of the Central Government in passing the UGC Act is to make provisions for the promotion and co-ordination of university education. **"University"** refers to those institutions that are recognised as universities under Section 2(f) of the UGC Act.

The broad functions of the UGC include declaration of universities and recognition of degrees; determination and maintenance of standards of teaching, examination and research in universities. An institution can award a "degree" in India *only* if it is recognised as a university under the provisions of the UGC Act. The Government of India ("GOI") may, on the advice of the UGC, declare by notification in the official gazette that any institution for higher education, other than a university, will be deemed to be a university for the purposes of the UGC Act. The whole process of being granted deemed university status takes a minimum of one year.

Since a "university" status is granted *only* if it is established or incorporated by or under a Central Act, a Provincial Act or a State Act and includes any such institution as may, in consultation with the university concerned, be recognised by UGC in accordance with the regulations made in this behalf under the UGC Act and that a "university" status is not granted to an institution with FDI, many foreign universities have explored the possibility of entering into collaborative arrangements such as with the existing Indian universities and institutions. Any such collaboration arrangement with an existing Indian university is to be structured in such a manner so as to comply with the provisions of Indian law, including the Foreign Exchange Management Act, 1999 ("FEMA") and the rules and regulations framed under FEMA.

**All India Technical Education Council**

To the extent a foreign university proposes to operate in India by providing 'diploma' programs, they will also be subject to regulation by the All-India Council for Technical Education ("AICTE"). The AICTE has been established under the All-India Council for Technical Education Act, 1987 ("AICTE Act") with an aim of proper planning and coordinated development of the technical education system throughout India, the promotion of qualitative improvements in such education in relation to the planned quantitative growth, and the regulation and proper maintenance of norms and standards in the technical education system and for matters connected therewith.

The AICTE has been empowered, *inter alia*, to grant approval for the establishment of new technical institutions and courses/intake in the field of **"Technical Education"**. According to the AICTE Act, technical institutions and technical education have been defined as follows:

> *"Technical Education" means programmes of education, research and training in engineering, technology, architecture, town planning, management, pharmacy, and applied arts and crafts, and such other programmes or areas as the Central Government (of India) may, in consultation with the Council (the AICTE), by notification in the Official Gazette, declare.*
>
> *"Technical Institution" means an institution, not being a university, which offers courses or programmes of technical education and shall include such other institutions as the Central Government may, in consultation with the Council, by notification in the Official Gazette, declare as technical institutions.*

Institutions imparting technical education require approval by the AICTE prior to the commencing of a new course in technical education. The AICTE has notified the All-India Council for Technical Education (Grant of Approvals for Technical Institutions) Regulations, 2010 dated January 15, 2010 (the "AICTE Regulations"), which regulate the grant of approval for starting new technical institutions, introduction of courses or programmes, increase/variation of intake capacity of seats for the courses or programs, and extensions of approval for existing technical institutions, amongst others.

**Overlap of UGC and AICTE Jurisdiction**

Broadly speaking, the UGC will regulate educational activities which involve the award of a "degree" and the granting of a "deemed university status for the institutions proposing to award such degrees. The AICTE, on the other hand, will regulate educational activities that fall within the definition of technical education as defined under the AICTE Act and also regulates the registration and recognition of the technical institutions imparting such technical education.

There may be cases where the jurisdiction of the AICTE and the UGC may overlap; for example, in the case of a university that awards "degrees" that fall within the definition of Technical Education. In order to avoid any conflict in such cases of overlapping jurisdiction, the Ministry of Human Resource Development has released a notification that clarifies the conflict of powers of the UGC, the AICTE, and other regulatory bodies. The said notification provides that the power to inspect institutions notified as ‘deemed to be universities’ to the AICTE as well as to the UGC is to be seen separately in the light of the preambles and the statements of reasons of the AICTE Act and the UGC Act respectively. The powers of inspection accorded to the AICTE are specifically in order to ensure the maintenance of standards in management and technical education, whereas the power of inspection to the UGC is to ensure the overall functioning of universities/institutions notified as "Deemed to be Universities" in order to ensure overall standards like that of a university, including administrative and academic standards.

**Other Educational Regulatory Approvals**

There are various regulatory bodies that regulate specific sectors of higher education. They are broadly listed below:-

**Regulatory Body Sectors/Degrees Regulated:** The Distance Education Council regulates open universities and degrees awarded through distance education programs. The Bar Council of India regulates legal education and the award of law degrees in India. The Dental Council of India regulates dental education and degrees relating to dentistry in India. The Indian Nursing Council regulates the education and training of nurses, midwives, and health visitors. The Medical Council of India regulates medical colleges and medical education in India. The National Council for Teacher Education regulates teacher education in India. The Pharmacy Council of India Regulates education in pharmacy in India.

**(B) Primary Schooling**

A foreign institution desiring to conduct primary education-related activities in India has to comply with the laws relating to the establishment of schools, which vary from state to state. A school in India cannot be run with a profit motive. A society registered under the Societies Registration Act, 1860 or as a public charitable trust has to be constituted. In some states, a company incorporated under Section 25 of the Companies Act, 1956 (a non-profit company) may be formed to open a school.

Further, the organisation established under the relevant statutes in different states in India will then be required to obtain recognition from the concerned educational authority in various states in India.

The schools established under the relevant statute in various states would then be required to seek affiliation from the recognised board(s) (CBSE, ICSE, and so on) as recognised by the concerned department in various Indian states. In 2020, the President of India allowed the Ministry of Human Resource Development to rename itself the Ministry of Education to administer the education policy and literacy in the country.

**New Education Policy: 5 + 3 + 3 + 4 Education Structure**

Pre-primary education is for children aged three to six. This two-year learning programme is designed to prepare youngsters for elementary school. During these two years of schooling, children are taught for free in anganwadi, or community-based nurseries.

Children aged three to six will participate in activities that will help them develop their comprehension and problem-solving abilities.

Children will be taught science, mathematics, art, and other subjects through experiments during this time. Children aged 8 to 11 will be accommodated.

Students in the middle stage will be taught from grades six through eight, with a concentration on the core curriculum. Courses in skill development will begin in middle school.

The secondary stage, from ninth through twelfth grade, is divided into two parts, with pupils having access to a series of classes. The ability to pick courses and study in a personalised manner will also be available.

This system did not exist in government pre-schools. It was a typical education that encompassed grades one through ten, with the option to pursue courses in the eleventh grade.

**FDI POLICY**: 100% FDI is allowed in the education sector, which includes schools, colleges, universities, and training centres. As of March 2020, around $3.5 billion of funds have been infused into this sector. In the Union Budget 2022-23, Rs. 1,04,278 crores have been allocated for education.

# ENVIRONMENT LAW

## INTRODUCTION

The need to protect and conserve the environment has always been felt. There were several environmental protection legislations in existence prior to the independence of India. However, the thrust for a well-developed framework in force came only after the UN Conference on the Human Environment (Stockholm, 1972).

The first United Nations (UN) meeting to focus on international environmental issues was the United Nations Conference on the Human Environment, also known as the Stockholm Conference. The conference, held from June 5 to 16, 1972 in Stockholm, Sweden, represented a growing interest in conservation issues around the world and lay the groundwork for global environmental regulation. The Stockholm Conference's final declaration was an environmental manifesto that made a strong statement about the finite nature of Earth's resources and the need for humanity to protect them. In December 1972, the United Nations Environment Programme (UNEP) was established as a result of the Stockholm Conference to coordinate global efforts to promote sustainability and protect the natural environment.

The transformation of developing countries from agricultural to industrial economies has been the focus of planners, underpinned by goals of stimulating growth and reducing poverty. In the process of transition, most development policies have focused exclusively on boosting output and reducing poverty. However more recently, there has been a major concern over the environmental problems and human activities that have resulted in the pollution of the atmosphere, oceans, and land.

India was the first nation to provide for environmental protection explicitly in its Constitution. Article 51-A (g) of the Constitution of India which deals with the Fundamental Duties of the citizens clearly states that it is the duty of the state to: ‘protect and improve the environment and to safeguard forests and wildlife of the country’. It imposes a duty on every citizen ‘to protect and improve the natural environment including forests, lakes, rivers, and wildlife’. The constitutional provisions are backed by a number of laws - acts, rules, and notifications. Since the early 1970s, the Government has enacted 16 legislative measures that provide guidelines for protecting and improving the environment.

Several waste management policies in India were updated in July 2023. Hazardous waste, e-waste, and Plastic Waste Management Rules, for example, have been changed to bring India's waste management in line with that of other regions, most notably the European Union (EU). Extended Producer Responsibility (EPR) was introduced into these rules, laying considerable responsibility on producers and companies that sell products in India. These businesses are now subject to the "polluter pays" principle in order to reduce the negative influence on the environment throughout the product's lifecycle. This technique necessitates the establishment of mechanisms for collecting, "channelizing" (or passing via various passageways such as dealers), and returning products at the end of their useful lives in India.

The Ministry of Environment & Forests MoEF is the nodal agency in the administrative structure of the Central Government for planning, promotion, coordination, and overseeing the implementation of environmental and forestry programs.

**Environment and The Indian Constitution**

The Indian Constitution is one of the few in the world to include specific environmental protection measures.

The rights and obligations guaranteed by the constitution and the common law are supplemented by laws enacted by the national, provincial, and local governments. These laws, also known as legislations, must adhere to the constitution, but they have the power to amend and change the common law.

The 42$^{nd}$ Amendment to the Constitution, ratified in 1974, provides that it is the state government's responsibility to maintain and improve the environment, as well as the country's forests and animals. The latter makes it a fundamental duty of every citizen to safeguard and improve the natural environment, including forests, lakes, rivers, and wildlife, as well as to have compassion for living creatures, under the heading of fundamental duties.

"It is the obligation of the state, to enhance the level of nutrition and the standard of living, and to improve public health, the state shall endeavour to bring about prohibition of the consumption of intoxicating drinks and medications that are harmful to health, except for medicinal purposes," as enshrined under Article 47.

According to Article 48A, "the state shall endeavour to maintain and improve the environment, as well as to safeguard the country's forests and animals."

"It shall be the duty of every citizen of India to protect and improve the natural environment, including forests, lakes, rivers, and wild life and to have compassion for living creatures, and to develop the scientific temper, humanism, and other spirit of inquiry and reform, and to safeguard public property and to abjure violence," provided by Article 51A, which was added to the Constitution by the 42$^{nd}$ Amendment Act of 1976.

The Supreme Court is granted Writ Jurisdiction under Article 32, and all High Courts are granted Writ Jurisdiction under Article 226. This is one of the most unique aspects of the Constitution. The courts have the power to issue any directive, orders, or writs, including writs of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, as applicable, under these laws. This has prepared the way for Public Interest Litigations, which are one of the most effective and active vehicles for environmental protection.

**THE NATURE OF ENVIRONMENTAL REGULATION IN INDIA**

One of the major challenges facing India is to maintain a delicate balance between its economic growth policy and its environmental policy. India’s vast population, growing at a rapid rate, is one of the largest markets in the world for products and services. This dynamic population growth has contributed to a severe burden on its natural resources and has resulted in uncontrolled environmental degradation and neglect.

Following the judicial intervention, the Bhopal disaster, and international pressure, India stepped up its enforcement of environmental laws in the 1980s and continued into the 1990s. To contain the degradation of the environment, the ongoing initiatives of the Government include preventive as well as promotional measures for pollution and environmental impact assessment of industrial and other projects.

The present national policies for environmental management are contained in the Environment Protection Amendment Rules 2023, Forest Amendment Bill 2023, the National Conservation Strategy and Policy Statement on Environment and Development, 1992, and the Policy Statement on Abatement of Pollution, 1992.

Some policies such as the National Agriculture Policy, 2000, the National Population Policy, 2000 and the National Water Policy, 2012 have also contributed to environmental management. All of these policies have recognized the need for sustainable development in their specific contexts and formulated necessary strategies to give effect to such recognition. The National Environment Rules 2023 seeks to extend the coverage and fill in the gaps that existed between the previous policies, in light of present knowledge and accumulated experience. It was not displaced but instead was built on the earlier policies. The salient features of the National Environment Policy, 2006 are highlighted towards the end of this chapter.

With a view to mitigate the adverse environmental effects of development projects and integrating environmental concerns into development, prior environmental clearance of development projects based on impact assessment is being increasingly emphasized. Such clearance has been made mandatory for specified categories of development projects. Other initiatives include submission by industries of an environmental statement every year and setting up of a Cleaner Technology Division in the MoEF to develop and promote cleaner technologies that can be introduced in different sectors. While recognizing the severe problems related to both air and water pollution, the Policy Statement for Abatement of Pollution, 1992, identifies the following steps to integrate environmental considerations into decision-making at all levels –

1. Prevent pollution at the source;
2. Encourage, develop and apply the best available practical technical solutions;
3. Ensure that the polluter pays for the pollution and control arrangements;
4. Focus on protection of heavily polluted areas and river stretches;
5. Involve the public in decision-making.

India has a Central Pollution Control Board (CPCB) at the national level and the State Pollution Control Board (SPCB) at the state level. The mandate of the CPCB is to set environmental standards for all plants in India, lay down ambient standards and coordinate the activities of the SPCBs. The implementation of environmental laws and their enforcement, however, are decentralized and are the responsibility of the SPCBs.

The main pollution control statutes in India are the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, and the Environment (Protection) Act, 1986, which is designed to act as umbrella legislation for the environment, with the responsibility for administering the new legislation falling on the CPCB and SPCBs.

Following the Stockholm Conference, the Department of Science and Technology established the National Council for Environmental Policy and Planning in 1972 to act as a regulatory authority for environmental issues. Later, the Council became a full-fledged Ministry of Environment and Forests (MoEF).

The Ministry of Environment and Forestry (MoEF) was created in 1985 and is now the country's primary administrative authority for regulating and ensuring environmental protection, as well as establishing the legal and regulatory framework for it. A variety of environmental laws have been in effect since the 1970s. The Ministry of Environment and Forests (MoEF) and the pollution control boards (CPCB, Central Pollution Control Board, and SPCBs, State Pollution Control Boards) together comprise the sector's regulatory and administrative core.

**Some of the important legislations with respect to environmental protection are as follows:**

**THE ENVIRONMENT PROTECTION ACT, 1986**

The Environment (Protection) Act of 1986 empowers the federal government to safeguard and improve environmental quality, control and decrease pollution from all sources, and prohibit or restrict the establishment and/or operation of any industrial facility based on environmental considerations. The Environment (Conservation) Act was passed in 1986 with the goal of ensuring environmental protection and enhancement. It gives the Central Government the authority to create authorities tasked with preventing all forms of environmental pollution and addressing specific environmental issues that are unique to different sections of the country. The last time the Act was changed was in 1991.

**Latest Development:**

The Environment Rules, July 2023, were announced by the Ministry of Environment, Forest and Climate Change (MoEFCC) on February 22, 2022 to alter the Environment (Protection) Rules, 1986. On February 22, 2022, this became effective. The following is what has been stated: "Minimum stack height (Vertical Shaft Brick Kilns) - Kiln capacity less than 30,000 bricks per day - 14 m (at least 7.5m from loading platform); Kiln capacity equal or more than 30,000 bricks per day - 16m (at least 8.5m from loading platform)" has been substituted in Schedule – I entry Sl No. 74, which specifies "emission standards for brick kilns."

All new brick kilns must use zig-zag technology, have a vertical shaft, or use Piped Natural Gas as a fuel source in order to meet the specifications set out in this announcement. To avoid clustering of kilns in a region, new brick kilns should be built at least one kilometer away from existing brick kilns. The proprietors of brick kilns must ensure that the roads used to

carry raw materials or bricks are paved, and that vehicles are covered while transporting raw materials or bricks.

**Penalties:**

- Non-compliance with or violation of any of the Act's requirements is deemed a crime.
- Any violation of the EPA is punishable by up to five years in prison or a fine of up to one lakh rupees, or both.
- Offences by Companies: If an offence under this Act is committed by a company, every person directly in charge of the company, at the time of the commitment of offence, is deemed to be guilty unless proven otherwise.
- Offences by Government Departments: If a Department of Government commits an offence under this Act, the Head of the Department (HoD) is presumed to be guilty unless the contrary is proven.

**THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974**

In order to prevent and manage water pollution and to maintain or restore the country's water's wholesomeness, the Water (Prevention and Control of Pollution) Act was passed in 1974. In 1988, the Act was modified. In order to provide for the levying and collection of a cess on water consumed by people operating and carrying out specific types of industrial operations, the Water (Prevention and Control of Pollution) Cess Act was passed in 1977. This cess is gathered to supplement the funds available to the Central Board and State Boards for the prevention and control of water pollution, which were established in accordance with the 1974 Water (Prevention and Control of Pollution) Act. The Act last underwent revision in 2003.

**Penalties:**

1) Any individual who disobeys the directives of the board pursuant to Section 20(2) and (3) is subject to a three-month prison sentence, a fine, or both upon conviction.
2) If the person violates the board's directives under Clause (e) of Section 32(1) or Section 33(2), they might face up to six years in prison, a fine, or both if they don't comply.
3) In addition to the previously listed penalties. Penalties for several types of Acts are listed in Section 42, including:

    a) If someone takes down, destroys, or removes any notification that has been posted to the board.
    b) If someone interferes with a board member or another individual acting on the board's behalf.
    c) If a person refuses to provide any information that the board member needs to accomplish his duty.
    d) Or if he provides any members with information that he knows to be inaccurate.

Then, under all of the aforementioned Acts, a conviction would result in a maximum sentence of 3 months in jail, a maximum fine of 10,000 rupees, or a combination of the two.

## THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

The Air (Prevention and Control of Pollution) Act of 1981 was enacted shortly after the Water Act of 1974, and it aimed to offer a comprehensive framework for India's primary environmental issues.

The major goal of the Air Act is to provide laws to reduce and regulate air pollution in the country, and to establish Boards at the federal and state levels to carry out the required procedures to accomplish this goal. The Boards are given the authority to establish regulations to ensure that air pollution in the country is regulated. The legislation also empowers the Boards to take action against entities that fail to achieve the established air quality criteria.

**Penalties:**

Anyone who fails to comply with the provisions of Sections 21, 22, and the directions issued under Section 31A can be sentenced to one year and six months in prison under Section 37. If the requisite compliances under the aforementioned sections are still not carried out, this sentence can be extended to six years with a fine, plus an additional fine of five thousand rupees per day.

Under Section 38, penalties for certain acts are laid down. These acts are:

1) Under the authority of the Board, destroying, defacing, or removing any pillar, post, stake, or notice established in the ground.

2) Any person acting on the Board's directions is prohibited from executing his or her duties and functions under the Act.

3) Causing any damage to the Board's property.

4) Failure to provide information to a Board officer or employee that is requested by such officer or employee.

5) Failure to inform about emissions released in excess of the State Board's standard. Even the possibility of excessive emissions being released should be reported to the State Board.

6) When providing information to the Board, making fraudulent representations.

7) Giving misleading information to the Board in order to obtain Section 21 permission, i.e. authority to establish industrial plants.

These are offences that are punished by imprisonment for up to three months, as well as a fine of up to ten thousand rupees, or both.

## THE WILDLIFE PROTECTION ACT, 1972

In order to preserve environmental and ecological security, this Act protects the country's wild animals, birds, and plant species. The Act, among other things, prohibits the hunting of many animal species. The last time the Act was changed was in 2006. In 2013, the Rajya

Sabha introduced an amendment bill that was referred to a Standing Committee, however it was withdrawn in 2015.

**Latest Development:**

The Parliamentary Standing Committee on Science and Technology, Environment, Forests and Climate Change submitted its report on the proposed Wild Life (Protection) Amendment Act, 2022.The standing committee has found that some species were excluded from various schedules of wildlife and plants that have been proposed by the Environment Ministry and has recommended a revised listing of schedules to include these species.

**Penalties:**

Violations of the Act's provisions are punishable by imprisonment and penalties. These penalties will be increased as a result of the bill.

## THE FOREST CONSERVATION ACT, 1980

The Forest (Conservation) Act of 1980 (FCA, 1980) is an act of the Indian Parliament that ensures forest and resource conservation. It was enacted by the Indian Parliament to control the ongoing destruction of India's forests. It was enacted on October 25, 1980, andis divided into five portions.

Objectives of the Forest Conservation Act, 1980 are as follows:

1) While conserving the forest's integrity and territory, protect the forest's flora, animals, and other unique ecological components.
2) Stop the extinction of forest biodiversity.
3) Prevent the conversion of forest lands to agricultural, grazing, or other commercial purposes and intentions.

**Penalties:**

Section 3A deals with the Penalty for contravention of the provisions of the Act. It states that whoever violates any of the provisions of the Act, shall be punishable with simple imprisonment for a period which may extend to fifteen days. This was incorporated via the 1988 Amendment.

## THE NATIONAL GREEN TRIBUNAL ACT, 2010

The National Green Tribunal (NGT) was formed on October 18, 2010, under the NGT Act of 2010, as a specialist authority for resolving environmental disputes involving many disciplines. It was created after the National Environment Appellate Authority was abolished. It also takes inspiration from Article 21 of the Indian Constitution, which guarantees the residents of India a healthy environment.

**Penalties:**

The NGTs can impose expressively higher penalty amounts on companies for non-compliance with their directions. If a company fails to comply with any order or award of the NGT, the company is liable to a fine of up to INR 25o Lakhs.

## HAZARDOUS WASTES MANAGEMENT REGULATIONS

Hazardous waste refers to any waste generated which is toxic, flammable or corrosive in nature and can most likely cause harm to health and the environment. Rules related to hazardous waste management are as follows:

1) Bio-Medical Waste Management Amendment Rules, 2018

2) Solid Waste Management Amendment Rules, 2020

3) Plastic Waste Management Amendment Rules, 2023

4) E-Waste (Management and Handling ) Amendment Rules, 2023

5) Batteries (Management & Handling) Amendment Rules, 2022

6) Coastal Regulation Zone Notification, 2019

**Fiscal Incentives to Encourage Control and Prevention of Pollution:**

1. In order to encourage environmental conservation, donations given by the corporate sector for the conservation of nature and natural resources are exempted from income tax.

2. A depreciation allowance of 30 percent is also allowed on devices and systems installed in industrial units for minimizing pollution or for the conservation of natural resources.

3. In order to encourage plants to shift from congested urban areas, capital gains made in moving from urban to other areas are exempted from taxes, if these are used for acquiring land and building production facilities in non-urban areas.

4. Excise and custom duty exemptions or reductions are given for the use of environment-friendly raw materials.

# ENTRY OPTIONS IN INDIA FOR FOREIGN ENTERPRISE

## INTRODUCTION

Foreign investment plays a significant role in economic development of any economy like India. India is an attractive destination for various foreign investors due to the sheer diversity of the country's natural resources, the amendments in tax laws, the implementation of new initiatives like the Make in India initiative and Digital India initiative. There are simpler and transparent foreign direct investment (FDI) policies governing the country and extremely high skilled human resources. The Indian Government in 2020, announced schemes like- 'production-linked incentive (PLI) scheme for electronics manufacturing which attracts foreign enterprises.

The Indian government has raised FDI caps, introduced on-line portals (such as eBiz, Shram Suvidha), reduced the duration and procedures for starting a business and introduced E-VISA in order to increase the ease of doing business.

According to the Ministry of Commerce and Industry, India recorded the biggest foreign direct investment (FDI) inflow for the fiscal year 2022–2023 at $70.9 billion. The country's FDI inflows have surged 20-fold from the fiscal year 2003–2004, when they were only $4.3 billion. Gross Foreign Direct Investment (FDI) inflows increased, from $83.6 billion in FY 2022 to $70.97 billion in FY 2023. According to the PHD Chamber of Commerce and Industry (PHDCCI), India is expected to attract $100 billion in FDI inflows in 2022-23.

A foreign company can set up their business in India through two routes—it can choose the form of an incorporated entity (as an Indian company) or on unincorporated entity (as a foreign company). Foreign Companies can also set up their operations in India through two means—through a liaison office/representative office or through branch office.

**LIAISON OFFICE**

These are owned and controlled by the foreign enterprises. However, the liaison offices are not in the capacity to generate income and are primarily opened by foreign companies to liaise with their customers in India and for promoting export and import. No activities involving manufacturing, trading or any other commercial activity are permitted from a liaison office. A liaison office in India is permitted to undertake the following activities:

- Representing in India the parent company/group companies in India
- Promoting export/import from/to India
- Promoting technical/financial collaborations between parent/group companies and companies in India
- Acting as a communication channel between the parent company and Indian companies

The opening and operation of these offices is regulated by the Foreign Exchange Management Act (FEMA) that is amended from time to time. Approval from the RBI is required for opening such offices. The conditions imposed for operation of such offices are:

- Expenses of such offices are to be met entirely through inward remittances of foreign exchange from the head office abroad.
- Such offices should not undertake any trading or commercial activities and their activities should be limited to collecting and transmitting information between the overseas head office and potential Indian customers.
- Such offices should not charge any commission or receive any income from Indian customers for providing liaison services.
- Liaison offices also have to file regular returns comprising of annual audited accounts, an annual report on the activities of the office and some other documents with the RBI.

An application to set up a liaison office in India has to be made to the central office of RBI (Foreign Investment Division). After the application is approved, permission is granted for an initial period of three years. Applications for renewal of the permission should be made to the concerned regional office of RBI under whose jurisdiction the office is geographically situated. Pursuant to the setting up of the liaison office, with the approval of the RBI, the Registrar of Companies needs to be intimated, about the setting up of a place of business under the Companies Act.

It may be noted that an insurance company having approval from the Insurance Regulatory and Development Authority under the provisions of Insurance Regulatory and Development Authority Act, 1999 to establish a liaison office in India does not require approval under the provisions of the FEMA.

**PROJECT OFFICE**

Foreign companies can set up temporary project/site offices in India to execute specific projects in India and to carry on any activity relating and incidental thereto. The RBI has granted general permission to a foreign entity for setting up a project office in India subject to the following conditions:

1. It has secured from an Indian company a contract to execute a project in India; and
2. The project is funded by inward remittance from abroad; or
3. The project is funded by a bilateral international finance agency (i.e., the World Bank, International Monetary Fund or similar other body); or
4. The project has been cleared by an appropriate authority; or
5. A company or entity in India awarding the contract has been granted term loan by a public financial institution or a bank for the project.

Pursuant to the setting up of the Project Office, the Registrar of Companies needs to be intimated about the setting up of a place of business under the Companies Act. RBI has also granted general permission to foreign entities to remit the surplus on winding up/completion of projects. These offices are only permitted to engage in activities related on incidental to the completion of the project.

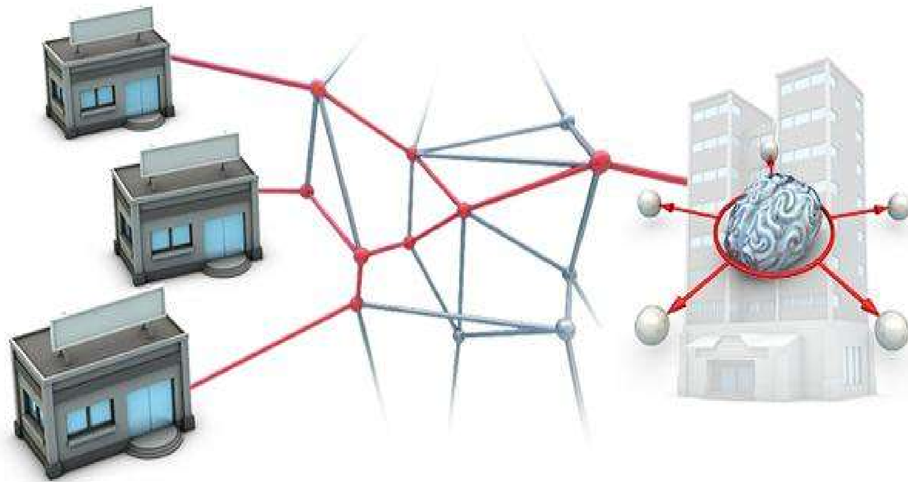
**BRANCH OFFICE**

A branch office is basically an extended arm of the foreign company and can undertake the export/import of goods, consultancy, research, coordination with local buyers and sellers, provide technical support for products sold in India, development of software and operations related to airline/shipping business. The branch office can acquire property for the permitted use, but cannot lease or rent property. The foreign parent company is legally held liable for all activities of the Indian branch.

However, these branches are not allowed to undertake manufacturing activities. A branch is treated as a 'Permanent Establishment' of a foreign company in India and is liable for higher Income Tax (40 per cent plus 2.5 per cent surcharge plus 3 per cent education cess; as against 30 per cent plus 10 per cent surcharge plus 3 per cent education cess for companies set up in India). The profits earned by the branch office are freely remittable from India and the branches have to submit an annual activity certificate to the Reserve Bank of India.

**The branch office can undertake the following activities:**

- Export/Import of goods - Rendering professional or consultancy services;
- Carrying out research work, in which the parent company is engaged;
- Promoting technical or financial collaborations between Indian companies and parent or overseas group company;
- Representing the parent company in India and acting as buying/selling agent in India;
- Rendering services in Information Technology and development of software in India;
- Rendering technical support to the products supplied by parent/group companies;
- Foreign airlines /shipping company



Applications for opening of branches in India are to be made to the central office of RBI (Foreign Investment Division). However, approval from RBI is not required if a company intends to establish a branch/unit in Special Economic Zones (SEZs) to undertake manufacturing and service activities provided such units are functioning in those sectors where 100 per cent FDI is permitted; such units comply with the provisions of the Companies Act; such units function on a stand-alone basis, and in the event of winding up of business and for remittance of winding up proceeds, the branch approaches an authorized dealer (i.e., persons authorized by the RBI to deal in foreign exchange) with prescribed documents.

**INDIAN COMPANY**

A foreign company can commence operations in India through incorporation of a company under the provisions of the Amendment bill 2020. A foreign company can set up a completely owned subsidiary or can start a joint venture with an Indian organization/ company which permits 100% foreign direct investment (FDI) through programmed course. Preceding this, endorsement is needed from the public authority or RBI.

A completely owned or a subsidiary organization has the greatest adaptability/ flexibility to direct business in India. The parent association can completely control the operation of all tasks in India. The wholly claimed subsidiary is treated as domestic organization/ company and is permitted to have every one of the exclusions and derivations delighted in by the Indian organizations.

**Joint Venture with an Indian Partner**

A joint venture can prove to be advantageous for a foreign investor in the following ways:

A. There is already an established distribution or marketing set up of the Indian partner.
B. Available financial resources of the Indian partner.
C. The contacts of the Indian partner that help ease the process of setting up operations.

There are no separate legislations/ laws for joint ventures in India and laws governing domestic companies apply equally to joint ventures.

Some of the broad and important clauses/ provisions which ought to be included in the joint venture agreement are as follows:

- **Approvals:** The joint venture agreement is subject to the RBI and Foreign Investment Promotion Board (FIPB) policies.
- **Finance:** This provision sets out the way in which finances are to be raised for the business. It endorses the measure of starting speculation and the commitments to be made.
- **Object:** The objects, scope, extent and the end product of the joint venture should be specified.
- **Shareholdings:** This mentions the shareholding ratio between the parties, the class of shares to be issued and the rights attached thereto. The clause also contains information about the shareholder's meetings, voting rights, future issue of share capital, transfer of shares etc.
- **Management:** The contribution of the board of directors, provisions relating to meetings and resolutions, the terms and conditions for expansion of business, appointment and removal of the senior management and service agreements are also stated in this clause.
- **Deadlock:** This clause pertains to situations of deadlock between the parties. The aim is to bring about a mechanism of resolution in case of such deadlock.
- **Resolution of disputes:** This clause defines a dispute along with the appropriate method to settle the said dispute. They are generally resolved using methods like arbitration or mediation. Litigation may also be resorted to, but it is generally discouraged.
- **Confidentiality**: This clause is in the nature of a prohibitory clause. It entails provisions for the preservation of the company's secrets and strategic information.
- **Termination and Agreement:** This clause should mention the circumstances under which a joint venture can be terminated. These circumstances include factors such as breach of agreements, insolvency, etc. It also mentions the consequences of the termination, if any. Often a 'Force majeure' clause can also be added to the above, in order to protect those parties who are victims of events beyond their control.

**Wholly Owned Subsidiary Company**

In industries where the FDI policy allows for 100 percent foreign direct investment, foreign corporations may also establish wholly-owned subsidiaries.

**Limited Liability Partnership (LLP)**

LLP is a new corporate form in India. It provides the benefits of limited liability to a company and allows its members the flexibility of organizing their internal management on the basis of a mutual agreement.

Incorporation of LLP by foreign investors is allowed in sectors where 100 per cent FDI is allowed through automatic route. LLPs with FDI are not allowed to operate in agricultural or plantation activity, print media or real estate sector.

LLP is regulated by Limited Liability Partnership Act, 2008 Amendment Act 2021 and Limited Liability Partnership Rules, 2009 Amendment Rules 2022. An LLP should have a minimum of two designated partners who are individuals, with at least one of them being residents of India.

# EXTERNAL COMMERCIAL BORROWING

**INTRODUCTION**

An external commercial borrowing (ECB) is a tool to inspire India to encourage Indian companies and corporate organisations to raise money from outside the country in foreign exchange. In other words, it is basically the loans granted by non-residents in foreign currency to Indian borrowers. The government of India permits organisations and companies in India to raise fund through ECB for development, new ventures and investments. Other such external sources of finance include Foreign Currency Exchangeable Bond (FCEB) and Foreign Currency Convertible Bonds (FCCB). While foreign currency convertible bonds are issued to raise finance, ECB refers to commercial loans which may be in the form of bank loans, bonds, securitised instruments, buyers' credit and suppliers credit aided from non-resident lenders with a basic average maturity time period of 3 years.

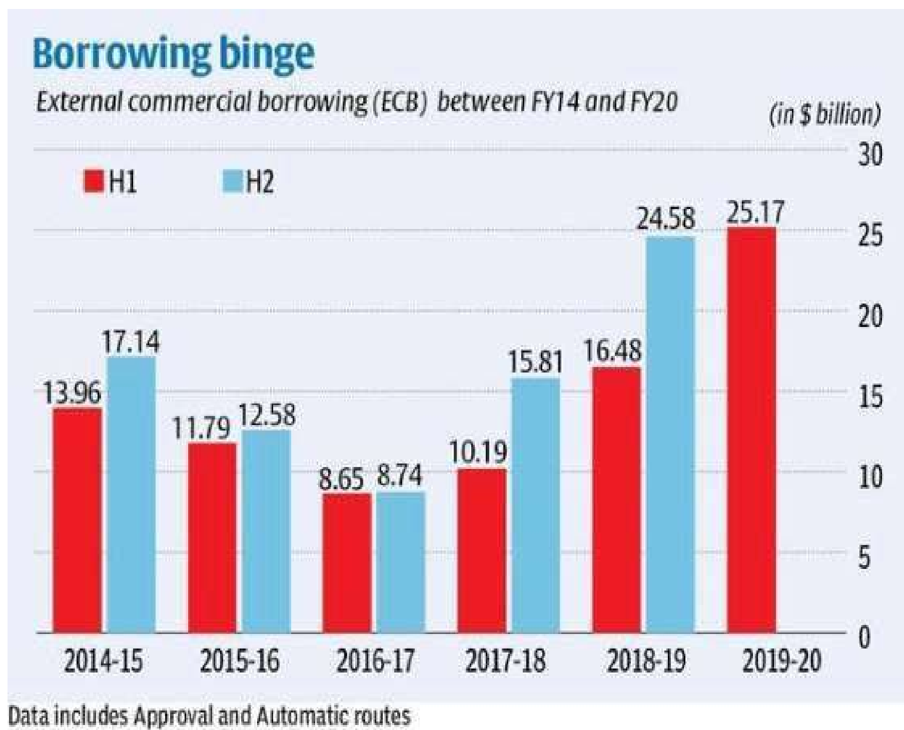
**<u>ROUTES FOR EXTERNAL COMMERCIAL BORROWING</u>**

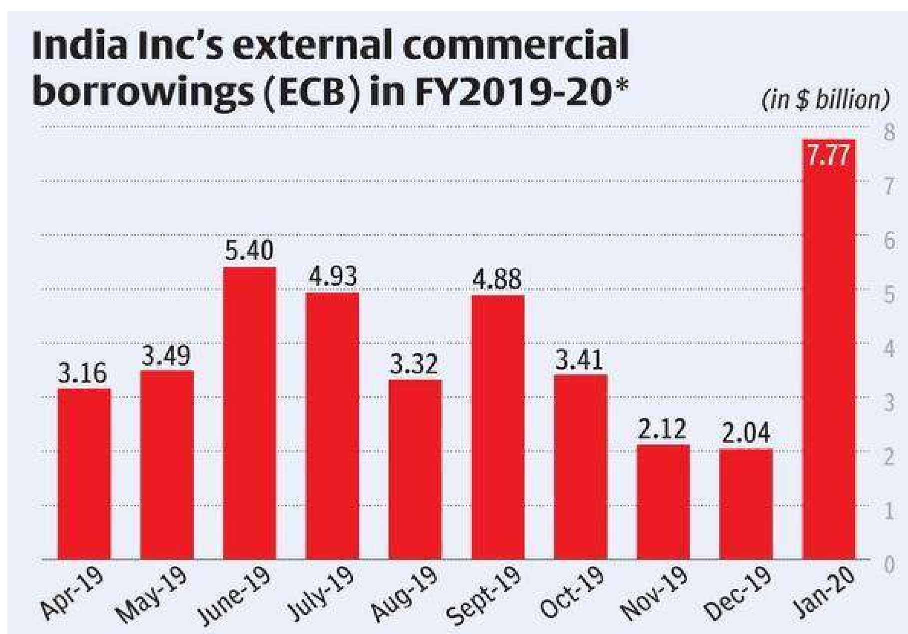
| Automatic Route | Government Route |
|---|---|

ECB can be brought in India either through approval route or automatic route. If a company passes all the authorized norms, it can raise money without any prior approval. Under automatic route, the government has sanctioned some qualification norms with regard to industry, amounts, end-use etc. For specific pre-specified sectors, the borrowers have to take sanction from the Government and the Reserve bank of India (RBI) before borrowing

through ECB. RBI has issued formal instructions and circulars specifying these regulations for borrowing.

Taxman : Overview for External commercial borrowing graph : Source RBI




Source : RBI *includes ECBs raised under Automatic & Approval routes

**Eligible Borrowers**

- Under the Automatic Route, all corporate entities including those in the hotel, hospital, software sectors (registered under the Companies Act, 1956) and Infrastructure Finance Companies (IFCs) (except for financial intermediaries like

banks, financial institutions (FIs), Non-Banking Finance Companies (NBFCs) and Housing Finance Companies (HFCs)).

- Non-Government Organisations (NGOs) engaged in micro-finance activities and Units in Special Economic Zones (SEZs) are eligible to raise ECB for their own requirement.
- The borrowers not covered under the Automatic Route fall under the ambit of Approval Route.

**Recognised Lenders**

- Borrowers can raise ECB from internationally recognized sources such as international banks, international capital markets, multilateral financial institutions (such as IFC, ADB, CDC, etc.), export credit agencies, suppliers of equipment, foreign collaborators and foreign equity holders [other than erstwhile Overseas Corporate Bodies (OCBs)].
- For a "foreign equity holder" to be eligible as "recognized lender" under the automatic route, they would require a minimum holding of equity in the borrower company as set out below:
  - For ECB up to USD 5 million - minimum equity of 25 per cent held directly by the lender;
  - For ECB more than USD 5 million - minimum equity of 25 per cent held directly by the lender and the proposed ECB not exceeding four times the direct foreign equity holding.
- For individual lenders, certain additional criteria are also required to be complied with.

**Amount and Maturity**

- A corporate may raise up to USD 500 million or equivalent during a financial year using ECBs. However, corporates can avail ECB of an additional amount of USD 250 million with average maturity of more than 10 years under the Approval route, over and above the existing limit of USD 500 million under the Automatic route, during a financial year. Prepayment and call/put options, however, would not be permissible for such ECB up to a period of 10 years.
- An ECB up to USD 20 million or equivalent in a financial year must have a minimum average maturity of three years.
- ECB above USD 20 million per financial year and up to USD 500 million or equivalent must have a minimum average maturity of five years.

**End Uses**

- ECB can be raised only for investment such as import of capital goods (as classified by DGFT in the Foreign Trade Policy), new projects, modernization/expansion of existing production units, in real estate sector - industrial sector including small and medium enterprises (SME), infrastructure sector and specified service sectors namely hotel, hospital, software in India. Infrastructure sector is defined as:

i. power;
ii. telecommunication;
iii. railways;
iv. road including bridges;
v. sea port and airport;
vi. industrial parks;
vii. urban infrastructure (water supply, sanitation and sewage projects);
viii. mining, exploration and refining; and
ix. cold storage or cold room facility, including for farm level pre-cooling, for preservation or storage of agricultural and allied produce, marine products and meat.

- Utilisation of ECB proceeds is permitted in the first stage acquisition of shares in the disinvestment process and also in the mandatory second stage offer to the public under the Government's disinvestment programme of Public Sector Undertaking (PSU) shares.
- ECB proceeds can be utilized for overseas direct investment in Joint Ventures (JV)/Wholly Owned Subsidiaries (WOS) subject to the existing guidelines on Indian Direct Investment in JV/WOS abroad.
- NGOs engaged in micro finance activities may utilize ECB proceeds for lending to self-help groups or for micro-credit or for bonafide micro finance activity including capacity building.
- Payment for Spectrum Allocation.
- Corporates engaged in the development of integrated township which includes housing, commercial premises, hotels, resorts, city and regional level urban infrastructure facilities, such as roads and bridges, mass rapid transit systems and manufacture of building materials. Development of land and providing allied infrastructure forms an integrated part of township's development.
- Certain end uses are not permitted for ECB proceeds. These include investment in capital markets, acquisition of a company (or part thereof) in India by a corporate, investments in real estate, working capital, general corporate purpose and repayment of existing Rupee loans.

**Guarantee**

Issuance of guarantee, standby letter of credit, letter of undertaking or letter of comfort by banks, Financial Institutions and Non-Banking Financial Companies (NBFCs) from India relating to ECB is not permitted. However, the above stated documents in respect of ECB by textile companies for modernization or expansion of textile units will be considered under the Approval Route subject to prudential norms.

**Security**

The choice of security to be provided to the overseas lender/supplier for securing ECB is up to the borrower. AD Category-I banks may, subject to the fulfilment of certain compliance requirements, convey ‘no objection’ under the Foreign Exchange Management Act (FEMA), 1999 for creation of charge on immovable assets, financial securities and issue of corporate or personal guarantees (subject to certain conditions) in favour of overseas lender/security trustee, to secure the ECB to be raised by the borrower.

**ADVANTAGES OF ECB**

- ECB is a type of a loan and may not be of equity nature or convertible to equity. Hence, it does not weaken/water down the stake in the company and can be done without giving away control as debtors do not enjoy voting rights.
- Accessibility of larger market can help companies satisfy larger requirements from global players in a better manner in comparison with what can be achieved domestically.
- Indian companies can usually borrow at cheaper rates from the U.S. and the Eurozone as interest rates are less there compared to the home country, India. The cost of funds is usually less from external sources if borrowed from economies with a lower rate of interest.
- Avenues of lower cost funds can improve the profitability of the companies and can encourage and promote economic growth.
- It provides access to international markets for the borrowers and gives good exposure to opportunities on a global platform.
- The economy also gets benefit, as the government can direct inflows into the sector which have potential to grow.

**DISADVANTAGES OF ECB**

- Since the borrowing is foreign currency denominated, paying back the principal and the interest needs to be made in foreign currency and this exposes the company to exchange rate risk. Companies may have to suffer hedging costs or assume exchange rate risk which if goes against may end up negative for the borrowers resulting in them incurring heavy damages.
- More debt on the company’s balance sheet is considered as a downside by the rating agencies which may result in a possible downgrade of rating done by rating agencies which can eventually increase the cost of debt. This may also tarnish the company’s reputation in the market and market value of the shares too in later years.
- Accessibility of funds at a cheaper rate may bring in a negligent attitude on the company’s side resulting in excessive borrowing. This eventually results in higher (than requirement) debt on the balance sheet which may affect many financial ratios negatively.

## RECENT TRENDS

Due to the cheaper overseas funds and easier overseas borrowing norms, ECB of Indian companies jumped nearly 50% in the six months ending on 30th September 2019 from a year ago.

Data of Reserve Bank of India (RBI) shows that corporates raised $ 2.368 billion in April 2021 and $ 5.029 billion in March, 2022 via the ECB route.

India Inc. raised $3.7316 billion via external commercial borrowings (ECB's) under the automatic route in January 2021 about 26 per cent more than what was acquired in the preceding month.

In December 2020, Indian companies collectively swabbed up $2.9671 billion through ECB route. The development and increase in borrowing through ECB's come in the scenario of non-food bank credit growth slowing to 5.7 per cent on year-on-year basis in January 2021 compared to 8.5 per cent in January 2020.

In January 2021, four companies collected resources of $500 million and above through ECBs, as per the RBI data on ECB/Foreign Currency Convertible Bonds. Export-Import Bank of India generated more than USD 1 billion for on-lending/sub-lending, with the tenure of ECB being 10 years.

# FOREIGN DIRECT INVESTMENT

**BRIEF OVERVIEW**

India has formulated a comprehensive and extensive strategy for Foreign Direct Investment (FDI). Since the beginning of economic reforms in the early 1990s, important changes have been implemented in the areas of investment, trade, financial sector, exchange control simplification, competition, and intellectual property rights, among others. The current business climate in India is liberal, appealing, and hospitable to financial backers.

Ever since India gained independence, the nation's socio-economic development programs have strived to achieve economic self-reliance and social equity. There is a near unanimity among political parties on economic reforms in India. With the benefits flowing from the economic reforms undertaken by successive governments in the country, this political consensus has broadened on a national scale.

Foreign investment policy is managed by three bodies namely, the Ministry of Finance, RBI and the Department for Promotion of Industry and International Trade. The finance ministry is responsible for notifying changes in FDI policy under FEMA, which was earlier done by the RBI.

In India, the primary objective of the FDI policy is to invite and facilitate foreign investment to achieve faster economic growth. The policy guidelines of the Government of India for FDI in India are reviewed on an ongoing basis considering the economic requirements of the country.

The regulations have been structured to identify the industrial sectors, with or without sectoral caps, for investments, to minimize the procedural formalities and finally to introduce an automatic route for foreign investors to bring in investment by merely informing the RBI.

The economic reforms initiated in 1991 introduced far-reaching changes and to a great extent unshackled the Indian economy. These changes were mainly introduced in the following aspects of the economy:

- Trade and exchange controls;
- Selective access to foreign investment;
- Dominance of the public sector in industrial activity;
- Discretionary controls on industrial investment and capacity expansion;
- Public ownership and regulation of the financial sector:

**Market Size**

Despite setbacks from the military activity in Ukraine and the Covid-19 pandemic, FDI inflows in fiscal 2022 were $1.6 billion more than the previous year, according to the report. In FY22, FDI equity inflows into manufacturing sectors surged by 76% to $21.34 billion, up from $12.09 billion the year before. FDI equity investments have also risen sharply. Karnataka, with 38 percent of total FDI equity inflows, continues to be the leading receiving state, followed by Maharashtra (26%), and Delhi (14%). Singapore is the top investor country in terms of FDI equity inflow, with 27 percent, followed by the United States (18 percent), and Mauritius (16 percent) for FY 2021-22.

The service sector in India reserved for itself a highest share in FDI equivalent to over 629 billion Indian Rupees in fiscal year 2019. The sector included finance, banking, insurance and other non-financial sectors like research and development, outsourcing, testing and analysis. With a share of roughly 25%, computer software and hardware becomes the largest recipient industry of FDI equity inflow. In the Financial Year 2021-22, India received the largest annual FDI inflow of USD 83.57 billion.

During the 2022 period, World Investment Report by UNCTAD ranked India 7th largest recipient of FDI which is a positive sign.

**IMPORTANT CONSIDERATIONS UNDER FDI**

**Repatriation of Dividend:**

Dividends are freely repatriable without any restrictions (net after tax deduction at source or Dividend Distribution Tax).

**Repatriation of Capital:**

Authorized Dealer (AD) Category-I bank can allow the remittance of sale proceeds of a security (net of applicable taxes) to the seller of shares resident outside India, provided the security has been held on repatriation basis, the sale of security has been made in accordance with the prescribed guidelines and NOC / tax clearance certificate from the Income Tax Department has been produced.

Investments are subject to lock-in period of 3 years in case of construction development sector.

**Repatriation of Interest:**

Interest on completely, obligatorily and mandatorily convertible debentures is openly repatriable with no limitations (net of appropriate taxes).

**Aspects of Taxation:**

The financial backer is needed to pay charge on overall gain acquired in India. The rates of taxes differ among structures. The company incorporated in India is required to pay 30% tax (turnover exceeding 250 crore) + @ 15.5% + surcharge + education cess. The fixed business environment in India is treated as a lasting foundation and is needed to pay charge @ 40% + surcharge + education cess. There is no tax on profits distributed. LLPs are required to pay tax @ 30% + surcharge + education cess (where total income exceeds 1 crore).

**INCENTIVES TAKEN BY THE GOVERNMENT:**

- Government of India approved the National Policy on Software Products to develop the country as the software hub in February 2019.
- Government of India will provide soft loan amounting to US$ 1 billion to sugar mills to help them in clearing their debt amounting to US$ 3.33 billion to farmers. The money will be directly credited to the farmer's bank account via the Pradhan Mantri Jandhan Yojana. Later, the Government decided to provide soft loans under Sugar Development fund to sugar mills for a year in 2021 seeing the market condition.
- Government of India has approved the National Digital Communication Policy (NDCP) for attracting US$ 100 billion in investments, improved broad band connectivity and generation of four million jobs in the telecom sector.
- SEBI has doubled the investment by angel funds in VC industry upto 100 crores.

- Government of India approved the National Mineral Policy 2019, National Electronics Policy 2019 and Faster Adoption and manufacturing of (Hybrid) and Electric Vehicles (FAME II).
- Government of India launched a support and outreach program for the Micro, Small and Medium Enterprises (MSMEs) sector. It involves 12 key initiatives which will help in boosting the growth, expansion and facilitation of MSME's across the country.
- Ministry of environment and forests has permitted environment clearance for 35 km coastal road connecting south and north Mumbai.
- India and Japan have come together for infrastructure development in India's north-eastern states and are also establishing an Indian-Japan Coordination Forum for Development of North East to undertake strategic infrastructure projects in the north-east. Japan has invested around 2 billion dollars in improving infrastructure in India's northeast states.

**MAJOR PRINCIPLES OF INDIA'S FOREIGN INVESTMENT REGULATIONS**

The provisions, which apply only to entry of FDI, emanate from the Foreign Exchange Management Act, 1999 (FEMA) and the rules and regulations framed there under. The route to foreign investment has been made easier as the thrust is more on the management of foreign investment rather than on regulation as was prevalent under its predecessor regulation, Foreign Exchange Amendment Bill 2000. India's foreign investment regulations are two pronged, one relates to the authorisations or licenses required by a foreign investor, and the other deals with the relationship between the subsidiary or joint venture company and its foreign parent company or investor, as the case may be (profit repatriation, royalties, etc.).

**BASIC REGULATIONS GOVERNING THE ENTRY BY FOREIGN INVESTORS**

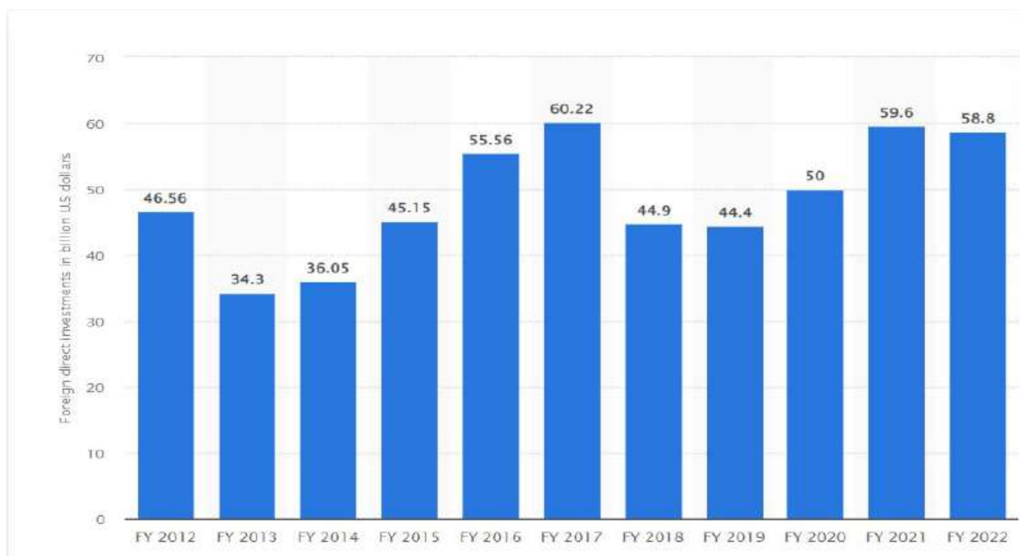
The basic rules regulating possible entry by foreign investors are as follows:

- No investment is permitted in a few sensitive sectors.
- Specific approval is required in a few sectors. Approvals are not automatic in these sectors and they are accorded on a case-to-case basis on merit.
- In all other sectors, foreign investment is allowed on an automatic basis up to the permissible limit set for a sector, i.e., it does not require prior approval of the Government of India, and the investment is required to be notified within a specified period.
- Except in the following circumstances, where a non-resident investor has an existing joint venture/technology transfer/trademark agreement, as on January 12, 2005, new proposals in the same field for investment/technology transfer/technology collaboration/trademark agreement would have to be under the Government approval route through Foreign Investment Promotion Board constituted by the Government of India (FIPB)/Project Approval Board in Department of Industrial Policy & Promotion, Ministry of Commerce & Industry, Government of India:
  - Investments to be made by Venture Capital Funds registered with the SEBI; or
  - Investments by Multinational Financial Institutions like Asian Development Bank (ADB), International Finance Corporation (IFC), Commonwealth Finance Corporation (CDC), Deutsche EntwicklungsGescelschaft (DEG) etc.; or

- ➢ Where the investment by either of the parties is less than 3 per cent in the existing joint venture; or
- ➢ Where the existing joint venture/collaboration is defunct or sick; or
- ➢ for issue of shares of an Indian company engaged in Information Technology sector or in the mining sector, if the existing joint venture or technology transfer / trade mark agreement of the person to whom the shares are to be issued are also in the Information Technology sector or in the mining sector for same area/mineral.

- In so far as joint ventures to be entered into after January 12, 2005 are concerned, the joint venture agreement may embody a 'conflict of interest' clause to determine/ safeguard the interests of joint venture partners in the event of one of the partners desiring to set up another joint venture or a wholly owned subsidiary in the 'same' field of economic activity. In order to determine 'same' field, the 4 digit National Industrial Classification (NIC), 1987 Code has to be referred to.
- Investments, once approved and implemented as per the approval conditions, are valid permanently and qualify for future repatriation of profits and capital.
- Approvals can follow one of the two routes, namely the Automatic route or the Approval route.
- The government, from time to time, notifies "sector specific guidelines for FDI" delineating the percentage of FDI permitted in specified sectors/activities. The guidelines also specify if the foreign investment would fall under the automatic or approval route. In the sectors/ activities not listed in the guidelines, FDI is permitted up to 100 per cent under the automatic route, subject to the applicable sectoral rules/regulations.

Gross FDI flows : Source Times of India



## INDIA HAS GOT RECORD FDI THIS YEAR DESPITE PANDEMIC

**The Automatic Route**

This route applies to all proposals that are completely in line with the investment guidelines prescribed for the sector. No prior approval is necessary for investments under the automatic route. However, the name of the collaborators, details of allotment, copy of the foreign collaboration agreement, the original foreign inward remittance certificate from the authorized dealer and other specified information are to be provided to the RBI within a specified period. Automatic route extends to the following proposals:

- Where the proposed investment is within the specified ceilings prescribed for automatic route;
- Subject to sectoral norms, FDI in Special Economic Zones (SEZs), Export Oriented Units (EOUs), Electronic Hardware Technology Park (EHTP), Software Technology Park (STP) and Industrial Parks;

**The Approval Route**

FDI activity not covered under the automatic route requires prior government approval and is considered by the Foreign Investment Promotion Board (FIPB), Department of Economic Affairs and Ministry of Finance on a case-to-case basis. Prior approval of the Government of India is necessary for foreign investment in the following cases:

- Proposal requiring industrial license under the Amendment Act 2016 ;
- Foreign equity being more than 24 per cent in the capital of units manufacturing items reserved for small-scale industries;
- All items which require an Industrial Licence in terms of the location policy notified by Government under the Industrial Policy of 1991;
- All proposals in which the foreign collaborator had an existing venture/tie up in India in the same field on or before January 12, 2005, with some stated exceptions;
- All proposals with respect to sectors in which foreign investment can only be by prior government approval as per the notified sectoral policy;

The FIPB, comprising of the secretaries of Departments/Ministries of Industries, Commerce, Finance and External Affairs, besides officials from various administrative Ministries, meets every week and considers applications in their totality. The decision of the committee is communicated within 30 days and applicants can also ascertain the status from the website http://www.dipp.nic.in. While granting approval, weightage is given to the employment potential, potential inflow of foreign exchange through exports, long term competitive advantage to India and favourable alignment of the proposals with government priorities like poverty alleviation, infrastructure development etc. The comments of the administrative Ministry as well as the industry development departments of the recipient State are well considered while clearing the proposal. All cases involving higher investments, as well as applications rejected by the FIPB, are referred to the Cabinet Committee for Foreign Investment (CCFI) for its final decision. Proposals that are considered sensitive may necessitate presentations before the members of the Committee besides meetings with the concerned departments before a final decision is taken.

Besides the above, Foreign Investment Implementation Authority (FIIA) has been set up to facilitate quick implementation of FDI approvals and assist foreign investors in getting the necessary approvals.

**RECENT DEVELOPMENTS IN FDI POLICY**

Union Cabinet of the Government of India has approved the changes to the foreign direct investment policy of the government issued by the Department for the Promotion of Industry and International Trade (DPIIT) through Press Note 4 dated 18th September 2023 (Cycle and Rickshaw Tyres and tubes order)

**The changes initiated by the Press Note 4 in the foreign direct investment policy are as follows:**

- 100% FDI under the automatic route has been allowed in Indian entities engaged in coal and lignite mining for exclusive consumption for power projects, iron and steel and cement units and other activities permitted under the provisions of Coal Mines (Special Provisions) Act, 2015 and the Mines and Minerals (Development and Regulations) Act, 1957 and other relevant laws on the subject matter.
- 100% FDI in Indian entities engaged in contract manufacturing is permitted under automatic route through a legally tenable contract.
- FDI in Single Brand Retail Trade is permitted 100% under the automatic route which earlier required a prior government consent for investments exceeding 49%. Changes have also been brought up in the sourcing norms by Press Note 4. Now all procurements made from India by the SBRT entity shall be counted towards local sourcing, irrespective of the fact whether goods procured have been sold in or exported from India. Further Press Note 4 provides that online retail trading can be undertaken prior to the opening of a brick and mortar store provided within a period of 2 years from the date of start of online retail trading.
- 26% FDI in entities that are engaged in uploading/ streaming of news and current affairs through digital media is permitted under the government approval route. Further 49% FDI under the government approval route in Up-linking of News and Current Affairs' TV Channels and 100% FDI in the Up-linking of Non-News and Current Affairs' Channels/Down linking of TV Channels under the automatic route.

**WAY FORWARD –**

India's GDP growth is expected to be the greatest among all global economies in 2021-22, because to a rapid rate of immunisation. With India's rapid and consistent improvement in the ease of doing business, it gains an advantage in attracting private and foreign investors. In the infrastructure sector, investor confidence is high, thanks to favourable long-term financing conditions, recovery stimulus packages, and overseas investment programmes.

Deep reforms such as PM Gati Shakti, a National Master Plan for Multi Modal Connectivity, which is essentially a digital platform that brings 16 Ministries together, including Railways and Roadways, for integrated planning and coordinated implementation of infrastructure connectivity projects, will entice foreign investors.

In her Budget speech, the FM stated that, in order to encourage exports, it is recommended to repeal the Special Economic Zones Act and replace it with new legislation that will allow

states to collaborate on the "Development of Enterprise and Service Hubs." This will apply to all big current and new industrial enclaves in order to maximise the use of available infrastructure and improve export competitiveness.

On the back of these recent economic changes and ease of doing business, India is likely to attract $100 billion in foreign direct investment (FDI) in 2022-23.

## CONCLUSION

While FDI in developing countries, including India, has grown rapidly in recent years, shifts in its distribution suggest that significant competition exists among potential host countries. Multi-National Corporations (MNCs) frequently make choices among potential host countries when deciding where to locate their foreign production facilities. In that regard, the prospects for increase in FDI in India have been made attractive by favourable changes in its FDI policies.

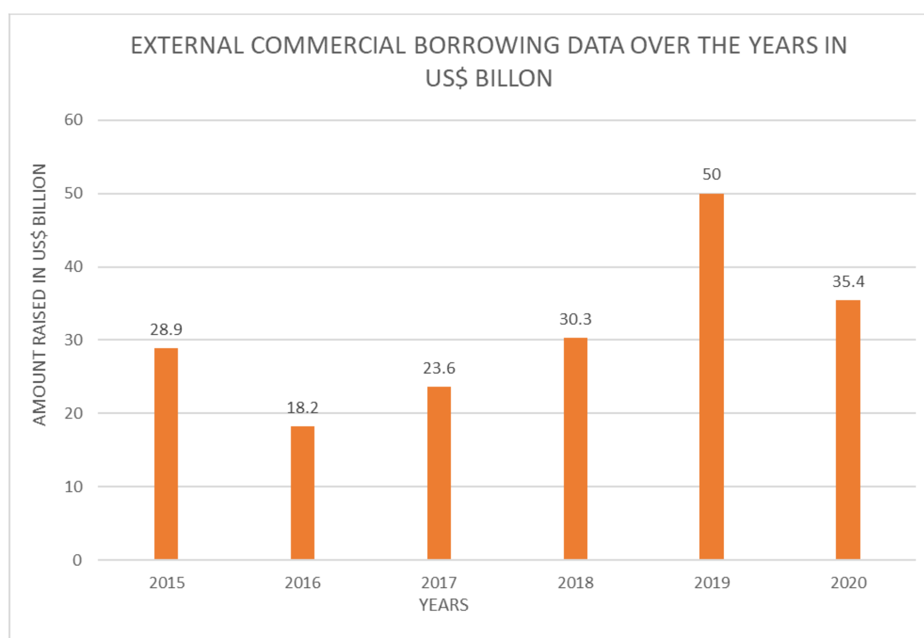
# FOREIGN INSTITUTIONAL INVESTMENT

A Foreign Institutional Investor ("FII") is an institution founded or organised outside of India that plans to invest in India and is registered as a FII under the Securities and Exchange Board of India (SEBI) (Foreign Institutional Investor) Regulations, 2021.

It is a company incorporated or registered overseas but interested in investing in the Indian securities market. These include hedge funds insurance companies, pension funds and mutual funds. In the Indian context, it refers to foreign companies which are investing in the financial markets of India.

Foreign Institutional Investors play a very important role in an economy.

Post liberalization in the early 1990s, there was a gradual shift towards capital account convertibility. From September 14, 1992, with reasonable limitations, FIIs and Overseas Corporate Bodies (OCBs) were allowed to put resources into monetary/ financial instruments. The development of FII strategy in India has shown a consistent and careful way to deal with progression of an arrangement of quantitative limitations/ restrictions (QRs).




## FIIS CATEGORIES

An applicant seeking registration as a foreign portfolio investor may apply in one of the categories mentioned hereunder or any other category as may be specified by the Board from time to time –

**(a) "Category I foreign portfolio investor" which shall include –**

(i) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled or at least 75% directly or indirectly owned by such Government and Government related investor(s);

(ii) Pension funds and university funds;

(iii)Appropriately regulated entities such as insurance or reinsurance entities, banks, asset management companies, investment managers, investment advisors, portfolio managers, broker dealers and swap dealers;

(iv) Entities from the Financial Action Task Force member countries or from any country specified by the Central Government by an order or by way of an agreement or treaty with other sovereign Governments, which are –

I. appropriately regulated funds;
II. unregulated funds whose investment manager is appropriately regulated and registered as a Category I foreign portfolio investor: Provided that the investment manager undertakes the responsibility of all the acts of commission or omission of such unregulated fund;
III. university related endowments of such universities that have been in existence for more than five years;

An entity -

(A) whose investment manager is from the Financial Action Task Force member country and such an investment manager is registered as a Category I foreign portfolio investor; or

(B) which is at least seventy-five per cent owned, directly or indirectly by another entity, eligible under sub-clause (ii), (iii) and (iv) of clause (a) of this regulation and such an eligible entity is from a Financial Action Task Force member country: Provided that such an investment manager or eligible entity undertakes the responsibility of all the acts of commission or omission of the applicants seeking registration under this sub-clause.

**(b) "Category II foreign portfolio investor" shall include all the investors not eligible under Category I foreign portfolio investors such as –**

(i) appropriately regulated funds not eligible as Category-I foreign portfolio investor;

(ii) endowments and foundations;

(iii) charitable organisations;

(iv) corporate bodies;

(v) family offices;

(vi) Individuals;

(vii) appropriately regulated entities investing on behalf of their client, as per conditions specified by the Board from time to time;

(viii) Unregulated funds in the form of limited partnership and trusts;

Explanation: An applicant incorporated or established in an International Financial Services Centre shall be deemed to be appropriately regulated.

**Foreign investments in the country can take the form of the following:**

- Investments in listed/unlisted companies other than through stock exchanges (i.e. through the foreign direct investment or private equity/foreign venture capital investment route).
- Investments in Listed Companies (i.e., FII investments).
- Investments by non-inhabitant Indians (NRIs) and Persons of Indian Origin (PIOs) in different structures.
- Investments through American Depository Receipts/Global Depository Receipts (ADR/GDR).

**TERMS ASSOCIATED WITH UNDERSTANDING OF FIIS-**

- **Sub-account**: Sub-account incorporates those foreign companies, foreign people, and foundations, assets or portfolios which are set up or incorporated outside the territory of India for whose benefit, investments are proposed to be made in India by a FII, and who is enrolled as a sub-account under the SEBI (FII) Regulations, 1995.
- **Designated Bank**: Designated Bank implies any bank in India which has been approved by the Reserve Bank of India to go about as a financier/ banker to FII.
- **Domestic Custodian**: Domestic Custodian implies any substance enlisted with SEBI to carry on the movement of offering custodial types of assistance in regard to protections.
- **Broad Based Fund**: Broad Based Fund refers to a fund established or incorporated outside India, which has at least twenty investors with no single individual investor holding more than 49% shares or units of the fund. In the event that the wide based asset has institutional investor(s), it's not important for the asset to have 20 financial investors. If the broad-based fund has an institutional investor who holds more than 49% of the shares or units in the fund, then the institutional investor must itself be a broad-based fund.
- **Caution List**: When the total holdings of FIIs under the scheme reach the limit of 2 percent below the sectoral cap, the RBI issues a notice to all designated branches of the Authorized Dealer (AD) Category-I banks cautioning that any further purchases of shares of the particular Indian company will require prior approval of the RBI. The RBI gives case-by-case approvals to FIIs for the purchase of shares of companies included in the Caution List. This is done on a first-come, first-served basis.
- **Ban List**: Once the shareholding by FIIs reaches the overall ceiling/sectorial cap/statutory limit, the RBI places the company in the Ban List. Once a company is placed on the Ban List, no FII or NRI can purchase the shares of the company under the Portfolio Investment Scheme.

**GENERAL OBLIGATIONS AND RESPONSIBILITIES LAID DOWN BY THE SEBI (FOREIGN PORTFOLIO INVESTMENT) REGULATIONS, 2019 (LATEST AMENDMENT July 2023)**

**Appointment of custodians:**

(1)A foreign portfolio investor or a global custodian acting on behalf of the foreign portfolio investor shall enter into an agreement with the designated depository participant engaged by it to act as a custodian, before making any investment under these regulations.

(2) In addition to the obligation of custodian under any other regulations, the custodian shall -

(a) report to the depositories and the Board on a daily basis the transactions entered into by the foreign portfolio investor in the form and manner specified by the Board or depositories from time to time;

(b) monitor investment of the foreign portfolio investors;

(c) maintain the relevant true and fair records, books of accounts, and documents including the records relating to transactions of foreign portfolio investors;

(d) report the holdings of foreign portfolio investors who form a part of investor group to the depositories and the depositories shall club the investment limits to ensure that combined holdings of all these foreign portfolio investors remains below ten per cent of the total paid-up equity capital on a fully diluted basis of a investee company at any time.

**Appointment of designated bank**:

A foreign portfolio investor shall appoint a branch of a bank authorised by the Reserve Bank of India for opening a foreign currency denominated account and special non-resident rupee account before making any investments in India.

**Investment advice in publicly accessible media**:

(1) A foreign portfolio investor, or any of its employees shall not render directly or indirectly any investment advice about any security in the publicly accessible media, whether real-time or otherwise, unless a disclosure of its interest including long or short position in the said security has been made, while rendering such advice.

(2) In case an employee of the foreign portfolio investor is rendering such advice, he shall also disclose the interest of his dependent family members and his employer including their long or short position in the said security, while rendering such advice.

**Maintenance of proper books of accounts, records, etc**.:

Every foreign portfolio investor shall maintain the following books of accounts, records and documents, namely –

(a) true and fair accounts relating to remittances of funds to India for buying and selling and realising capital gains or losses on investment made from such remittances;

(b) bank statement of accounts;

(c) contract notes relating to purchase and sale of securities; and

(d) communication including in electronic mode from and to the designated depository participants, stock brokers and depository participants regarding investments in securities.

**Preservation of books of accounts, records, etc:**

Subject to the provisions of any other law, for the time being in force, every foreign portfolio investor shall preserve the books of accounts, records and documents specified in Regulation 29 for a minimum period of five years from the date of approval of the surrender or cancellation of registration by the Board.

**Appointment of compliance officer**:

(1) Every foreign portfolio investor shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines and instructions issued by the designated depository participant or the Board or the Central Government: Provided that in case of a foreign portfolio investor who is an individual, such individual shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines and instructions issued by the designated depository participant or the Board or the Central Government.

(2) The compliance officer shall immediately and independently report any non-compliance observed by him to the Board and the designated depository participant.

**MANDATE / CODE OF CONDUCT ISSUED BY SEBI REGARDING FPI:**

1. A foreign portfolio investor and its key personnel shall observe high standards of integrity, fairness and professionalism in all dealings in the Indian securities market with intermediaries, regulatory and other government authorities.
2. A foreign portfolio investor shall, at all times, render high standards of service, exercise due diligence and independent professional judgment.
3. A foreign portfolio investor shall ensure and maintain confidentiality in respect of trades done on its own behalf or on behalf of its clients.
4. A foreign portfolio investor shall ensure the following – (a) Clear segregation of its own money and securities and that of its client's money and securities. (b) Arm’s length relationship between its business of fund management/investment and its other business.
5. A foreign portfolio investor shall maintain an appropriate level of knowledge and competency and abide by the provisions of the Act, regulations made thereunder and the circulars and guidelines, which may be applicable and relevant to the activities carried on by it. Every foreign portfolio investor shall also comply with award of the Ombudsman and decision of the Board under Securities and Exchange Board of India (Ombudsman) Regulations, 2003.
6. A foreign portfolio investor shall not make any untrue statement or suppress any material fact in any documents, reports or information to be furnished to the designated depository participant and/or Board.
7. A foreign portfolio investor shall ensure that good corporate policies and corporate governance policies are observed by it.
8. A foreign portfolio investor shall ensure that it does not engage in fraudulent and manipulative transactions in the securities listed in any stock exchange in India.

9. A foreign portfolio investor or any of its directors or managers shall not, either through its/his own account or through any associate or family members, relatives or friends indulge in any insider trading.
10. A foreign portfolio investor shall not be a party to or instrumental for –
    a) creation of false market in securities listed or proposed to be listed in any stock exchange in India;
    b) price rigging or manipulation of prices of securities listed or proposed to be listed in any stock exchange in India;
    c) passing of price sensitive information to any person or intermediary in the securities market.

**MONITORING OF FOREIGN INVESTMENTS MADE BY FIIS:**

The Reserve Bank of India (RBI) monitors the ceilings on FII investments in Indian companies on a daily basis. For effective monitoring of foreign investment ceiling limits, the RBI has fixed cut-off points that are two percentage points lower than the actual ceilings. The cut-off point for instance, for companies with 24 per cent ceiling is 22 per cent and for companies with 30 per cent ceiling is 28 per cent and so on. Similarly, the cut-off limit for public sector banks (including State Bank of India) is 18 per cent.

Once the aggregate net purchases of equity shares of the company by FIIs reach the cut-off point, which is 2 per cent below the overall limit, the RBI cautions all designated bank branches so as not to purchase any more equity shares of the respective company on behalf of FIIs without prior approval of the RBI. The link offices are then required to intimate the RBI about the total number and value of equity shares/convertible debentures of the company they propose to buy on behalf of FIIs. On receipt of such proposals, the RBI gives clearances on a first-come-first served basis till such investments in companies reach 24/30/40/49 per cent limit or the sectoral caps/statutory ceilings as applicable. On reaching the aggregate ceiling limit, the RBI advises all designated bank branches to stop purchases on behalf of their FIIs. The RBI also informs the general public about the 'caution' and the 'stop purchase' in these companies through a press release.

**PROHIBITIONS ON FII**

FIIs are not permitted to invest in the capital of a company in Defence Industry subject to Industrial license under the Industries (Development & Regulation) Act, 1951.

Both FIIs and NRIs are not allowed to invest in any company which is engaged or proposes to engage in the following activities:

i. Business of chit fund*, or
ii. Nidhi company, or
iii. Agricultural or plantation activities, or
iv. Real estate business** or construction of farm houses, or
v. Trading in Transferable Development Rights (TDRs).

* NRIs are eligible to subscribe to the chit funds on non- repatriation basis.

**Real estate business does not include construction of housing / commercial premises, educational institutions, recreational facilities, city and regional level infrastructure, townships.

**The following documents are required for registration of FIIs:**

(1) The designated depository participant shall on behalf of the Board grant the certificate of registration, bearing registration number generated by the Board, as specified in the First Schedule to an applicant if it is satisfied that the applicant is eligible and fulfils the requirements as specified in these regulations.

(2) The designated depository participant shall endeavour to dispose of the application for grant of certificate of registration as soon as possible but not later than thirty days after receipt of application by the designated depository participant, or after the information called for under Regulation 6 has been furnished, whichever is later.

(3) Upon grant of certificate of registration to the applicant, the designated depository participant shall remit the fees, as specified in Part A of the Second Schedule, received from the applicant to the Board.

(4) If an applicant seeking registration as a foreign portfolio investor has any grievance with respect to its application or if the designated depository participant has any question in respect of interpretation of any provision of this regulation, it may approach the Board for appropriate instructions.

(5) The foreign portfolio investor needs to have a valid registration as long as it is holding securities or derivatives in India: Provided that a foreign portfolio investor whose registration is not valid and who is holding securities or derivatives in India shall be allowed to sell such securities or wind up their open position in derivatives within one year from the date of publication of these regulations.

**Eligibility Criteria for Applicant seeking FII Registration:**

A designated depository participant shall consider an application for grant of certificate of registration as a foreign portfolio investor if the applicant satisfies the following conditions namely: -

(a) the applicant is not an Indian resident;

(b) the applicant is not a non-resident Indian or an overseas citizen of India;

(c) non-resident Indians or overseas citizens of India or resident Indian individuals may be constituents of the applicant provided they meet the conditions specified by the Board from time to time;

[Provided that resident Indian other than individuals, may also be constituents of the applicant, subject to the following conditions, namely – (i) such resident Indian, other than individuals, is an eligible fund manager of the applicant, as provided under sub-section (4) of section 9A of the Income Tax Act, 1961 (43 of 1961); and (ii) the applicant is an eligible investment fund as provided under sub-section (3) of section 9A of the Income Tax Act, 1961 (43 of 1961) which has been granted approval under the Income Tax Rules, 2011]

[Provided further that resident Indian, other than individuals, may also be constituents of the applicant, subject to the following conditions, namely – (i) the applicant is an Alternative Investment Fund setup in the International Financial Services Centres and regulated by the International Financial Services Centres Authority; (ii) such resident Indian, other than individuals, is a Sponsor or Manager of the applicant; and (iii) the contribution of such resident Indian, other than individuals, shall be up to- (a) 2.5% of the corpus of the applicant or US $ 7,50,000 (whichever is lower), in case the applicant is a Category I or Category II Alternative Investment Fund; or (b) 5% of the corpus of the applicant or US $ 1.5 million (whichever is lower), in case the applicant is a Category III Alternative Investment Fund]

(d) the applicant is a resident of the country whose securities market regulator is a signatory to the International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to the bilateral Memorandum of Understanding with the Board;

[Provided that an applicant being Government or Government related investor shall be considered as eligible for registration, if such applicant is a resident in the country as may be approved by the Government of India;]

(e) the applicant being a bank is a resident of a country whose central bank is a member of Bank for International Settlements;

[Provided that a central bank applicant need not be a member of Bank for International Settlements.]

(f) the applicant or its underlying investors contributing twenty-five per cent or more in the corpus of the applicant or identified on the basis of control, shall not be the person(s) mentioned in the Sanctions List notified from time to time by the United Nations Security Council and is not a resident in the country identified in the public statement of Financial Action Task Force as – (i) a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or (ii) a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;

(g) the applicant is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

(h) any other criteria specified by the Board from time to time:

[Provided that clause (a), (d) and (e) shall not apply to an applicant incorporated or established in an International Financial Services Centre.]

**MONITORING FOREIGN INVESTMENT**

Foreign Investment in India is regulated in terms of clause (b) of sub-section 3 of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (FEMA) read with Foreign Exchange Management (Transfer or Issue of a Security by a Person resident Outside India) Regulations, 2017 issued vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017. FEMA prescribes various foreign investment limits in listed Indian companies. These include the aggregate Foreign Portfolio Investment limit (FPI limit), the aggregate NRI limit

and the sectoral cap. The RBI Master Direction (FED Master Direction No. 11/2017-18) dated January 04, 2018 provides a compilation of the instructions issued on Foreign Investment in India and its related aspects under FEMA.

As per FEMA, the onus of compliance with the various foreign investment limits rests on the Indian company. In order to facilitate the listed Indian companies to ensure compliance with the various foreign investment limits, SEBI in consultation with RBI has decided to put in place a new system for monitoring the foreign investment limits. The architecture of the new system has been explained in Annexure A.

The depositories (NSDL and CDSL) shall put in place the necessary infrastructure and IT systems for operationalizing the monitoring mechanism described in Annexure A. The Stock Exchanges (BSE, NSE and MSEI) shall also put in place the necessary infrastructure and IT systems for disseminating information on the available investment headroom in respect of listed Indian companies.

The depositories shall issue the necessary circulars and guidelines for collecting data on foreign investment from listed companies. The system for collecting this data from the companies shall go live on the date of the issuance of this circular. The companies shall provide the necessary data (details of which have been mentioned in Annexure A) to the depositories latest by April 30, 2018.

**FINANCIAL INVESTORS INITIATIVE TEAM**

A group called Financial Investors Initiative was formed with the goal of assisting Limited Partners and General Partners in increasing their capital deployment to India. The group collaborates with investors to find investment opportunities, advocate for policy changes, and assist in problem-solving at various phases of the investment process.

Identification of investment opportunities aligning with investors' interests is one of the key activities made by the FII team to promote institutional investment. Other activities include:

1. Computerized analysis for developing an India investment plan;

2. Financial modelling and strategic investment consulting;

3. Assistance in acquiring necessary authorizations and certifications;

4. Aftercare via problem-solving with assistance from oversight organisations.

# GOODS AND SERVICES TAX (GST)

India's largest tax reform in 60 years is the **Goods and Services Tax (GST)**. Many nations around the world have enacted this Act, making it unique in its sort. India, with its enormous diversity, has embraced this widely discussed Act in its own special way. The motto *"One Nation, One Tax"* and the variety of transactions and inequities that exist in our country have been expertly combined by India.

Goods and Services Tax (GST) is a value-added tax imposed on most goods and services in India. It was implemented on July 1, 2017, replacing multiple taxes levied by the central and state governments. The GST has replaced taxes such as the Value Added Tax (VAT), Central Sales Tax (CST), Service Tax, and Excise Duty, etc. The GST in India has multiple tax slabs, with different rates applied to different goods and services. The tax rates are divided into five categories: 0%, 5%, 12%, 18%, and 28%. Essential goods such as food and agriculture-related items have a 0% tax rate, while luxury and sin goods have a higher 28% tax rate. Most goods and services fall under the 18% tax slab. GST is levied at every stage of the supply chain, from manufacturing to retail. However, businesses with annual turnover below a certain threshold (40 Lakhs for most states, 20 Lakhs for special category states) are not required to register for GST.

Businesses that are registered for GST are required to file regular returns, detailing their sales and purchases, and pay any taxes owed to the government. Overall GST simplifies the process of indirect taxation and helps in reducing the cascading effect of tax on end consumers. The GST council was established to oversee and make recommendations on the GST system. The council is made up of representatives from the central and state governments, and it meets regularly to review and make changes to the GST tax structure and rules as necessary.

The structure of GST has three important components:

- **CGST** – The Central Government levies it on intra-state sales
- **SGST** – The state Government collects it after an intra-state sales
- **IGST** – The Central Government of India collects it from an inter-state transaction

## Latest Updates -

As of 1st January 2023, the GST (Goods and Services Tax) rate in India has undergone several changes. The GST Council, which is responsible for making decisions on GST rates, has made these changes to simplify the tax structure and provide relief to various sectors.

- One of the major changes is the reduction of GST on affordable housing from 8% to 1%. This move is aimed at promoting the government's housing for all scheme and boosting the real estate sector, which has been hit hard by the pandemic. The GST on under-construction properties, which was previously 12%, has also been reduced to 5%. This will help in reducing the burden on homebuyers and promote the sale of under-construction properties.

- Another significant change is the reduction of GST on electric vehicles from 12% to 5%. This will make electric vehicles more affordable and encourage people to shift towards clean energy. The government hopes that this move will also help in achieving its goal of 30% electric vehicles on Indian roads by 2030.
- The GST on certain goods and services has also been increased. The GST on cigarettes, pan masala, and tobacco products has been increased from 28% to 40%. This is a move to discourage the consumption of these products and promote public health.
- The GST on luxury goods has also been increased from 28% to 32%. This will help in generating more revenue for the government. Overall, the GST rate changes from 1st January 2023 are aimed at providing relief to various sectors, simplifying the tax structure, and generating more revenue for the government. It is expected that these changes will have a positive impact on the economy and promote the growth of various sectors.

**Noteful Transitional Rules –**

- The date of invoicing or the date of payment, whichever comes first, continues to determine the timing of supply.
- Even if the time of supply is after January 1, 2023, it is possible to charge GST at the previous rate for the full value of any goods or services that were fully received prior to that date.
- Even if the moment of supply is after 1 January 2023, it is possible to charge GST at the previous rate on any products or services that were partially received before to that date.

## ROLE OF GST AND ITS REFORMS FOR THE BETTERMENT OF BUSINESS-TRADE IN THE INTERNATIONAL REGIME

One of the most clever changes to indirect taxation is the GST. In India, the business process' value chain frequently included double taxes from the production stage to consumption. The prior taxation structure contained a number of gaps that allowed tax evasion at various points. The interstate transfer of products was either exempt from taxation or subject to additional taxes thanks to the federal indirect taxation scheme. The GST changes have aided India's economy in balancing the application of taxes at various points during the production, distribution, and consumption of goods and services.

However, the Indian courts have developed a number of guidelines for improving the effectiveness of the GST, which are briefly mentioned below –

The Gujarat High Court ruled in *Union of India vs. M/S Mohit Minerals Pvt. Ltd* that the chargeable sections must be interpreted strictly and that importers of goods cannot be considered “recipients” as defined under section 5(3) of the IGST Act. Entry 10 of Notification No. 10/2017, which fastens the importer's tax liability, is therefore unlawful. In the absence of provision, delegated legislation is not permitted to impose taxes under Article 265. Since the services are actually received by the foreign exporter, it is incorrect for the Revenue to classify importers as service recipients. Therefore, the Indian importers cannot be

held responsible for paying tax on such services since they were not even required to give compensation to the international shipping lines. A service recipient cannot also be a service beneficiary. Because the importer does not qualify as a recipient of services and cannot therefore take advantage of the ITC (Input Tax Credit) of the IGST so paid, the assertion that payment of IGST is revenue neutral on account of ITC eligibility with the importer is untrue. Simply because a shipment of commodities ends up in India does not equate to the supply of that shipment of goods taking place in India.

According to the reasoning in the case of *Kusum Ingots & Alloys Limited v. Union of India*, when a law is deemed unconstitutional by a High Court, it is considered to apply to the entire territory of India. As a result, taxpayers can take advantage of this decision to get a refund of already-paid taxes.

The factors that must be taken into account while determining tax liabilities under the GST Law are laid out in the *Bai Mamubai Trust v. Suchitra* Case. According to this, “reciprocity” is a necessary component to start the definition of supply. A wrongdoing unilateral action is not considered by the doctrine of supply. For IGST to be implemented, supply must be a taxable event.

As stated in *Linde Engineering India Pvt Ltd v. Union of India (2020),* the export conditions cannot be applied when the service provider and service recipient are separate legal entities even though they are members of the same cluster. As a result, the services provided to a separate legal entity that is a parent company are considered to be exported. The ruling clarifies the objectives behind the exclusion restrictions in the export service rules.

After the Supreme Court’s decision in the case of *Vodafone International Holding BV v. Union of India* regarding retrospective taxation in the country, which has caused concern in the minds of foreign investors for carrying on international trade in India, the need for reforms in general taxation law is especially obvious.

The Indian courts' decisions have set the road for a better tax system in the nation, which must continue to advance to maintain a stronger position in international trade.

# HEALTHCARE

## INTRODUCTION

The healthcare sector has a major role in the economy. It has become one of India's most developing areas-both in terms of revenue and employment. Healthcare and medical services consist of hospitals, medical equipment, clinics, telemedicine, medical tourism, and insurance. The Indian healthcare sector is growing at a lively pace because of the growing public and private investment in the sector and the trust of the people.

The Indian healthcare system can be categorically divided into public and private. The public healthcare system comprises limited secondary and tertiary care resources. The public healthcare system is majorly limited to rural areas to provide primary healthcare services. The private sector provides the majority of secondary, tertiary, and quaternary services, which are majorly concentrated in metropolitan areas.

Although India has a fairly good healthcare system comprising of government and private service providers, the demand-supply gap for healthcare delivery is large. In India, health is a state subject, though the Ministry of Health & Family Welfare oversees national disease control programmes. However, the government realises that public funding is constrained and, consequently, the various states desire to attract private investment in this sector. Rising incomes and growing literacy are likely to drive higher per capita expenditure on healthcare. The trend is shifting from infectious diseases to lifestyle diseases.

### Investment Policy

The FDI Policy puts hospitals under an automatic route with 100 per cent FDI. The government has recently given the sector a boost by extending tax benefits to financial institutions, providing long-term capital to private hospitals with 100 beds or more, increasing tax depreciation rates up to 40% on life-saving medical equipment, and lowering or eliminating customs and excise duties on life-saving equipment and drugs, hearing aids, crutches, wheel chairs, walking frames, tricycles, and arches.

**Healthcare Outsourcing**

Outsourcing in the healthcare sector has come a long way from low-end claims processing and medical transcription to medical analytics and clinical processing. The US healthcare industry outsources to India not only its medical billing and insurance processes but also data analysis and software development.

Medical outsourcing has four clients: provider (hospitals and physicians), payer (health insurance companies), pharmaceutical companies, and healthcare IT companies.

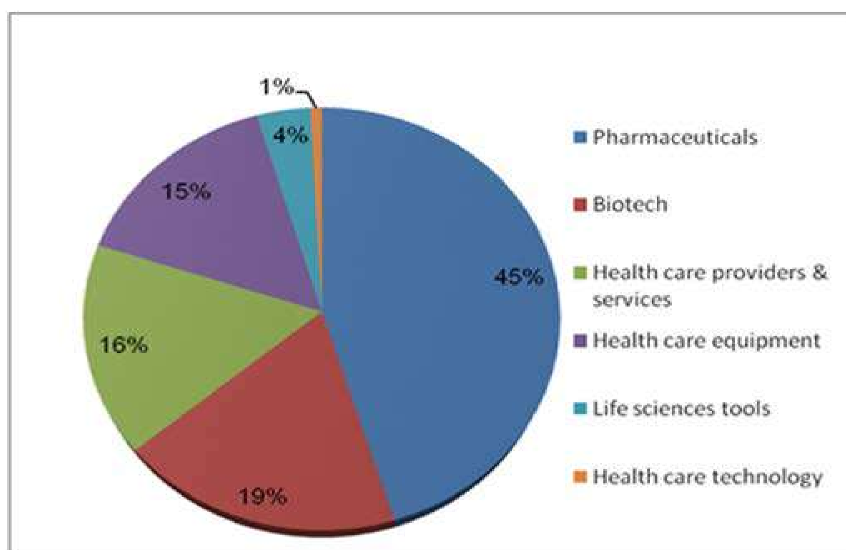
The provider-end work involves medical billing and raising claims for hospitals and physicians. Up to $30-40 million is outsourced to India. Medical transcription outsourcing to India is about $100 million.

A new area, which is in the area of knowledge processing outsourcing is, medical analytics, where we analyse data for providers and insurance companies. In India, Wipro Technologies is a key player offering such services.

**Pharmaceuticals**

India is among the fastest growing pharmaceutical markets in the world. In FY 2021-2022, the Indian pharmaceutical industry was the third largest in the world by volume. The global pharmaceuticals market has grown from $1454.66 billion in 2021 to $1587.05 billion in 2022 at a compound annual growth rate (CAGR) of 9.1%,with the domestic retail market expected to cross the $65 billion mark by 2024 and reach an estimated $120 billion to $130 billion by 2030. India enjoys an important position in the global pharmaceutical sector. The country also has a large pool of scientists and engineers with the potential to steer the industry ahead to greater heights.

In the recent Union Budget of 2022, the pharmaceutical industry of the country was recognised as the "sunrise sector" for India’s economy and is expected to grow threefold over the next decade. As per the Economic Survey of 2021–2022, the Indian pharmaceutical industry is expected to reach $65 billion by 2024.



## INVESTMENT IN DIFFERENT HEALTHCARE SOLUTIONS

### India's current status in the global pharmaceutical industry

India produces the drugs at the lowest manufacturing cost in the world. It is the largest producer of generic drugs, the largest producer of the vaccine in the world and by volume, the third largest overall drug producer.

### The market structure and size

According to a report by the Indian Economic Survey 2021, the domestic market is projected to expand at a compound annual growth of 19.2% in the period of 2020–27.

The government has increased the healthcare spending to 3% of the GDP which is a great initiative.

The healthcare sector saw a drastic change during 2020 due to the COVID-19 pandemic. The healthcare industry in India stood at INR61.79 billion in 2017 and is expected to reach INR 132.84 billion by 2023. The hospital industry in India, accounting for 80% of the total healthcare market, is witnessing huge investor demand from both global as well as domestic investors. The hospital industry is expected to reach $132 bn by 2023 from $61.8 bn in 2017, growing at a CAGR of 16-17%. If healthcare expenditures are increased, there is a good chance that healthcare services will improve. Rural India, which comprises almost 70 percent of the population, needs special attention.

### Government initiatives

In the budget 2021, "Pradhan Mantri Atmanirbhar Swasth Bharat Yojana (PMANSBY)" was launched, which lays emphasis on the expansion of the healthcare system in India through the finance commission grant of Rs.13,192 crores provided. In the budget 2022-23, key announcements in the healthcare sector was made such as incorporation of National Digital Health Ecosystem and the launch of National Tele-Mental health program.

2023's health budget is 13 percent of the previous year's budget of 2022, which in itself shows the rise of healthcare in India. With the outbreak of the coronavirus, enormous funds have been granted for vaccination programmes. The government aims at gradually increasing public health expenditure to 2.5 percent of the nation's GDP by the year 2025.

PPP (public-private partnership) should be prioritised for faster and better achievement of healthcare goals. Also, a reduction of GST on life-saving drugs and medicines should be done.

In order to bring behavioural changes in the sector, more finding needs to be dedicated to create a nodal health agency. It will be impactful if we incorporate (WASH) - water, sanitation, nutrition, and hygiene as a major part of the functions of Panchayati Raj and Municipalities.

India should look into investing in biotechnology. India’s biotechnology industry, comprising biopharmaceuticals, bio-services, bio-agriculture, bio-industry and bioinformatics, is expected to grow at an average rate of around 30% a year and reach $100 billion by 2025.

The medical industry in India is brimming with promising opportunities. The nation has likewise become a centre for very good quality, high-end diagnostic services with huge capital speculation. People have now become more conscious of their health resulting in a huge scope of opportunities in the healthcare sector. The hospital industry is expected to reach $132 bn by 2023 from $61.8 bn in 2017, growing at a CAGR of 16-17%. The government also plans to increase health expenditure to 2.5% of the country’s GDP. The increase in competition in healthcare globally has given a competitive advantage to India, resulting in the increased success rate of Indian companies in getting Abbreviated New Drug Applications (ANDA).

# INFRASTRUCTURE

## INTRODUCTION

Infrastructure is the foundation stone on which the fort of economic success is built. It not only ensures its evolution but also ensures consistency in its growth. India is trying to attain "economic nirvana" through a consistent focus on the growth of infrastructure. India is setting out on a new excursion of financial progression development. The activeness of the Government to attain the best infrastructure is evident from its committed efforts in this direction.

The infrastructure sector in India has seen major reforms brought forth to achieve planned and consistent economic development. There has been a gradual shift from a controlled and restrictive market economy to an open market economy where private players including foreign investors have been given an important role.

In India, post announcement of the New Economic Policy ("Policy") in 1990-91, infrastructure was identified as one of the priority areas for development. The term "infrastructure" in common parlance means and includes the following: power projects, roads, ports, water projects, telecommunication projects, and railroads etc., these having a common feature being that they are inevitable for the growth of trade and commerce and also for improving standards of living.

Before the announcement of the Policy, it was the Central/ State Government's responsibility to plan and oversee the development of the infrastructure sector. After the Policy came into effect there was a temporary and gradual shift from the public sector (Government) to the private sector giving rise to partial privatization by giving incentives to the private sector to take part in these projects. Post introduction of the Policy there was a lot of euphoria since the infrastructure sector had to undergo revolutionary changes owing to these reforms.

Specific sectors of the infrastructure sector are governed by their specific Acts. These Acts provide the modes and means of private participation. Generally, private participation is allowed through a grant of licenses to the private developer or through a contractual relationship between the Government and the private developer. Various modes of this type of participation are Build Own and Operate (BOO) or Build Operate and Transfer (BOT) or Build Lease and Transfer (BLT) and Public-Private Partnership (PPP).

The Following Laws Govern and influence the Infrastructure Industry in India:

- Transfer of Property Act, 1882
- Land ceiling laws of various states
- Land zoning laws in various states
- Exchange control & foreign investment laws
- Environmental laws
- Labour laws
- Indirect taxation laws include (Excise, Customs and Sales tax etc.)
- Income Tax Act, 1961

**MARKET SIZE**

As per the data published by the Department of Industrial Policy and Promotion (DIPP) - Foreign Direct Investment (FDI) received in this sector (townships, housing, built-up infrastructure and construction development projects) for a period of 20 years starting from April 2000 to March 2022 stood at US$ 847 million; it is estimated that the logistics sector in India is expected to increase at a Compound Annual Growth Rate (CAGR) of 8% in the next five years to reach upto 380 billion dollars by the year 2025.

Under Pradhan Mantri Gram Sadak Yojana (PMGSY) all villages in India has been connected through a road network in 2019. Under Pradhan Mantri Gram Sadak Yojana-III (PMGSY) the objective is to upgrade the 1,25,000 km of road length for five years and the estimated cost of completion comes out to be Rs 80,250 crore (US$ 12.03 billion). It is a significant achievement that the construction of roads in India has become the second cheapest in Asia. In totality, India has spent Rs. 29,767 crores on construction of 3595 kms of roads to provide all weather access to borders with China, Pakistan, Myanmar and Bangladesh. A new Metro Rail Policy has been announced to boost private investment in the sector. One of the major accomplishments is that the Metro rail network has touched 895 Km.

It is forecasted that in the coming 10 years investment opportunities worth Rs 20,96,700 crore (US$ 300 billion) will be available in the energy infrastructure.

**INVESTMENTS**

India has an investment necessity worth INR 50 trillion (US$ 777.73 billion) in infrastructure to attain sustainable development in the country by 2024.

Some key investments in the sector are mentioned below:

1. The Asian Infrastructure Investment Bank (AIIB) announced in June 2018, an investment of US$ 200 million into the National Investment & Infrastructure Fund (NIIF)

2. Venture capital and private equity investments in the sector have reached US$ 3 billion in July 2022.

3. For the Rajasthan Water Sector Restructuring Project for desert areas, the government of India signed a loan agreement with the New Development Bank (NDB) worth US$ 345 million.

4. The National Investment and Infrastructure Fund (NIIF) in partnership with UAE-based DP World in January 2018 sought to create a platform that aimed to mobilize investments worth US$ 3 billion into businesses like terminals, ports, logistics and transportation.

5. India has declared a yearning speculation plan called National Infrastructure Pipeline (NIP) for six years finishing FY2025 with Rs 111 trillion in the framework area.

## GOVERNMENT INITIATIVES

The Government of India will invest huge amounts in the infrastructure sector by 2024 and 2030, mainly in urban transport, renewable energy and highways. Rs 30 lakh crore has been allocated to the sector; it is estimated that an investment of Rs 5 lakh crore is needed for railways infrastructure between 2018-30.

Some of the steps taken by the Government to boost the sector in recent times are being discussed below:

- The railway sector received the largest ever budgeted allocation of Rs 2.40 lakh crores in 2023-24 which is 27.5% higher than the budgetary allocation 2022-23.
- A total of Rs 5 lakh crore has been earmarked for railway infrastructure investment between 2018 and 2030.
- Rs 16,000 crore (US$2.47 billion) has been allocated for the Sahaj Bijli Har Ghar Yojana. The scheme's goal is to achieve nationwide residential electrification.
- The Green Energy Corridor Project, together with other wind and solar power projects, received Rs 4,200 crore (US$ 648.75 billion) to expand its capacity.
- The Telecom department has been allocated Rs. 84,587 crores in 2022 - 23and needs atleast Rs. 1.5 – 2.5 lac crore investment in the coming year towards more development in 5G sector.
- Rs 2 lakh crore (US$ 31.81 billion) would be spent in the effort to build smart cities.
- Establishment of a new Committee to establish standards for metro rail systems.
- The Indian government announced a 9000-kilometre economic corridor. Aside from that, the Ministry of Railways will launch the Krishi Udaan Scheme to transport agricultural products at both national and international levels.
- DFFCIL (Dedicated Freight Corridor Corporation of India Limited) inked a Memorandum of Understanding (MOU) with CRWC (Central Railside Warehouse Company Ltd.) for the establishment of freight terminals.
- In 2021, the NHAI issued an order mandating FAST Tag (an electronic toll collection directly by RFID) at all toll plazas for better road mobility.
- India is expected to become the world’s third largest constructing market by 2022. This sector will grow at a CAGR of 7% by 2027.

### Performance of eight core infrastructure industries:

- Coal, crude oil, natural gas, refinery products, fertilizers, steel, cement, and power are among the eight main infrastructure industries.

- The aggregate index of eight main industries was 144.4 in January 2022.
- In October 2020, NITI Aayog and the Quality Council of India (QCI) published the 'National Program and Project Management Policy Framework' (NPMPF), which aims to introduce dramatic changes in the way infrastructure projects are implemented in India.
- The National Thermal Power Corporation Ltd. (NTPC) announced plans to construct industrial parks within its power projects on September 23, 2020, and has solicited Expressions of Interest (EOIs) from Indian enterprises.
- Important Indian players are also working to improve the country's infrastructure in sectors such as electric vehicle (EV) infrastructure.

## Strong momentum in expansion of roadways

- Between FY19 and FY21, highway building in India has expanded at a CAGR of 17.00 percent. In the fiscal year 2022, 10,457 kilometers of the highway were built. In the fiscal year 2023, India expects to build 12000 km of highways with six to eight lane roads. The Indian government has planned to build 65,000 kilometers of national roads by 2022 at Rs. 5.35 lakh crore (US$ 741.51 billion).
- The national roads would be extended by 25,000 kilometers for Rs. 20,000 crores (US$ 2.61 billion).
- The Ministry of Road Transport and Highways intends to construct 60,000 kilometers of world-class national highways by 2024, at a rate of 40 kilometers each day.
- The Indian government intends to build highways spanning 313 kilometers across Punjab, Haryana, and Rajasthan for Rs. 11,000 crores (US$ 1.48 billion).
- Government measures such as the National Infrastructure Pipeline, National Monetization Pipeline, Bharatmala Pariyojana, modifications to the Hybrid Annuity Model (HAM), and a rapid rate of asset monetization are expected to promote road building in FY22.

## Strong revenue growth for Indian railways

- The Union Budget 2023-24 announced an allocation of Rs. 2.40 Lakh crores (US$ 18.34 billion) for Indian Railways, which is higher than the revised projections from the previous fiscal year.
- The Ministry of Railways is developing a strategy to collect Rs. 15,000 crores (US$ 1.56 billion) over the next 10-20 years through the rail display network (RDN), which provides passengers with real-time information.

- By 2032, Indian Railways would require Rs. 35.3 trillion (US$ 545.26 billion) in investment for capacity expansion and modernization. Capital spending in the sector is predicted to rise by 92 percent every year.

- Railways are spearheading India's battle against climate change, and it is making considerable progress toward its ambitious goal of being a net zero carbon emissions organization by 2030, as well as reaching India's Intended Nationally Determined Contributions (INDC) objectives.

- Indian Railways had the greatest loading in freight transportation in FY 2022-23. With this, Indian Railways' freight income grew to Rs. 1,65,000 crores (US$ 19.92 billion) in the same time, up from Rs. 1,13,897 crores (US$ 15.36 billion) in 2019-20.

## Key highlights of Union Budget 2022-23

- The government has provided a significant boost to the infrastructure industry by allocating Rs. 10 lakh crore (US$ 130.57 billion).

- The Department of Information Technology and Telecommunications has been granted Rs. 16,549 crores (US$ 11.05 billion).

- The Indian railroads received Rs. 1,40,367.13 crore (US$ 18.34 billion), with Rs. 1,37,100 crore (US$ 17.91 billion) for capital expenditure.

- Road transport and highway have been granted Rs. 2,70,435 Crore in Budget 2023-24.

- The government announced the following initiatives under the Pradhan Mantri Gati Shakti National Plan in Budget 2022-23:

    - A plan for expressways will be designed in 2022-2023 to assist people and commodities move more rapidly.

    - The national roads would be extended by 25,000 kilometresfor Rs. 20,000 crores (US$ 2.61 billion).

    - A new Unified Logistics Interface Platform will be launched to facilitate data interchange between operators across multiple modes of transportation, implement a just-in-time logistics management strategy and provide operators with real-time data. 100 PM Gati Shakti freight terminals for multimodal logistics facilities will be created during the next three years.

    - A 2,000-kilometer railway network will be brought under 'Kavach' to improve safety and capacity. 400 new Vande Bharat trains with greater energy efficiency and passenger comfort would be developed and manufactured over the next three years.

- 'Innovative' finance alternatives for the development of metro systems of appropriate design and scale would be encouraged. To fulfil Indian aspirations, metro systems and physical infrastructure should be standardized.

- The government announced Rs. 18,998 crores (US$ 2.61 billion) for metro projects.

- The Mega Investment Textiles Parks (MITRA) program was created to develop world-class infrastructure in the textile sector and to establish seven textile parks over three years.

**THE WAY FORWARD**

According to the Ministry of Road Transport and Highways, India's national highway network is expected to cover 65,000 kilometers by 2022, with around 20,000 km of work scheduled for completion in the next couple of years. As per the Department of Telecommunications, the Government of India, Government is formulating a plan to provide Wi-Fi facilities to 550,000 villages by March 2019. For this, a cost of Rs 3,700 crore (US$ 577.88 million) is roughly estimated. India and Japan have joined hands for infrastructure development in north-eastern states in India and are also setting up an India-Japan Coordination Forum for Development of the North East (CFDNE).

# INSOLVENCY LAW

## INTRODUCTION

The Government of India introduced the Insolvency and Bankruptcy Bill in November 2015 to provide a statutory framework for time-bound recovery or restructuring of defaulted assets. The Code provides for various provisions for being one-stop insolvency legislation and allows the creditors to assess their debtors' business and reach an agreement for its revival, recovery or closure.

Part I of the Act deals with the Preliminary aspect of the Code, the short title, extent, and application of the code and definitions under this Act. Part II of the Insolvency and Bankruptcy Code, 2016 deals with the curious process of Insolvency Resolution under the statute and also provides for the Liquidation for Corporate Persons. Chapter I of Part II deals with the entire definitions coming under Insolvency. Chapter II contains the Corporate Insolvency Resolution Process. The Corporate Insolvency process can be initiated by the Financial Creditor, Operational Creditor or the Corporate Debtor itself. The Financial Creditor(s) furnishes an application under Section 7(2) for the initiation of the Corporate Insolvency Resolution Process. The Insolvency and Bankruptcy Code (Amendment) Bill, 2022 proposes key change such as maximising recovery from dubious transactions, bankruptcy actions and steps to implement the code of conduct for creditors.

## FAST TRACK INSOLVENCY RESOLUTION PROCESS

The Code manifestly provides for a framework to enable fast-track insolvency resolution of corporate debtors. The Process is mandated to be completed within a time of 90 days (extendable to a maximum of 45 days more).

## ADJUDICATING AUTHORITY: NATIONAL COMPANY LAW TRIBUNAL (NCLT)

The Eradi Committee established National Company Law Tribunal (hereafter referred to as NCLT) under the framework of the Companies Act, 1956, but the constitutional validity of NCLT was questioned which extended for 10 years and was notified under the Companies Act, 2013.

NCLT is a quasi-judicial authority with the sole objective to ease the recovery process for corporate which is an integral part of business and to resolve corporate disputes which are civil arising under the Companies Act, 1956. NCLT acts as a normal law-abiding court that is obliged to function fairly without biases and represent natural justice in its decisions.

NCLT exercises multiple large-scale functions which include:

- Registration of Companies
- Deposits
- Power to investigate
- Freezing Assets of a company
- Conversion of a public limited company into a private limited company

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 was promulgated on April 4, 2021. It amends the Insolvency and Bankruptcy Code, 2016. Insolvency is a situation where individuals or companies are unable to repay their outstanding debt.

**Some important changes are :**

- The Code provides a time-bound process for resolving the insolvency of corporate debtors (within 330 days) called the corporate insolvency resolution process (CIRP). The debtor himself or its creditors may apply for initiation of CIRP in the event of a default of at least one lakh rupees. Under CIRP, a committee of creditors is constituted to decide on the insolvency resolution. The committee may consider a resolution plan which typically provides for the payoff of debt by merger, acquisition, or restructuring of the company. If a resolution plan is not approved by the committee of creditors within the specified time, the company is liquidated. During CIRP, the affairs of the company are managed by the resolution professional (RP), who is appointed to conduct CIRP
- Pre-packaged insolvency resolution: The Ordinance introduces an alternate insolvency resolution process for micro, small, and medium enterprises (MSMEs), called the pre-packaged insolvency resolution process (PIRP). Unlike CIRP, PIRP may be initiated only by debtors. The debtor should have a base resolution plan in place. During PIRP, the management of the company will remain with the debtor.
- Minimum default amount: Application for initiating PIRP may be filed in the event of a default of at least one lakh rupees. The central government may increase the threshold of minimum default up to one crore rupees through a notification.
- Debtors eligible for PIRP: PIRP may be initiated in the event of a default by a corporate debtor classified as an MSME under the MSME Development Act, 2006. Currently, under the 2006 Act, an enterprise with an annual turnover of up to Rs 250 crore, and investment in plant and machinery or equipment up to Rs 50 crore, is classified as an MSME. For initiating PIRP, the corporate debtor himself is required to apply to the adjudicating authority (National Company Law Tribunal). The authority must approve or reject the application for PIRP within 14 days of its receipt.
- Approval of financial creditors: For applying for PIRP, the debtor needs to obtain approval of at least 66% of its financial creditors (in value of debt due to creditors) who are not related parties of the debtor. Before seeking approval, the debtor must provide creditors with a base resolution plan. The debtor must also propose the name of the RP along with the application for PIRP. The proposed RP must be approved by at least 66% of the financial creditors.
- Proceedings under PIRP: The debtor will submit the base resolution plan to the RP within two days of the commencement of the PIRP. A committee of creditors will be constituted within seven days of the PIRP commencement date, which will consider the base resolution plan. The committee may provide the debtor with an opportunity to revise the plan. The RP may also invite resolution plans from other persons. Alternative resolution plans may be invited if the base plan: (i) is not

approved by the committee, or (ii) is unable to pay the debt of operational creditors (claims related to the provision of goods and services).

- A resolution plan must be approved by the committee by a vote of at least 66% of the voting shares. A resolution plan must be approved by the committee within 90 days from the commencement date of PIRP. The resolution plan approved by the committee will be examined by the adjudicating authority. If no resolution plan is approved by the committee, the RP may apply for termination of PIRP. The authority must either approve the plan or order termination of PIRP within 30 days of receipt. Termination of PIRP will result in the liquidation of the corporate debtor.
- Moratorium: During PIRP, the debtor will be provided with a moratorium under which certain actions against the debtor will be prohibited. These include filing or continuation of suits, execution of court orders, or recovery of property.
- Management of debtor during PIRP: During the PIRP, the board of directors or partners of the debtor will continue to manage the affairs of the debtor. However, the management of the debtor may be vested with the RP if there has been fraudulent conduct or gross mismanagement.
- Initiation of CIRP: At any time from the PIRP commencement date but before the approval of the resolution plan, the committee of creditors may decide to terminate PIRP and instead initiate CIRP in respect of the debtor (by a vote of at least 66% of the voting shares).
- The Insolvency and Bankruptcy Board of India through its circular dated 18th September, 2023 in the exercise of the powers granted under Clause (t) of the sub-section (1) of section 196 read together with sections 7, 9 and 240 of IBC Code, 2016 has introduced the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate persons) (second Amendment) Regulations, 2022.

**RESOLUTION PLAN BINDING ON ALL STAKEHOLDERS**

As per the provisions of the Insolvency and Bankruptcy Code, 2016, once the resolution plan gets approval, it becomes binding on all the stakeholders. The code has most definitely played an important role in improving India's Ease of Doing Business ranking from 130 in 2016 to 63 in 2022.

# INSURANCE

## INTRODUCTION

Insurance law is the common name given to works such as insurance policies, reinsurance and their claims, broadly divided into three categories, namely -

1) Regulation of the business of insurance;
2) Regulation of the content of insurance policies (especially with respect to consumer policies)
3) Regulation of claim handling wise

The Covid-19 pandemic has posed several challenges to the growth of the sector.

In India Insurance is divided into 2 sectors-

- Life Insurance;
- General Insurance:
  - Marine insurance;
  - Aviation insurance;
  - Fire insurance;
  - Motor vehicle insurance;
  - Miscellaneous insurance;
  - Crop Insurance
  - Re-insurance.

Insurance Regulatory and Development Authority of India (IRDAI) serves as the nodal agency governing the concerned laws.

## LEGISLATIVE REGIME

The principal legislation mandated to provide a framework for the regulation of the insurance business in India is the Insurance Act, 1938 and Insurance Regulatory and Development Authority of India Act, 1999 (IRDAI Act). Others include:

- Life Insurance Corporation (LIC) Act, 1956
- The Marine Insurance Act, 1963
- The General Insurance Business (GIB) (Nationalization) Act, 1972
- Public Liability Insurance Act, 1991.

Additionally, the provisions provided under the Indian Contract Act, 1872 are also applicable to the contracts of insurance. Similarly, the provisions of the Companies Act, 1956 are also applicable to the companies carrying on insurance business. The subordinate legislation includes Insurance Rules, 1939 and the Ombudsman Rules, 1998 framed by the Central Government under Section 114 of the Insurance Act, 1938 and also 32 regulations made by the IRDAI under Section 114 A of the Insurance Act, 1938 and Section 26 of the IRDAI Act, 1999.

The Indian cabinet recently raised the FDI limit in the insurance sector to 74%, paving the way for the following benefits:

- Capital availability
- Consumer welfare
- Empowerment of IRDAI
- Health Insurance
- Promoting Reinsurance Business in India
- Strengthening of Industry Councils
- Robust Appellate Process
- Insurance Scenario in India

The said limit is not applicable on Life Insurance Corporation of India (LIC). The Government issued Press Note 1 of 2022 on 14 March, 2022 mentioning the FDI limit as 20%, through an automatic route in the Life Insurance Corporation of India (LIC), established and governed under the Life Insurance Corporation Act, 1956.

Amongst other significant recent changes, IRDAI has introduced norms to curb mis-selling of Insurance policies. It has been made mandatory for the insurers to issue customised Benefit Illustrations (BI) that project the accumulated corpus of the policyholders based on two different assumed rates of returns i.e., 4% and 8% to show two investment growth scenarios projected for each policy. The benefit illustration should be signed both by the prospective policyholder and the insurance agent or the authorised person of an intermediary. Benefit Illustrations is a set of projections, prepared by the actuaries of the insurance company. It basically shows how the (policyholder's) insurance policy fund is invested, and project how it will perform over a period of time. Thus, the regulator IRDAI is taking proactive measures to protect and safeguard the interest of the policyholders/buyers to ensure that unscrupulous sale agents do not trick them into buying unsustainable policies based on unrealistic promises. With respect to Health Insurance, the BI as specified under Annexure-A with indicative ages are mandated to be provided.

**RECENT DEVELOPMENTS**

- The Union Budget Venture Capital and Private Equity invested more than 5.5 lakh crore last year facilitating one of the largest start-up and growth ecosystem.
- An exclusive health identity system is introduced which is expected to aid insurance businesses in improved risk assessment, premium and claim evaluation, and risk assessment in general.
- As per the allocation in the Union Budget 2023 of India, the Government has resolved to provide a fund of INR 15,500 crore for the crop insurance scheme
- IRDAI has given the framework for issue of surety bonds by insurance companies. The use of surety bonds as a substitute for bank guarantee will be made acceptable in government procurements as per Budget 2022-23.
- Insurance (Amendment) Act came into effect from April 1st 2021 with the aim to increase the influx of foreign capital into the Indian private insurers by increasing the FDI limit from 49% to 74% in insurance till 2023.
- The parent or guardian of a differently-abled person can take an insurance scheme for such person and get a tax relief as well.

- All products and add-ons or riders are to be introduced or modified/revised under health insurance business and offered by General and Health Insurers, permitted to be launched by “Use and File” procedure, by complying with all norms. The same applies to life insurance companies also now vide a circular dated 10.06.22.

The changing dynamics of the sector have evolved with the pandemic where health insurance products have increased, due to the government allotting Rs 64,180 crore solely to health sector. This tremendous allocation has a huge impact on the insurance sector giving a boost for the latter’s growth as well.

# INTELLECTUAL PROPERTY REGIME IN INDIA

## INTRODUCTION

In India the following types of intellectual property rights (IPR) are protected under statutory and common law:

- Patents;
- Trade Marks;
- Copyrights;
- Designs;
- Geographical Indications;
- Semiconductors Integrated Circuit Layout-Designs;
- Plant Varieties.

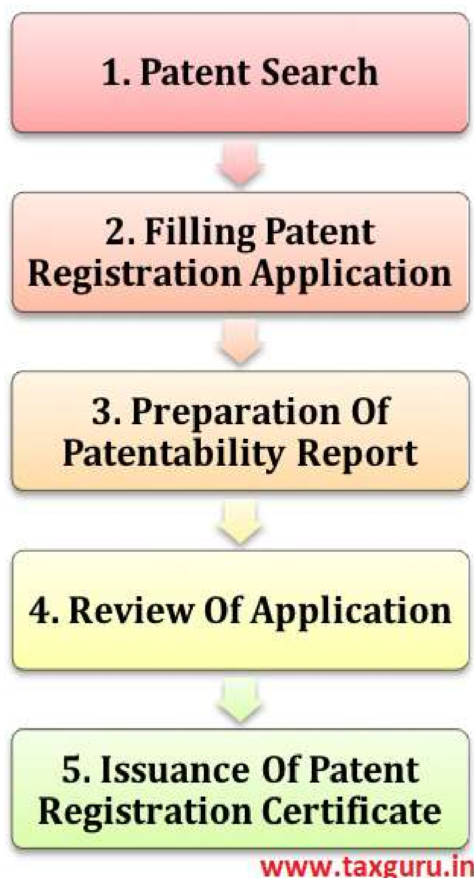
**Legislations regulating Intellectual Property Rights in India:**

- The Patents Act, 1970 as amended by the Patents (Amendment) Act, 2005; Patent Rules, 2003; the Patent (Amendment) Rules, 2006; Patent (Amendment) Rules, 2012; Patent (Amendment) Rules, 2013; Patent (Amendment) Rules, 2014; Patent (Amendment) Rules, 2016; Patent (Amendment) Rules, 2017; Patent (Amendment) Rules, 2019; Patent (Amendment) Rules, 2023 incorporated changes pursuant to India's obligations under TRIPS.
- The Trade Marks Act, 1999; the Trade Mark Rules, 2002; the Trade Marks (Applications and Appeals to the Intellectual Property Appellate Board) Rules, 2003; the Trademark (Amendment) Rules, 2013; and the Trademark Rules, 2017.
- The Copyright Act, 1957; is amended by the Copyright (Amendment) Act, 2012; the Copyright Rules, 2013; and the Copyright (Amendment) Rules, 2021.
- The Designs Act of 1911 has been completely replaced by the Designs Act of 2000. The Designs Act, 2000 relating to Industrial Designs, was amended on May 11, 2001, and the Designs Rules, 2001 was amended in 2008 by the Design (Amendment) Rules, 2008; and the Designs (Amendment) Rules, 2021.
- The Geographical Indications of Goods (Registration and the Protection) Act, 1999; and the Geographical Indications of Goods (Registration and the Protection) Rules 2002; Geographical Indications of Goods (Registration and Protection) Amendment Rules, 2020 and the Geographical Indications of Goods (Forms to making an appeal and fees therefore) Rules, 2013.
- The Semiconductor Integrated Circuits Layout-Design Act, 2000; the Semiconductor Integrated Circuits Layout-Design Rules, 2001; and the Semiconductor Integrated Circuits layout, Design (Amendment) Rules, 2012.
- The Protection of Plant Varieties and Farmers' Rights Act, 2001, which was consequently amended by the Protection of Plant Varieties and Farmers' Rights Rules, 2003, 2008, 2009, 2010, 2012, 2013, 2015, 2016 and 2018.
- The Biological Diversity Act, 2002 and the Biological Diversity Rules, 2004.

- The Information Technology Act, 2000 which was consequently amended in 2002, 2003, 2004, 2009, 2011, 2012, 2013, 2015, 2016, 2017,2021 and 2023.

## PATENTS

### The Patents Act, 1970




The Patent system is governed by the Patents Act, 1970, and the Patents Rules, 2003. The Patents Act and Rules have been amended on numerous occasions. The Act and the Rules increased transparency and decentralized the functioning of the patent offices and simplified various other procedures associated with the grant of patents. Product (drugs & food) patents have been allowed in line with India's commitment under the TRIPS. In addition to the amendments done in the Act, the overall patent practice in India is gradually striding towards a standardized system, where enforcement plays a major part in maintaining the equilibrium.

A patent is a legal right that confers a monopoly to a person for his/her invention. According to the Patents Act, 1970, an 'invention' must meet the following three essentials:

- **Novelty**: It must be a new product or a process that did not previously exist.
- **Inventive Step**: It must offer a new technical improvement as simple changes to a previously known technique cannot be patented.
- **Industrial Applicability**: The proposed invention must be useful. It also implies that it must be possible to manufacture the proposed invention.

Once a product or process is patented, it cannot be commercially produced, distributed, used, or sold without the consent of the patent owner.

Patent rights in India are granted on a first-to-apply basis. The application for a patent can be made by either:

a. the inventor or

b. the assignee or legal representative of the inventor.

**The following are the salient features of the Act :**

- The definition of **“invention”** stands widened and includes a new product or process involving an inventive step and capable of industrial application. By the 2005 amendment, the definition of **“new invention”** has been introduced in the Act as meaning ‘any invention or technology which has not been anticipated by publication in any document or used in the country or elsewhere in the world before the date of filing of a patent application with provisional/complete specification i.e., the subject matter has not fallen in the public domain or does not form part of the state of the art.'
- To define patentable subject matter in respect of pharmaceuticals, the definition of **"pharmaceutical substance**" has been inserted by the Patent (Amendment) Act of 2005, meaning any new entity involving one or more inventive steps.
- Under the 2005 amendment, the mere discovery of a new form of a known substance, which does not result in the enhancement of the known efficacy of that substance, is not considered an invention within the purview of the Act. In addition, the Act has defined **'new form of a known substance'** as those substances falling under one of the following categories- Salts esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations, and other derivatives of a known substance. Such substances will be considered the same substance unless they differ significantly in properties concerning efficacy.
- All chemical substances capable of being used as medicine, drug, or food can now be patented. This complies with the provisions under TRIPS. The mailbox applications for product-related claims for medicines and drugs have now been opened for examination and a substantial number of product patents have been granted. This is a change that the pharmaceutical industry has been looking forward to for some time.
- The Act, as amended, provides that a person who is a resident of India must apply for permission from the Controller of Patents to file in foreign jurisdictions, unless an application for a patent for the same invention has been made in India not less than six weeks before filing of the foreign application, and either no secrecy directions have been given or all such directions have been revoked. Failure to comply with this will lead to the deemed abandonment of such application and the patent granted, if any, will be liable to be revoked. However, no such prior permission is required concerning an invention whose application has first been filed in a country outside India by a person residing outside India.
- In case of any disparity, the fast track mechanism shall prevail for disposal.
- A patent granted is now valid for 20 years from the date of filing. This has been extended, from the 14-year period that the old Act provided. The term of a patent granted through the Patent Cooperation Treaty (PCT) route is also 20 years from the date of first filing as accorded under the PCT.

- Provision for allowing priority provision under the PCT has been extended to a group of countries or inter-governmental organizations, therefore, 12 months priority will also be available to applications filed in the European Patent Office, African Regional Intellectual Property Office (ARIPO), African Intellectual Property Organization (AIPO) or (OAPI) and Eurasian Patent Office (EAPO).
- Grounds for the opposition as well as revocation of patents have been enlarged. Pre-grant oppositions can be filed by the opponent even though it may not be an interested party in determining such opposition. Post-grant oppositions can be filed at any time by an interested party, within one year from, after the date of grant of the patent.
- The application for a patent is filed according to the territorial limits where the applicant normally resides, has a domicile, has a place of business, or the place from where the invention originates. If the applicant has no place of business or domicile in India, the appropriate patent office is decided as per address for service in India, which is usually the address of the Patent Agent who files on behalf of the applicant.
- A foreign national resident can also apply and obtain a patent in India. A patent application may also be made jointly by two or more corporations as assignees.
- Publication of applications after eighteen months with facility for early publication enables getting patented rights as if it was registered from the day if reasonableness of time is observed.

**Information Required for Filing an Ordinary/Convention Patent Application :**

- Full names, addresses, and nationality of the applicant(s) as well as the inventor; and
- Details of convention priority, if any - including first filed country, filing number, and date.

**Documents Required:**

- Provisional or complete specification (in case of a convention application the application must be filed with complete specification only). If the provisional specification is filed, it must be followed by a complete specification within 12 months; (note: in the case of an ordinary application, there is a provision in the act for postdating the application up to a maximum period of six months)
- Drawing and abstract of the invention
- Information and undertaking listing the number, filing date, and status of each foreign patent application, if any
- Proof of right on Form 1
- Certified copy of priority document (if priority is claimed)
- Declaration of inventorship
- A duly executed power of attorney
- Copy of search and examination reports issued in respect of corresponding foreign applications; and
- Translations, if required, are accompanied by declarations verifying such translations are duly signed.

## TRADEMARKS

**The Trademark Act, 1999**

A Trademark is one of the most valuable assets for a business. A company's trademark shelters its distinctive sign or indicator. This may be a symbol, logo, word, phrase, name, sound, design, or image that symbolizes the brand value or goodwill associated with the product and services or its business. It helps to differentiate between different products.

The process for registration of trademarks in India takes about 15 to 18 months (including the objection period). The trademark is valid for ten years starting from the date of issuance of the certificate. It can be renewed for another 10 years on the payment of the prescribed fees.

Ultimately, a trademark should be easy to remember whether it is a word, a symbol, or a combination of the two. It should not be lengthy and suggestive of the quality of the products.

Although not a signatory to the Nice Convention, India follows the International Classification of Goods and Services as listed in the 9th edition of the NICE classification for identifying the relevant class of goods and/or services for which a trademark application is filed.

Trademark rights can be exercised either by the registered proprietor or a registered user/permitted user according to the consent of the registered proprietor by written agreement. The Act sets out provisions for the assignment of unregistered trademarks, which was not possible under the erstwhile Trade & Merchandise Act, 1958.

An application for registration of a trademark must be made to the relevant office of the Trademarks Registry under whose jurisdiction the principal place of business of the applicant in India falls. In case the applicant does not carry-on business in India, the application can be filed at the office of the Trademarks Registry within whose territorial limits the address for service in India is situated.

In the case of an unregistered company, anyone may apply in her/his name and then subsequently assign the trademark in the company's favour. With the launch of e-filing facilities, an applicant can file the trademark from anywhere via the Internet, and payment for applying can be made through the payment gateway of authorized bankers. It is also possible to file a multi-class application in India based on a single application provided that the official fee is paid on a per-class basis. Both used-based, as well as intent-to-use-based applications, can be filed in India.

Before a trademark application is filed, a search in the trademarks database maintained by the Trademarks Registry of India is recommended. This avoids filing for a conflicting mark, which can save the applicant's time, effort, and cost incurred in developing and adopting a mark, which has previously been adopted by someone else.

India is a signatory to the Paris Convention and therefore it is possible to apply for registration of a trademark claiming convention priority. A priority application must be filed within 6 months of the priority date. To claim priority, a certified copy of the convention application is required.

Among others, falsely applying or using a trademark with the intent to defraud or possessing goods or things bearing a false trademark for sale or selling or letting out for hire is a criminal offence under the Act, punishable with imprisonment up to 3 years and a fine of up to Rs. 200,000.

Recently, the Trademark Rules have been amended by the Trademark (Amendment) Rules, 2010. The main reason for amending the Trademark Rules is to prepare ourselves to become part of the Madrid System by matching our description of goods and services to that of the internal NICE classification of goods and services under the NICE agreement. As per amended Schedule IV (description of goods and services) class 42 has been divided into four classes, namely:

**CLASS 42**

- Scientific and technological services and research and design relating thereto.
- industrial analysis and research services.
- design and development of computer hardware and software.

**CLASS 43**

- Services for providing food and drink.
- Temporary accommodation.

**CLASS 44**

- Medical services.
- Veterinary services.
- Hygienic and beautiful care for human beings or animals.
- Agriculture, horticulture, and forestry services.

**CLASS 45**

- Legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals.

- Further, the amendment provides for the issuance of a duplicate or copy of the Registration certificate (hereinafter called RC) without any payment of fee if the Registered proprietor claims that the original RC has not been received. However, such request for issuance of duplicate or copy of RC is required to be supported with

evidence of non-receipt of original RC and should be made before the expiry of the time limit for renewal of registration and restoration of the registered Trademark.

**Information required for filing a trademark application in India**

- Name, address, and nationality of the applicant.
- Specification of goods or services.
- Class.
- Mark.
- Particulars of use of the mark; and
- Details of convention priority if any

**Documents required:**

- A duly executed power of attorney.
- Certified copy of the priority application, certified by the trademark's registrar or competent authority of the country of priority, (this can be filed at the time of application or within two months of filing in India); and
- The electronic representation of the mark.

## COPYRIGHTS

### The Copyright Act, 1957

Copyright grants an exclusive right to content creators and artists. It is a form of legal ownership of their work. Copyright gives the creators the exclusive right to use and distribute the work for a set amount of time. A Copyright protects the unique expression of ideas and not the idea itself. Facts, ideas, methods of operation, systems, etc. are not eligible to claim copyright status. These are usually trademarked. It is defined under Section 14 of the Copyrights Act,1957.

**Under the Indian Copyrights Act, a copyright exists in :**

a. Original literary, dramatic, musical, and artistic work, cinematograph films, and sound recordings.
b. Literary works: novels, poems, short stories, books on any subject, computer programs, song lyrics; and
c. Computer software, computer hardware, etc.

**Copyright is sanctioned to prevent others from :**

a. Copying/reproducing the work in any form, such as print, video, or audio.
b. Publishing and selling copies/recordings of the work commercially.
c. Renting or lending the work in a free market.
d. Broadcasting the work in various forms.
e. Translating it into other languages.
f. Copyright registration procedure.

In India, formal registration for acquiring a copyright is not required. However, it is advisable to obtain a certificate of registration of the copyright as the certificate may serve as evidence in a court of law if a dispute relating to the ownership of the copyright arises.

In the case of original literary, dramatic, musical, and artistic works, the duration of copyright is the lifetime of the author or artist, and 60 years is counted from the year following the death of the author.

In the case of cinematograph films, sound recordings, posthumous publications, anonymous and pseudonymous publications, works of government, and works of international organizations are protected for 60 years which is counted from the year following the date of publication.

India has one of the most advanced copyright protection regimes in the world. The Copyright Act, 1957 is based on the Berne Convention for the Protection of Literary and Artistic Works and the Universal Copyright Convention, 1952. The Act protects original literary, dramatic, musical, and artistic works as well as cinematograph films and sound recordings. The Copyright (Amendment) Act, 1999 makes the Indian copyright law in compliance with TRIPS.

This amendment came into force on January 15, 2000. The Copyright (Amendment) Act, 1999, in compliance with Article 14 of TRIPS, extended copyright protection to performers for fifty years, which is computed from the end of the calendar year in which the performance took place. Prior to this amendment, the performers’ protection was valid for only 25 years.

As per the International Copyright Order, 1999 (promulgated by the Indian Government), "foreign works" which are first published in a country, which is a member of the Berne Convention or the Universal Copyright Convention, would be accorded the same copyright protection in India, as Indian works without undergoing any formalities. It provides that the foreign country accords "national treatment" to Indian works, recognizing the criterion of reciprocity. Therefore, such foreign copyright holders may enforce her/rights in India in the face of an infringement action by relying on copyright protection issued in the holder's home country.

The Amendment Act of 1999 empowers the Indian Government to extend the provisions of the Copyright Act to performances and broadcasts made in other countries, provided, those countries extend similar protection to broadcasts and performances made in India.

Under the Act, the owner of a copyright may assign her/his rights to any person, either wholly or partially for the entire term of the copyright or any part thereof, her/his rights in an existing work or a future work. To be valid, the assignment must be made in writing. In a case where the period of assignment is not stated, the duration of the assignment is deemed to be five years from the date of assignment. If the territorial extent of the assignment of the rights is not specified, the territory is deemed to be limited to India. The reversion of rights provision in the Act states that in cases where the assignee does not exercise the rights granted to her/him within a year from the date of assignment, the rights automatically revert to the assignor unless otherwise specified in the assignment agreement.

The Act contains a comprehensive definition of **"computer program".** A new offence was added in the Act to cover the wilful use of an infringing copy of a computer program. It further clarified the scope of copyright protection by modifying the meaning of "author" in cinematograph films or sound recordings to include the producer. The producer has been defined as a person who takes initiative and responsibility for making the work. The

definition of **"communication to the public"** includes making a work available by any means of display or diffusion and including not just communication through satellite but also cable or any other means of simultaneous communication to more than one household.

The landmark case of "**Eastern Book Company v. D.B. Modak" (2008)1 SCC 1** has brought a paradigm shift in the degree of originality required in a work to attain copyright in India. This judgment of the Supreme Court of India has made a significant shift from the 'sweat of the brow' doctrine followed up till now to a 'modicum of creativity as a standard for proving originality in work to enable protection under the Copyright Act.

The Copyright Societies and the Copyright (Amendment)Act 2012 is expected to bring the country's copyright laws in line with international standards in internet and digital technology and provide for stringent punishment. The Act has brought in conformity with the World Intellectual Property Organisation (WIPO) Internet Treaties, namely WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) which have set the international standards in these spheres.

The Copyright Rules, 2013 was notified by The Ministry of Human Resources and Development on 14 March 2013. A draft for amendments was released in 2019 for public comments. On 30 March 2021, the government of India notified the Copyright (Amendment) Rules, 2021 vide gazette notification. Prior to this amendment, the Copyright Rules, 2013 was last amended in 2016. The main objective of this amendment is to ensure transparency and accountability. Electronic and traceable payment methods, distribution of royalties, undistributed royalty, and annual transparency reports by copyright societies amongst the others are a few of the things this amendment deals with.

## Software Copyright Protection in India :

The Act imposes heavy punishment and fines for infringement of copyright in a software programme. The Act spells out the rights of a copyright holder, the position on software rentals and the rights of a user to make backup copies. It is illegal to make or distribute copies of copyrighted software without proper or specific authorization. The fair use provisions to computer programmes allow acts necessary to obtain information for achieving interoperability of an independently created computer programme and further allow observation, study, or test of the functioning of the computer programme to determine the underlying ideas and principles while performing acts necessary for the functions for which the computer programme is supplied. Backup copies may be made as temporary protection against loss, distribution, or damage to the original copy.

Infringement of copyright and/or other rights conferred by the Act can be tried under both civil and criminal laws. The sale or hire, or any offer for sale or hire of any copy of a computer program without specific authorization of the copyright holder is prohibited. The wilful use of an infringing copy of a computer programme is an offence. Civil and criminal actions may be instituted for the injunction, actual damage (including infringer's profits) and accounts and/or criminal punishments and fine.

## Information Required for Filing Copyright Application in India

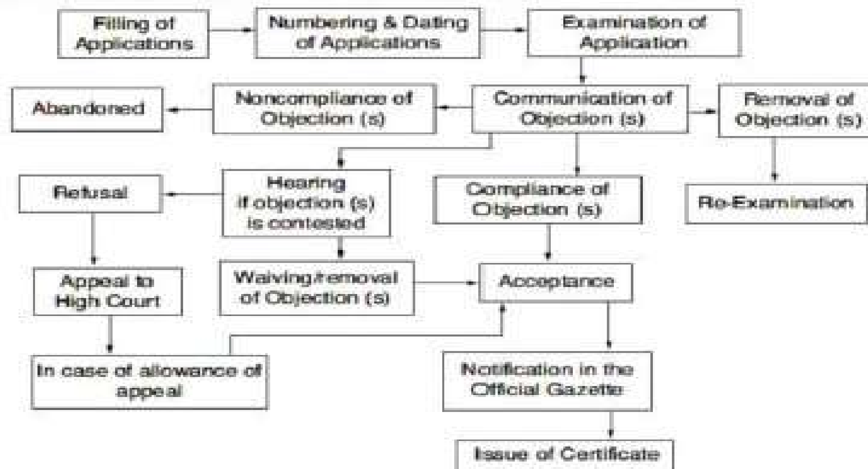
- Name, address, and nationality of the applicant.
- Nature of the applicant's interest in the copyright of the work.

- Name and address of every person, if any, who claims to have any interest in the subject matter of the copyright or disputes the applicant's rights (to whom notice of the application is to be sent).
- Description of the work; and
- Title of the work.

## Documents Required

- A duly executed power of attorney.
- Statement of particular and statement of further particulars (for literary, dramatic, musical, and artistic works only) detailing the nature of the work; and
- Copies of the work (three if the work is published, one if the work is unpublished).
- No objection letter is to be obtained from the author(s) who has any interest in the work.

**DESIGNS**




## The Designs Act, 2000

The Designs Act, 2000 and the Designs Rules 2001 as amended in 2008 and 2014 govern the protection of industrial designs. The registration of a design confers on the registered proprietor the right to act against third parties who apply the registered design without license or authorization.

India's Union Cabinet has approved the National Design Policy that intends to use the slogan "Designed in India" and to provide Indian designs with better branding and global status for the designs' quality and utility.

**The Design Act, 2000 provides for the following essential requirements for an industrial design to be registered in India :**

- The design should relate to the features of shape, configuration, pattern or ornament, the composition of lines or colours or both, as applied to an article. Thus, designs of industrial plans, layouts and installations are not registerable under the Act.
- The industrial design should have been applied to the article by any industrial process.

- The design must be new or original, not previously published, or used in any country prior to the date of filing for registration.
- The design should not be linked to any functional feature of the article (Designs that are linked to technical or functional aspects are granted patent rights in India.)
- The design should not include any trademark or property mark, or artistic works defined under Section 2 of the Indian Copyright Act, 1957.

**The salient features of the Designs Act are as follows :**

- **'Design'** means and includes 'composition of lines or colours or a combination thereof applied to any article in addition to the already recognized visual features of shape, configuration, pattern, or ornamentation applied to any article but does not include any trademark or property mark or artistic works as defined under the Copyright Act, 1957.
- **Section 4 of the Designs Act, 2000** details the prohibition of registration of certain designs. It lays down that a design which is not new or original or has been disclosed to the public in India or in any other country by publication in tangible form or by use or in any other way prior to the filing date, or where applicable, the priority date of the application for registration or is not significantly distinguishable from known designs or combination of known designs or comprises or contains scandalous or obscene matter shall not be registered.
- An extension of 3 months for filing the response to the examination report may be provided if the applicant or his agent seeks such extension under Form 18 which is to be made before the expiry of the stipulated period of 6 months from the date of application.
- An application which has not been completed due to any neglect or default of the applicant, to enable registration to be affected within six months from the date of application or within the extended period of 3 months, is deemed abandoned.
- India follows the International Classification of Industrial Designs according to the Locarno Agreement.
- It is possible to claim priority within the Paris Convention.
- The period of protection for a registered design is 10 years and this is extendable for an additional period of 5 years if renewal is duly filed.

**Information required for filing a Design Application :**

- Full names, addresses and nationality of the applicant;
- Class and name of the article to which a design is applied;
- Details of convention priority, if any
- Title of the article; and
- Statement of novelty.

**Documents Required**

- A duly executed power of attorney;
- Deed of assignment;
- Certified copy of the design application was filed in the country of priority if any; and

- Representations illustrate the views of the article wherein the originality resides. Prospective view in addition to six directional views (front, rear, right side, left side, upper, and bottom) (photographs are acceptable and preferred).

## GEOGRAPHICAL INDICATIONS :

**Geographical Indications of Goods (Registration and Protection) Act, 1999**

A Geographical Indication (GI) is a tag used on products based on their geographical uniqueness. The uniqueness of a product is defined either by its origin, process, or availability. GI tags usually help businesses enhance their marketability.

**Objectives of GI Act :**

1. Prohibits unauthorized persons from misusing geographical indications and customers from deception.
2. To encourage and promote exports of the goods bearing Geographical Indication.
3. Law governing the geographical indication of goods in India could well enough to cover the concern of yielders of such goods, and is used to identify agricultural, natural, and manufactured goods. The manufactured goods should be prepared, processed, or produced in that territory. It should have a special quality or characteristics. Examples are Basmati Rice, Darjeeling Tea, Nagpur orange etc.

Once a geographical indication is registered it is valid for a period of 10 years. It can be renewed from time to time for a further period of 10 years each. It is not compulsory to register the geographical indications. However, registered/ authorized users can exercise the exclusive right to use the geographical indication.

**Legal /Legislative Developments Over the Last Five Years**

- India announced its first National IPR policy in 2016. After the announcement of the National IP policy, the portfolio of Copyright and Semi-Conductors shifted to the Department of Industrial Policy and Promotion, Ministry of Commerce, which was subsequently renamed the Department of Promotion of Industry and Internal Trade (DPI).
- The Maharashtra Cyber Digital Crimes Unit (MCDCU) was set up in August 2017. The unit has been established as a public-private partnership to enable the industry to work directly with state police to combat digital piracy.
- The Commercial Courts Act was enacted in 2016; it provided an opportunity to reduce delays and increase expertise in judicial IP matters.
- In 2017, the Patent Rules and the Trademark Rules were revised, adopting strict timelines to dispose off cases and streamline examination. Special discounts for filing and an expedited examination for start-ups were also introduced.
- The Patent rules were revised in September 2019 to clarify and expand the criteria of its expedited examination procedures to include start-ups and small businesses, agreements with foreign IP offices, and the election of the IPO as a Patent Cooperation Treaty (PCT), International Searching Authority (ISA), or International Preliminary Examination Authority (IPEA).
- In 2018, change to the Customs Rules on IPR removed patents from the scope of customs protection. Accordingly, the new customs redecoration system permits owners of the

trademark, designs, copyright, and geographical indications to record their IPR with Customs and seek affirmative enforcement action in the event of counterfeit activity at the ports. Customs officers have ex-officio authority to seize and destroy counterfeit goods, though rights holders must pay for the storage and destruction of counterfeit materials.

- The Cinematographic Bill: In 2019, the cabinet approved anti-cam cording language to be inserted in the Cinematographic Bill. The Bill contains provisions criminalizing illicit camcording.
- The Cinematographic (Amendment) Bill 2023 – Key changes with respect to certification of films, copyright coverage, menance of piracy as well as extent of governmental control over CBFC.
- The Pesticides Management Bill (2008) would allow data protection of agricultural products.
- The Department of Biotechnology, Ministry of Science and Technology, Government of India has, as part of the new National Biotechnology Development Strategy launched by the Government of India, initiated legislation to promote, protect and optimize the potential of public-funded research and development in biotechnology and life sciences by regulating its IPR. The utilization of the Publicly Funded Intellectual Property Bill, 2008, or in other words the Indian Bayh-Dole Act is under consideration and discussion. The Bill primarily aims to boost the commercial utilization of publicly funded research.
- On December 16, 2022, the IP Office notified that the Design Wing of Patent Office has started issuance of e-certification with effect from November 1, 2022.
- Jan Vishwas (Amendment of Provisions) Bill, 2022.

# INFORMATION TECHNOLOGY AND SOURCING TO INDIA

## INTRODUCTION

In view of the tremendous growth potential of the industry, the government established a separate Ministry of Information Technology (IT) in October 1999 and enacted the Information Technology Act, 2000. The IT Ministry is primarily responsible for framing all legislations and policies relating to information technology, knowledge-based industries, the internet, e-commerce, IT education, IT-based education, and the development of electronics and computers. The Information Technology Act, 2000 came into effect on 17.10.2000. The information and technology industries are very prone to data theft and theft of other non-tangible intellectual property.

Draft digital data protection Bill, IT Rules 2011.

The IT Act contains 94 sections, 13 Chapters and 4 Schedules.

In Chapter I of the IT Act, Section 1 states the applicability of the Act and Section 2 provides definitions for the subjects to be dealt with in the Act. The offences covered under the Act and the penalties and punishment prescribed for them are under Chapter XI, Sections 65 to 78.

The purpose of enacting the IT Act is to make the atmosphere safer for the IT industry to work and excel in India by giving protection to their intangible properties and to deter the people working in the organisation as well as hackers from committing cybercrime that result in heavy losses for the industry.

The sourcing industry is not governed by any special laws. Various laws are applicable to the issue of sourcing, depending upon the area of work. The Indian Contract Act, 1872; Insolvency and Bankruptcy Code, 2016; Insurance Laws; Labour Laws; Civil Procedure Code, 1908; Specific Relief Act, 1963; Commercial Courts Act, 2015; Arbitration and Conciliation Act, 1996, and other general civil laws apply to most sourcing works.

IT-based services and products have become essential for the growth and success of any business enterprise. This industry has a conspicuous impact on improving the productivity of almost every other sector of the economy. It also has a huge potential for further accelerating growth and economic development. Information technology has not only contributed to the economic development of the country but has also made governance more efficient and responsive. It has made access to government services and information easier and more inexpensive. Information technology has also made the management and delivery of government services (such as health services, consumer rights, etc.) more effective while enhancing transparency.

**MARKET SIZE**

The global sourcing market in India continues to expand and develop at a higher stride as compared to the IT-BPM(Business Project Management) industry. India is the major sourcing destination across the world, accounting for more than 55% market share of the US$ 200-250 billion global services sourcing business between the years 2019-20.

The IT industry constituted 7.4% of India's GDP in FY2022. The 1.9% rise in exports from India is expected by the IT sector to attain US$ 81.89 billion in FY22. In 2022, the IT industry will witness the hiring of 5,00,000 new employees. As per STPI (Software Technology Park of India), the software exports by its registered units increased by 7% Year-Over-Year(YoY) to attain Rs. 5 lakh crore (US$ 67.40 billion) in Fiscal Year 2021 from Rs. 4.66 lakh crore (US$62.22 billion) in Fiscal Year 2020, driven by suddenly increased digitization and the IT industry's timely adaptation to remote working environments that aided in keeping up the industry's growth and development amid the coronavirus pandemic.

In FY21, the IT & BPM industry generated approximately $194 billion in revenue, a 2.3% increase year on year. The domestic revenue and export revenue of the IT industry are anticipated to be approximately US$ 45 billion and US$ 150 billion, respectively, in FY21. As per Gartner estimates, IT investment and outpay in India are anticipated to reach US$93.5 billion in 2021 (7.3% YoY growth) and further increase to US$ 124.6 billion in 2024.

The Indian software product industry is expected to attain US$ 100 billion by the year 2025. Indian companies are now aiming to invest internationally to broaden their global footprint and increase their global delivery centres. In February 2021, Tata Consultancy Services made a public announcement of its intention to recruit around 1,500 technology employees across the UK over the next year. The development would build capabilities for TCS to deliver efficiently and effectively to UK customers.

The data annotation market in India stood at around US$ 250 million in FY20, of which the US market contributed almost 60% of the total value. The market is anticipated to attain approximately US$ 7 billion by 2030 because of the major increase in domestic demand for AI.

The Indian IT industry has grown rapidly at an exponential rate after the economic reform of 1991-92. Indian IT companies have set up thousands of centres in India and in around 80 countries across the world. The majority of global corporations are sourcing IT-ITES from the Indian IT industry. It accounted for approximately 55 per cent of the global service sourcing market (US$ 200-250 billion) in 2019-20. The market size (especially exports) of the IT industry has grown manifold from approx. 67 billion US dollars in 2008-09 to 227 billion US dollars in 2022. The revenue is further expected to grow in the coming years at an accelerating rate and is expected to reach 350 billion US dollars by 2025.

**INVESTMENTS/DEVELOPMENT**

Indian IT's core competencies, skills, and strengths have lured major investments from major countries. The computer software and hardware sectors in India attracted foreign direct investment (FDI) inflows of $26.14 billion between the financial years 2020 and 2021. It

ranks second in the inflow of FDI, as per the Department for Promotion of Industry and Internal Trade (DPIIT). In FY21, computer software and hardware topped FDI investments, accounting for 44% of the total FDI inflows of US$81.12 billion.

Leading Indian IT firms like Infosys, Wipro, and Tech Mahindra are broadening and branching out their subscriptions and showcasing leading ideas in blockchain and artificial intelligence to clients using innovation hubs and research and development centres to create modified and evolutionary offerings and subscriptions.

**The major developments in the Indian IT and ITES sectors are as follows:**

In May 2021, Infosys bagged a partnership with Majesco, a New Jersey-based cloud insurance software solutions provider, to equip insurance companies with digital adoption and transformation across the insurance value chain. In May 2021, HCL and Hitachi ABB Power Grids announced a multi-year contract to construct a new greenfield digital foundation for the Global Transformation Programme. This will lend a hand to Hitachi ABB Power Grid in building an advanced, efficient, and developed independent IT organization. In the same month, TCS and VIAV Solutions joined forces to launch a new test to adhere to the industry's requirements for comprehensive testing of next-generation disaggregated 5G radio access network products. The LAC Chain partnered with TCS to launch the innovative laboratory of the Inter-American Bank Group to increase the adoption of a blockchain ecosystem throughout Latin America and the Caribbean.

## GOVERNMENT INITIATIVES

**The major initiatives taken by the government to promote the IT and ITeS sectors in India are as follows:**

(i)The Software Technology Parks of India (STPI) is an autonomous society under the Ministry of Electronics and Information Technology, which is responsible for the implementation of the Software Technology Parks of India (STPI) Scheme—a 100% export-oriented scheme for the development and export of computer software, as well as the export of professional services via communication links or physical media. The STPI has registered IT/ITeS units exported for Rs. 5.02 lakh crore for the fiscal year 2020-21.

(ii)The Government of India has approved the National Policy on Software Products-2019 in order to build a strong Indian software product development ecosystem that will result in a ten-fold increase in India's participation in the global software product market and 3.5 million direct and indirect jobs by 2025.

(iii)The Next Generation Incubation Scheme (NGIS) has been approved to promote the software product ecosystem and to address a key component of the National Policy on Software Product Development (NPSP 2019). It is envisioned that a thriving software product ecosystem will complement the growing IT industry, allowing for continuing expansion, new jobs, and increased competitiveness.

(iv)In May 2021, MyGov, the citizen engagement platform of the Government of India, in partnership with the Department of Higher Education, launched an innovation challenge to create an Indian language learning app.

(v)In order to establish an enabling environment for the IT industry, in April 2021, the Centre for Development of Advanced Computing (C-DAC) launched three innovative technological centres :

- Centre for Automatic Parallelizing Compiler (CAPC),
- Cyber Security Operation Centre (CSoC) as a Service, and
- C-DAC's indigenous High-performance Computing software solutions - Parallel Development Environment (ParaDE).

(vi)The Department of Telecom, Government of India and the Ministry of Communications, Government of Japan, signed an MoU to enhance cooperation in the areas of 5G technologies, telecom security and submarine optical fibre cable systems. In 2020, the government released "Simplified Other Service Provider" (OSP) guidelines to improve the ease of doing business in the IT industry, Business Process Outsourcing (BPO), and IT-enabled Services. Under the Champion Sector Services Scheme (CSSS), multiple other initiatives have been taken to increase IT sector exports. These include: Future Skills PRIME, Market Development Initiative in the Nordics and Africa Region, Market Outreach Initiatives, etc.

**OPPORTUNITIES**

The growth of the IT industry in India is unprecedented across the economies of the world. All the sub-sectors of this industry (hardware products have had relatively less progress) have made strides in revenue growth in the last two decades and have fuelled the growth of the Indian economy. The rapid advancement within the IT industry and liberalisation policies such as reducing trade barriers and eliminating import duties on technology products by the government of India are instrumental in the growth of this industry. Also, various other government initiatives like setting up Software Technology Parks (STP), Export Oriented Units (EOU), Special Economic Zones (SEZ) and foreign direct investment (FDI) have helped this industry achieve a dominant position in the world IT industry.

**Abundant investment opportunities exist in the following thrust areas in India:**

Satellite-based communication, Communication infrastructure Gateways, Wireless Software development, IT-enabled services, IT education, Fibre optic cable, Data centres and server farms are the various thrust areas in which abundant investment opportunities exist.

The remarkable feature of India's IT industry is that, along with its expansion in terms of market size, it is also incrementally adding a significant share to India's gross domestic product (GDP) and consequently boosting the growth and development of the country. The IT industry contributed around 8% of India's total GDP in 2020, up from 0.4 percent in 1991-92 (Graph 2). This percentage is expected to rise to 10% by 2025.

India's digitally skilled pool has grown over time and accounts for around 75 percent of global digital talent. India's four big IT companies (TCS, Infosys, Wipro, and HCL Tech)

have employed more than one million employees. New IT-based technologies such as telemedicine, remote monitoring, etc. are expanding and boosting demand in the digital economy. The rollout of fifth-generation (5G) communication technology, the growing adoption of artificial intelligence, big data analytics, cloud computing, and the Internet of Things (IoT) will further expand the size of the IT industry in India. As the size of India's digital economy is increasing, IT companies are establishing their centres in tier II and tier III cities, which will further enhance growth and reduce existing disparities.

It has emerged as a global economic force and a major contributor to the Indian economy in particular and the world in general. Thus, it is hereby outlined how the Indian IT industry has evolved over the years and its prominent role in boosting Indian's growth.

**CONCLUSION**

India is the leading outsourcing destination for IT companies all around the world. Having proven its capabilities in fulfilling and conveying both on-shore and off-shore services to global clients, surfacing technologies now offer an entire new range of opportunities for leading IT firms in India.

# LABOUR AND EMPLOYMENT

## INTRODUCTION

India has a large labour pool as almost 50% of its population comprising of 1.2 billion people can work. Naturally, the labour market of India is diverse, foreign companies need to understand this structure in order to take advantage of India's demographic dividend.

A large part of the working population is involved in the unorganized or informal sector, working for small businesses or manufacturing units that employ less than ten individuals.

The expansion of higher education has created a larger skilled talent pool in India.

## CONSTITUTION AND EMPLOYMENT

The Indian Constitution ensures equality before the law and extends to its citizens equal protection of law within India. The Preamble declares the country to be a socialist republic and the Constitution under its various provisions prohibits any prejudice against citizens and also provides for the freedom of associations or trade unions.

Under Article 16, the Constitution mandates equality of opportunity in the matter of public employment and prohibits any form of discrimination in relation thereto. Part IV (Directive Principles of State Policy) dictates that the State shall make provisions for securing just and humane conditions of work for all.

Under the Constitution, labour is a subject in the concurrent list whereby, both the Central & State Governments are competent to enact legislations subject to certain matters being reserved for the Central Government exclusively.

**EMPLOYMENT POLICY**

The aim of a well-conceived employment policy is to stimulate economic growth and development whilst raising the standard of living, meeting manpower requirements and overcoming unemployment. Such a policy strives to ensure that there is work for all those who are capable, and that there is freedom of choice of employment.

**STRUCTURE OF LABOR IN INDIA**

The government's labour laws usually categorize employees on the grounds of skill and area of operation. With respect to skills, employees are categorized as unskilled, semi-skilled, skilled, and highly skilled. In terms of area of operation, employees are classified as managerial personnel and workmen. This defines their job roles, wages, disbursal of benefits, and their rights and duties.

**LABOR LAWS IN INDIA**

Indian legislature is conscious about the rights of the labour and employment class of their country and for protection of their rights. Earlier, the web of legislation was such that workers had to fill plenty of forms just to claim one benefit. Therefore, various redundant labour laws were repealed. Now, 29 labour laws have been codified into 4 labour codes. It has amalgamated 4 laws in the Wage Code, 9 laws in the Social Security Code, 13 laws in the Occupational Safety, Health and Working Conditions Code, 2020 and 3 laws in the Industrial Relations Code.

Following legislations govern the labour sector in India:

a. Worker's Compensation Act, 1923
b. The Trade Unions Act, 1926
c. Payment of Wages Act, 1936
d. Industrial Employment (Standing Orders) Act, 1946
e. Indian Industrial Disputes Act, 1947
f. Factories Act, 1948
g. Maternity Benefits Act, 1961
h. Payment of Bonus Act, 1965
i. The Payments of Gratuity Act, 1972

**Glimpses of the above Stated Laws:**

i. Workmen's Compensation Act, 1923: This Act provides for the compensation to be given to all the workers with parity which means that the pay shall be same for every employee working at the same position. The basic idea for enactment of this statue is to protect the workers from getting exploited by way of making different to different workers working at the same position.
ii. The Trade Unions Act, 1926: This Act legalized trade unions in all the sectors in India. Prior to this forming of trade unions was illegal and the union also did not have any right to contest or protest for rights of the workers. The basic idea to implement this Act was to give voice to the demands of the workers and it also gives them legal sanctity against factory owners.
iii. Payment of Wages Act, 1936: This Act was implemented to guarantee timely payment of workers. Earlier, the Factory owners used to delay the payments by months and this act was implemented to protect this right of the workers.
iv. Industrial Employment (Standing Orders) Act, 1946: This Act provides for various mandatory orders to be followed by all industries and their violation may invite sanctions.
v. Indian Industrial Disputes Act, 1947: This is a complete law defining all kinds of establishments and workers. It also provides the minimum term of employment of a worker and the manner in which he can be removed and the process for the same including many other protections to the workmen.
vi. Factories Act, 1948: This Act has been enacted to remove the ambiguities contained in other acts regarding the definition of 'Factory' and regarding its working and structure. It is a comprehensive code for establishing a factory in India.
vii. Maternity Benefits Act, 1961: This Act has been enacted to give natural rights to pregnant women and it disallows termination of employment due to pregnancy and also talks about maternity leave.
viii. Payment of Bonus Act, 1965: This Act mandates an annual bonus to the workers. The main idea behind enacting this Act is to ensure additional benefits that a workman is entitled to for the productivity provided by him.
ix. The Payments of Gratuity Act, 1972: This Act secures after-employment benefits of the employees by way of gratuity with the main idea of providing some mandatory saving to every employee or worker so that he may not be a burden for others after his retirement and he led a life with dignity even after losing his job or even after his retirement.

The four labour codes passed by the Government of India are:

- The Code on Wages, 2019: Applies to all employees in the organized and unorganized sector. It seeks to regulate wages and bonus payments in all jobs and its goal is to provide equal remuneration to employees performing work of a similar nature in every industry, trade, business, or manufacture.
- The Code on Occupational Safety, Health and Working Conditions, 2020: Seeks to regulate the health and safety conditions of workers in establishments with 10 or more workers, and in all mines and docks.

- The Code on Social Security, 2020: Consolidates nine laws related to social security and maternity benefits.
- The Code on Industrial Relations, 2020; seeks to consolidate three labour laws namely, The Industrial Disputes Act, 1947, The Trade Unions Act, 1926, and The Industrial Employment (Standing Orders) Act, 1946. The Code seeks to enhance the business environment in the country largely by minimizing the labour compliance burden of industries.

## LABOR COSTS IN INDIA

Firms entering the Indian market often choose to evaluate comparative costs of labour before coming to a decision. India offers competitive benefits with its lower wage structure and access to a huge labour market. For instance, the average basic wage for contract workers in India is US$148 per month whereas in China it is US $234. Labour cost varies from region to region in India, the wages are much lower in two and three tier cities due to lesser cost of living and relatively affordable real estate. For instance, the annual salary of a software engineer in New Delhi is around US$7,600 whereas in Mysore it is US$6,600.

### Hiring of Staff and Workers by Foreign Companies

Trained managerial, professional and technical staff as well as skilled and unskilled workers are available in India at competitive rates. Managerial and supervisory positions are usually filled through advertisements in the print media, campus recruitments and hiring consultants. Government sector and major industrial establishments complete their recruitment process through notified employment exchanges.

Some large head-hunting firms help companies find suitable candidates for senior management positions. For hiring workers, companies advertise locally, go to industrial training schools or contact local employment exchanges. Appointing auditors of accounts, internal auditors and company secretaries is required in most cases, though it is not a pre-condition to investment.

### Hiring of Foreign Nationals

Indian companies may engage the services of foreign nationals (including non-resident Indians) for short-term assignments without the prior approval of RBI. Applications for remittance of remuneration to foreign nationals should be made by Indian companies to authorized dealers.

Recently, there has been a host of Information Technology (IT) software and IT services companies (being the constituents of the knowledge industry) entering the Indian market in line with the global trade policy. They are exempted from routine inspection by inspectors in line with the approved self-certification policy of the Government of India. In addition to a young working class population, India has a very large pool of English-speaking technical persons, skilled workers and an abundant supply of potential employees that prove to be a major attraction for foreign investors. The present industrial policy has eased the entry of foreign technicians and personnel by wiping out the need of prior government approval for employment not exceeding 12 months. Any employment exceeding 12 months requires a government clearance.

# MAKE IN INDIA

## INTRODUCTION

Make in India is a Government of India initiative, launched in September 2014 to boost the domestic manufacturing industry and to bring in foreign investors in the Indian economy to accentuate India's rank in the 'Ease of Doing Business'. The Government of India was successful in achieving the said target set by this scheme. India was at the 100th position in 2018 and has jumped 37 positions in 2022 as per World Bank's report and is currently at the 63rd position in the world, among other countries in the ease of doing business ratings. It aims to revive and build manufacturing businesses by emphasizing upon key sectors in India. The Make in India initiative has been launched to reckon India as a preferred investment destination and a global manufacturing hub. The objective behind this enterprise is to renew focus on job creation, skill development, and fostering innovation by building up the below-mentioned twenty-five sectors, namely:

1. Automobiles
2. Aviation
3. Chemicals
4. IT (Information Technology)& BPM ( Business Project Management)
5. Pharmaceuticals
6. Construction
7. Defense manufacturing
8. Electrical machinery
9. Food processing
10. Textiles and garments
11. Ports
12. Leather
13. Media and entertainment
14. Wellness
15. Mining
16. Tourism and hospitality
17. Railways
18. Automobile components.
19. Renewable energy
20. Mining
21. Bio-technology
22. Space
23. Thermal power
24. Roads and highways
25. Electronics systems

## KEY SECTORS

### 1) Automobile

The automobile sector has been one of the most important sectors which contributes around 7.5% to India's GDP. India is the third largest automotive market in the world. It is set to see a growth of 7.1 percent in 2022-23 based on strong underlying demand which reflects the general economic recovery and consumers' preference for personal vehicles over public transportation. India had seen a 27% growth in 2021 and is expected to soon become the third-largest producer of automobiles after China and USA by 2026. Right now, it is the fourth-largest vehicle manufacturer in the world. It received USD 21.38 billion through Foreign Direct Investment (FDI) between April 2000 and March 2019.

Major worldwide car manufacturers have been ramping up investments in India to meet the growing domestic demand. They plan to use India's competitive advantage to set up export-oriented production centres by offering a comparative cost advantage of roughly 10-25 per cent in comparison to that of its rivals.

A uniform tax rate is charged on complete vehicles and inputs which further boosts domestic production using local supplies.

All these factors add up to more reasons to invest in India's automobile sector.

**Policies and Schemes:**

- Automotive Mission Plan (2016-26) - The automobile sector in India is expected to contribute to almost 12% of India's GDP before 2026. The sector has the capacity to produce 300 billion USD. This sector can be one of the significant contributors to employment generation and the 'Skill India Program'. It is one of the prime movers of the manufacturing sector and the "Make in India" initiative. The export of vehicles is aimed to be multiplied by 5 times. To address the challenges of environment and safety, and to sustain and improve manufacturing competitiveness, specific interventions are envisaged.
- Draft National Automotive Policy 2018: Under the able guidance of the ministry of heavy industries and public enterprise, for the development of the automobile sector in India, a draft has been made which aims to place India among the top three countries of the world in the domain of automobile and auto component's export before 2026. It is a part of the Automotive Mission Plan (2016-26).
- The objectives of the laid draft and policy are to draw roadmap of a bright future for the automobile sector in India. It makes India a manufacturing hub to achieve green mobility.
- National Automotive Testing and R&D Infrastructure Project (NATRIP): It is one of the most remarkable steps by the government of India towards achieving a resilient automobile industry in India. The government joins hands with states and various automotive industries to create an integrated and core global competency and make indian vehicles at par with global standards.
- Faster Adoption and Manufacturing of Hybrid & Electric Vehicles in India : The Government of India introduced the FAME scheme in 2015 intending to support and

promote electric/hybrid vehicles in India. It incentivizes all possible vehicle segments. It has two major technological developments involved- BEV (battery electric vehicle) and HEV (Hybrid electric vehicle). The government aims to establish additional power generators inviting more investment in this area.

**2) Aviation**

Travel and aviation sectors are major contributors to the GDP and forming long-term plans will help in enabling an ecosystem in India to support manufacturing. Aviation Industry is showing tremendous signs of growth. Owing to the strong demand for civil aviation and travel in India and China, especially the former with over 20.0% growth, the Asia/Pacific region grew strongly by 10.6% compared to North America which had much slower growth comparatively. India is now the third largest aviation market as of 2022-23.

**Policies And Schemes:**

**FDI Policy:**

Airports: India is one of the least penetrated air markets in the world with 0.01 trips per capita per annum as compared to 0.5 in China and more than 2.59 in the USA for 2023.

Ground Handling Services and Maintenance Repair and Overhaul Services are fully allowed under the Automatic route.

UDAN (UdeDesh ka AamNagrik) Scheme: Regional connectivity scheme of UDAN was initiated by the government and as on 73 Airports have been operational.

NABH Nirman: NABH Nirman, announced in the union budget of 2018, aims to expand airport capacity by more than five times to increase the passenger traffic and production of the aviation sector which is undoubtedly the upcoming big contributor to the GDP.

Aviation- Flying for All: Indian government has drafted a Vision-2040 document that plans to increase the already increasing passenger traffic in India. Travelling in India is undergoing a swift shift from railways to aviation.

**Various other sectors in India which are experiencing a dynamic change under MAKE IN INDIA are as follows: -**

(a) Biotechnology- This sector has grown exponentially and is constantly undergoing further forward shifts. The contribution of this industry to the global market is expected to rise to 19% before 2025.

(b) Chemicals and Petrochemicals- This industrial sector was the topmost exporting sector in India during the period of April 2019 - January 2020. Also, 100% FDI is provided under automatic route in this industry except in the cases of hazardous chemicals.

(c) Construction- Under the ‘smart city initiative’, an investment of INR 2 lakh cr has been made by several cities. The Pradhan Mantri Awas Yojana (PMAY) housing for all which was launched in 2015 aims to provide housing for all in urban areas by 2022. In the last five years, the construction sector has contributed 8% to the GVA (gross value added). Hence this sector is another spotlight under the Make in India initiative.

(d) Defence manufacturing- India is among the top five countries in case of military spending. It is a matter of pride that it also has the fourth-largest standing army globally. India's defence requirements are largely met by imports and hence it has become a big sector to attract investment.

(e) Electrical machinery- This market is estimated to touch USD 96.14 billion by 2022. The Indian electrical industry mission plan (2012-22) aims to make India an attractive investment destination globally.

(f) Electronic system- The electronic industry includes electronic hardware products and their components. India's digital base is the second largest in the world and is also growing second fastest among the main leading economies. The Digital India program launched in 2015 is the third biggest startup in the world. Electronic manufacturing is a big contributor to the industry's development. The "National Policy on Electronics (NPE)" 2019 encourages and promotes India's electronic capabilities.

(g) Food processing- India is the world's largest producer of milk and spices. It is also the second largest producer of wheat, food grains, vegetables and fruits. This sector stands out as being one of the best choices to invest in for agrarian sector investors. The gross cropped area in India stands at 198.4 mn ha (hectares) as per the land use statistics of 2014-15.

(h) Leather- The leather industry holds significant importance in the economy of the nation. In May 2021 alone, leather industry observed 155% growth. During 2021-22, India exported total leather products of a value of US$ 4.87 billion, a 32% increase from the previous year. In March 2022, the leather product exports in the country were valued at US$ 471.39 million, a 7% increase from February 2022. In August 2022, total leather exports stood at USD 473.87 million.

# MEDIA AND ENTERTAINMENT

## INTRODUCTION

India derives its very identity from its multifaceted ancient culture which continues to thrive today and further enhances the ethos and traditions rooted within its civilization. Media and entertainment activities have traditionally played an important role in assimilating the regional and religious diversity into a common mixed bowl, which is today known as the 'Indian culture'. It is for this reason that over the year's media and entertainment as an industry sector has emerged among the fastest growing sectors in India and today it plays a major role in the country's economic growth.

Media & Entertainment (M&E) industry revenues are expected to spike to 2.32 trillion by 2024. India is the largest consumer of the data globally and also the second-largest television market only behind China. It is also world's second largest telecommunication market. It has a diverse distributing and broadcasting sector with more than 800 satellite channels. India also has an upcoming 5-G spectrum in India which is expected to give a boost to the technology available.

In 2021, India's media and entertainment business was estimated to be worth about 1.61 trillion Indian rupees. After recovering from the pandemic's unfavourable effects, the industry grew by slightly more than 16% between 2020 and 2021. The industry's largest contributor was television, which was followed by digital and print media. Radio remained to be the lowest-earning medium that year. Growth of 20% to reach 2.1 trillion in 2022.

## STATISTICS

Globally, the Indian entertainment industry dictates the overall commercial film production by virtue of sheer volume of its output and extensive distribution of films throughout the world. Various Indian regional film industries (Bollywood, Bhojpuri, Tamil, Telugu etc.) attract a large audience worldwide, ranging from countries like UK, USA, and Canada to East and South Africa, Middle East, Fiji, British Caribbean and other such countries with significant Indian population.

The media and entertainment industry absorbs a big market size with the television marketing topping the table, followed by print, digital media, filmed entertainment.

With the ever-increasing online population, digital media and online gaming are projected to have 23% and 43% CAGR respectively. AGV sector (animation, gaming and VFX) are expected to lead this upward trend of the M&E growth.

Ever since the film industry opened its gates to foreign investments, several favourable projects have poured in and several overseas production houses have also setup operations in India. FDI in teleports, DTH, mobile TV's, cable networks etc. is allowed up to 100% under the automatic route. Subsequently, 26% FDI in publishing of newspaper/periodicals/foreign magazines is allowed. The National Digital communication policy launched in 2018 by GOI aims to achieve- broadband for all, jobs, digital sovereignty and enhance India's contribution and partnership in global chain by 2022.

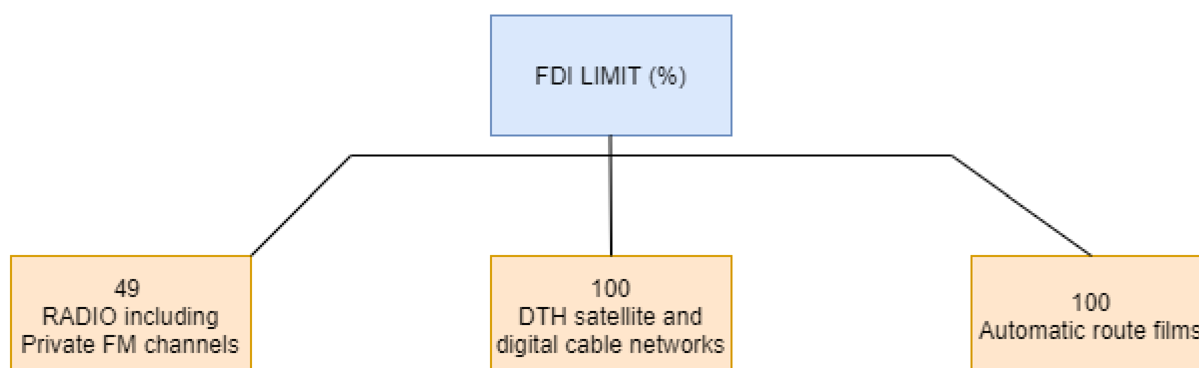
Segments like animation and gaming are also likely to see significant growth in the near future however it is a relatively small sector in India but has tremendous scope with the advancement of technology.

## POLICIES AND SCHEMES

According to industry experts the Media and Entertainment industry in India, with its numerous segments such as film, television, advertising, print media and music among others, is set to enter a golden era. Post the pandemic the industry is set to grow manifolds to grow past the already high growth forecasts.

**FDI Policy in different sectors of India:**

1. Broadcasting Carriage Services: Foreign Direct Investment (FDI) in Broadcasting Services is allowed up to 74% with FDI up to 49% under the Automatic/ direct route. FDI beyond 49% (up to 74%) is permitted under the government route only.
2. Broadcasting Content Services: FDI in India for FM radio is allowed up to 49% under the government route. FDI up linking of 'News and Current Affairs' TV channels have also been allowed up to 49% under the government route. FDI up linking of 'Non-News and Current Affairs' TV channels/downlinking of TV channels is allowed up to 100% under the government route.
3. Print Media: 26% FDI is allowed in the publishing of newspapers, periodicals consisting of news and current affairs and publication of Indian editions of foreign magazines dealing with news and current affairs under the government route, however, 100% FDI is permitted under the government approval route in non-news publication journals such as publishing/printing of scientific and technical magazines/specialty journals/periodicals etc. of similar nature. Only 26% FDI is permitted in under the Government approval route in publication of facsimile editions of foreign newspapers. However, foreign investment up to 100% is allowed in case of foreign publishing houses bringing out facsimile editions of their own newspapers through wholly owned subsidiary.




In December 2011, the Indian government passed 'The Cable Television Networks (Regulation) Amendment Act' for digitization of cable television networks by 2014 and in compliance of the act and legalities PAN India the set to boxes have been installed and every television user has become part of this digitalization. India has also signed the Co-production treaties with various countries including Italy, Brazil, UK and Germany which will likely increase the export potential of the film industry.

Indian Government has also framed National Digital Communications Policy (2018) with following objectives to achieve by 2022:

- Broadband connections for all;
- Creating employment by adding 4 million additional jobs in the Digital communications industry;
- Enhancing the contribution of the media and entertainment sector to 8% of the GDP.
- Propelling India into top 50 nations in the ICT Development Index of International Telecommunication Union (ITU) from its earlier rank of 134 in 2017;
- Enhancing India's contribution to global value chains and thus ensuring digital sovereignty;

The fight against piracy has also been an area of focus, with the successful introduction of sophisticated encryption technology, digital distribution and exhibition.

The media and entertainment industry are primarily under the aegis of the Ministry of Information and Broadcasting, which formulates and administers laws, rules and regulations relating to information, broadcasting, the press and films. The industry is regulated by different sets of laws, such as Cinema Exhibitions Rules, Entertainment Tax Regulations, etc. Besides, as media comes under the purview of the concurrent list, laws have also been passed by almost all States in relation to the same.

**Apart from the above stated broadcasting laws the following are also the important laws for broadcasting & media industry:**

- **Cable Television Networks (Regulation) Act, 1995**

An Act to regulate the operation of cable television networks in the country and for connected or other incidental matters.

- **Cable Television Networks Rules, 1994**

The rules define basic terminologies like 'Broadcaster', 'cable service', 'cable operator' and provided various procedures including the process of registering as a cable provider.

- **Prasar Bharati Act, 1990**

The act provides for the establishment of a Broadcasting Corporation for India (Prasar Bharati), defining its composition, functions and powers and also provides for other allied matters.

- **Press and Registration of Books Act, 1867**

The act primarily provides for the regulation of Printing-presses and Newspapers, for the preservation of copies of books and newspapers printed in India, and for the registration of such books.

- **Press (Objectionable Matters) Act, 1951**

The legislation provides mechanisms against the printing and publication of incitement to crime and other objectionable matter.

- **Newspaper (Prices and Pages) Act, 1956**

The legislation provides for the regulation of the prices charged for newspapers in relation to their pages and other allied areas including preventing unfair competition among newspapers so that newspapers may have fuller opportunities of freedom of expression.

- **Delivery of Books and Newspapers (Public Libraries) Act, 1954**

The act provides for delivery of books to the National Library and other public libraries.

- **Press Council Act, 1978**

The legislation provides for the establishment of a Press Council for the purpose of preserving the freedom of the Press and of maintaining and improving the standards of newspapers and news agencies in India.

- **Copyright Act, 1957**

The act regulates and provides for the all the mechanisms regarding the copyright laws of India.

- **Trade Marks Act, 1999**

The act consolidates the law relating to trademarks and provides for registration and better protection of trademarks for goods and services and for the prevention of the use of fraudulent marks.

**REGULATORY AGENCIES OVERSEEING THE INDUSTRY:**

- **Ministry of Information and Broadcasting**

  It is a nodal agency responsible for formulation and implementation of policies, framework, laws and regulations concerning broadcasting, information, films and press industry in India.

  Some of its functions include development of broadcasting and television, development and promotion of the film industry, sanctioning of film for public exhibition and administration of the Cinematograph Act, 1952

- **Telecom Regulatory Authority of India (TRAI)**

  Regulates, among other things, tariffs payable by subscribers of television channels and service providers in broadcasting sector

  Its functions are diverse like recommendatory (in respect of licensing), mandatory (fixation of tariffs) and judicial (disputes arising under Regulations between parties or against TRAI, heard by the Telecom Disputes Settlement and Appellate Tribunal)

- **Central Board of Film Certification (CBFC or Censor Board)**

  Examines films (Indian and foreign) to determine whether a film is fit for public display. If found fit, a certificate of exhibition is provided. A certificate of exhibition

is coupled with a rating described in the Cinematograph Act, 1952 (U, UA, A and S) which restricts the scope of its exhibition

All films, film songs, film promos, film trailers, music videos, music albums and their promos, whether produced in India or abroad, need to be certified by the CBFC as suitable for unrestricted public exhibition in India prior to its telecast-on television.

A person interested to step in the above industry should always be mindful that the above stated laws are industry specific laws and the industry is also subject to various general laws of the territory such as Indian Arbitration Act, 1996, Indian Contract Act, Tax Laws of India and various other laws.

While the M&E sector has tremendous growth potential, prudent fiscal legislation would only help it to perform at its full potential. The Government may do well to introduce appropriate tax and regulatory reforms to enable the Indian M&E sector reach new heights and become truly global.

However, India's per capita entertainment consumption remains lower than that of most of its contemporaries, indicating that there is tremendous space for continued expansion, fuelled by increased disposable incomes and greater access to content.

**New Rules and Guidelines for the Media and Entertainment Sector**

1. This is the first time that such laws for digital and online media operating under the country's jurisdiction have been established. The new social media rules follow a public battle between the government and Twitter over some tweets related to farmer protests that the administration deemed to be inciting violence. The government requested the deletion of approximately 1,500 accounts and communications, which Twitter obliged with only after being threatened with legal action. On Thursday, IT Minister Ravi Shankar Prasad expressed alarm over widespread exploitation of social media platforms and the proliferation of fake news.
2. For OTT players such as Netflix, Amazon Prime Video, and others, the new rules provide a three-tiered grievance redressal procedure. The publisher, must hire a chief compliance officer, a nodal contact person, and a resident grievance officer, is at Level 1. Each of the three officials will be required to live in India. They'll have to publish a monthly compliance report and remove specific details on a regular basis. A Level II self-regulatory board will be established, which will be led by a former Supreme Court or high court judge, or a person of eminence from the relevant profession, and will be able to issue advisory to the publisher. The Ministry of Information and Broadcasting will have a third-level oversight committee.
3. OTT platforms would categorise content into five age groups: U (universal), U/A 7+, U/A 13+, U/A 16+, and A (adult). For content classified as U/A 13+ or higher, platforms would be required to implement parental locks, as well as reliable age verification procedures for content classified as A.
4. Social media platforms will be divided into two groups under the new code: social media intermediaries and substantial social media intermediaries, with the latter having more responsibility. The government has set a threshold of fifty lakh registered users for designating a significant social media intermediary which will be

subject to additional requirements and compliance under new IT rules aimed at combating social media platform exploitation.

5. According to the current intermediary guidelines, social media sites must remove anything flagged by the government or court orders within 36 hours, and posts depicting nudity or modified photographs must be taken down within 24 hours of receiving a complaint. In addition, if a court or government requests it, social media companies will be forced to reveal the first source of malicious information that threatens India's sovereignty, state security, or public order. Significant social media intermediaries will be required to produce a monthly compliance report and proactively remove details of the contents.

# OIL AND NATURAL GAS

## INTRODUCTION

The Indian Petroleum industry is one of the oldest in the world. First, Oil was struck at Makum near Margherita in Assam in 1889, and the industry has come a long way since then. At the time of Independence in 1947, the Oil and Gas industry was controlled by international companies, and the Country produced about 0.25 Mt of crude oil in Assam, of which 0.23 Mt was refined. Digboi was the only refinery, and the market infrastructure was confined to urban and well-populated areas only.

After independence, the Government realized the importance of Oil and Gas for rapid industrial development and its strategic role in defence. Consequently, while framing the Industrial Policy Statement of 1948, developing the Petroleum Industry in the country was considered to be of utmost necessity. Until 1955, private oil companies mainly explored the hydrocarbon resources of India. In 1955, the Government of India decided to develop the oil and natural gas resources in various regions of the country as part of the public sector development. With this objective, an Oil and Natural Gas Directorate was set up towards the end of 1955 as a subordinate office under the then Ministry of Natural Resources and Scientific Research, constituted by a nucleus of geoscientists from the Geological Survey of India.

In April 1956, the Government of India adopted the Industrial Policy Resolution, which placed the mineral oil industry among the schedule 'A' initiatives, the future development of which was to be the sole and exclusive responsibility of the State.

Thus, in the 1970s, the industry was nationalized. Every activity, including exploration, development, production, refining, marketing, and distribution, was controlled by the various national oil companies. Since India's economic liberalization program began, the Oil and Gas Sector has undergone some fundamental changes. The last eight years have seen a radical restructuring of the Indian oil and gas sector. The recent initiatives enable private oil companies, both foreign and Indian, to explore new oil and natural gas reserves, develop proven reserves, and establish petroleum refineries and pipelines.

The Oil and Gas Sector in India features among the eight core industries of the nation and has become especially important due to its impact on the other sectors. The Country has an oil refining capacity of 248.9 MMT (01/09/2021). With the projected growth of the Indian economy and its dependence on energy demand, the sector is projected to witness considerable growth. Domestic and Foreign Investments are invited, as the Government also frames conducive policies like the 100% allowance of FDI in sectors like natural gas, petroleum products, and refineries, among others.

**MARKET SIZE**

- According to India Energy Outlook 2021, the nation's GDP is projected to rise to USD 8.6 trillion by 2040 as primary energy demand is expected to rise two-fold equivalent to 1,123 million tons of oil.
- India's crude oil production in India stood at 2.50 million tonnes, growth by 2.1% compared to last year. The simple oil import as of March 2022 was valued at $119.2 billion. The implications in value terms were the highest since FY14 when the import bill hit a whopping $143 billion for 189.2 MT of shipments. Crude oil imports increased by 5.4% and 8% during March 2022. On an annual basis, crude oil imports rose by 92% from $62.2 billion in FY21 and increased to 4.54 mbpd from 4.53 mbpd (FY-19). India's LNG imports fell 10.8% over a year earlier to 2408 million standard cubic metres in January. They were marked at 33.68 cm (FY20). LPG penetration rate of households increased from 56% (2016) to 97% (early 2020). India's oil demand is projected to jump 8.2% to 5.15 million barrels per day in 2022 as the economy continues to rebound from the devastation caused by the pandemic.
- India's consumption of petroleum products has seen a constant increase to 5231 thousand barrels per day in 2022, while the export of petroleum products from the nation increased to 65.7 MMT in FY20.
- In the coming fiscal year i.e. 2022, the Government would grant a tiny subsidy of Rs 4,000 crore for residential cooking gas (LPG).
- ONGC has budgeted Rs 29,950 crore in capital expenditure (CAPEX) for FY23, which is somewhat less than the revised expected expenditure of Rs 30,500 crore for the current fiscal year.
- The current fiscal expenditure is greater than the Rs 29,800 crore budgeted at the start of the year.
- IOC, the Country's largest oil refining and fuel marketing corporation, has set aside Rs 28,549 crore for the coming fiscal year, which is nearly identical to FY22.
- GAIL, the state-owned gas company, would spend Rs 7,500 crore on pipeline expansion and petrochemical facilities, up from Rs 7,160 crore in the current fiscal (FY22).

ONGC Videsh, ONGC's abroad investment arm, has proved a hindrance to meeting the current fiscal's spending commitments. It would only spend Rs 5,620.01 crore against a budget of Rs 8,380 crore. It has budgeted Rs 8,180 crore in capital expenditure for the next fiscal year.
Mangalore Refinery and Petrochemicals Ltd (MRPL), an ONGC subsidiary, spent Rs 965.76 crore in the current fiscal year, compared to a planned Rs 850 crore, and aims to spend Rs 815 crore in the next, according to the document.

The downstream (refining and marketing) oil industry promises to be one of the attractive growth markets in the world. The Hydrocarbon Vision 2025 formulated by the Ministry of Petroleum & Natural Gas in 1999 emphasized 90 per cent self-sufficiency in middle distillates (diesel/kerosene group) in the sector with an appropriate mix of national oil companies, foreign players and private Indian players so as to develop a globally competitive industry. This resulted in specific measures in the refining and marketing sectors, including

permitting private participation in refining, pipeline, and marketing infrastructure sectors phased dismantling price controls, de canalization of crude product imports/exports, etc.

**LEGAL AND REGULATORY FRAMEWORK**

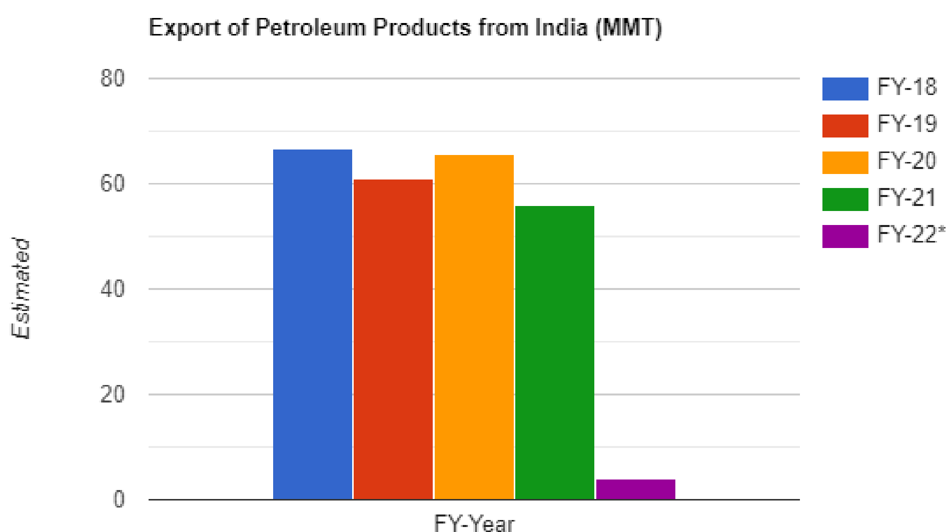
India's federal structure allows the Centre to regulate the development of oil fields, petroleum products, and mineral oil resources. While the contract for exploration and production of hydrocarbons is under the purview of the Indian Government, the approvals for implementing activities w.r.t exploration and production for onshore blocks are granted by the State governments.

**DOMESTIC AND OIL GAS LEGISLATION**

- The Oilfields (Regulation and Development) Act 1948 serves as the primary legislation which governs the upstream oil and gas sector. The Indian Government reserves the rule-making power vis-à-vis mining leases and mineral oil department.
- The Petroleum and Natural Gas Rules 1959 provides for the grant of offshore/onshore licenses and leases. The Mines Act 1952 (the Mines Act) and Oil Mines Regulations 2017 regulate the provisions regarding health, safety and welfare of workers in oil mines.
- The Petroleum and Natural Gas (Safety in Offshore Operations) Rules 2008 prescribe safety standards and other such measures to be taken for the safety of offshore oil and gas operations.

**REGULATION**

The Ministry of Petroleum and Natural Gas (MoPNG) acts as the nodal agency at the federal



government level. It administers various legislations while the Directorate General of Hydrocarbons (DGH) regulates and oversees petroleum and natural gas activities. The Oil Industry Safety Directorate (OISD) works under MoPNG regulating offshore blocks.

**INVESTMENTS**

The Petroleum and Natural gas sector led to an approximate FDI investment worth US$ 7.018 billion between April 2000 and March 2021 (DPIIT) which includes major developments like execution of MoU for offshore blocks between ExxonMobil and ONGC, the launch of winter-grade diesel suitable for extreme winters in November 2019, signing of MoU between NSIC acquisition of Reliance Gas Transportation Infrastructure by Brookfield for US$ 1.80 billion.

Several pipelines are being set up to transport crude, gas, and liquefied petroleum gas (LPG). Foreign companies have tied up with Indian counterparts to provide the technology, undertake contracts to lay the pipelines, etc. LPG - This sector is fully open for private sector investment. The smaller towns/rural demand is now increasing. The widening demand and supply gap offers immense opportunities to create infrastructure for LPG handling, transportation, inland storage facilities, bottling plants, and marketing. The requirement of LPG over and above the indigenous availability is met by imports. Several projects for import facilities are coming up. Both national and private sector companies like SHV, Shell, Caltex, and Exxon Mobil, are working on these projects.

Natural gas is expected to be an increasingly important component of energy consumption as the Country pursues energy resource diversification and overall energy security.

**GOVERNMENT INITIATIVES**

- India is adopting more environmentally benign measures regarding the usage and quality of fuels. Lead phasing-out & benzene reduction in gasoline, sulphur reduction, and acetone improvements of diesel are prominent measures under implementation/consideration. Such quality up-gradation of fuels will call for adopting the latest/state-of-the-art technology requiring huge investments by providing reformulated gasoline producing units, hydrocrackers, hydro-treaters, hydro desulphurizes, etc.
- There is unlimited scope in LPG marketing. With rural areas also starting to consume LPG, the demand is likely to increase even further. There is now a massive demand for LPG in commercial and industrial sectors also. Increased demand and gaps in demand and supply offer immense opportunities in the marketing of LPG, which is fully opened up for private investment. Imports meet the requirement of LPG over and above the indigenous availability.
- With the LPG distribution network increasing fast, investments are also required in the transportation of LPG, inland storage facilities, bottling plants, and distribution network. Private companies are welcome to invest in these areas.

**INVESTMENT OPPORTUNITIES**

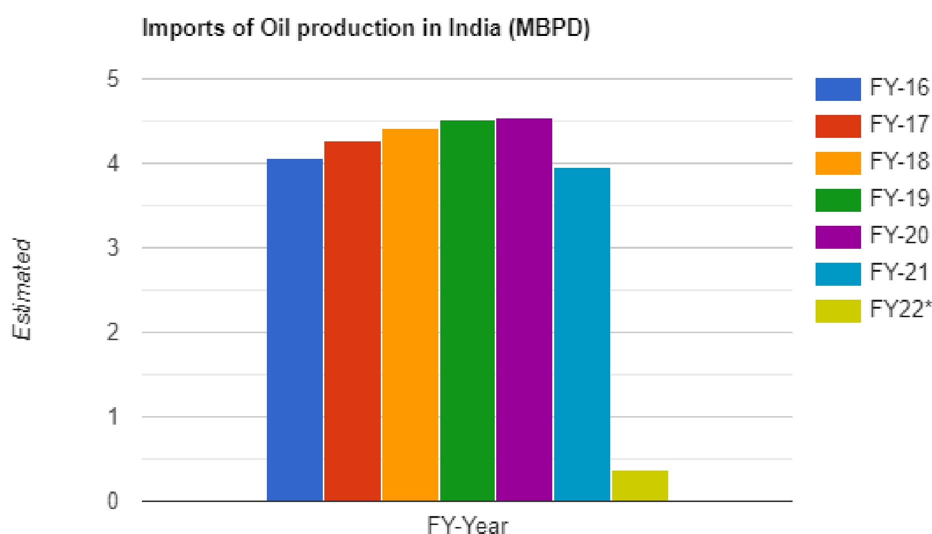
1. **Refining**: India's rise as a prospective refining hub, ranked 5th in refining, can be credited to the 25-50% cost deficiency compared to other Asian countries.
2. **Retail**: The rise in the automobile sector has led to investment in the Petroleum sector owing to the interdependence. India is projected to be ranked the 3rd largest automobile market, resulting in more demand for petroleum-based products.
3. **Gas**: The power and fertilizer sectors of the Indian economy constitute the majority driving force for the need for gas in the country. They use 66% of the total gas produced, and while the ever-growing demand for gas increases, the natural gas share in the overall economic framework is projected to rise from 8% to 20% by 2025.

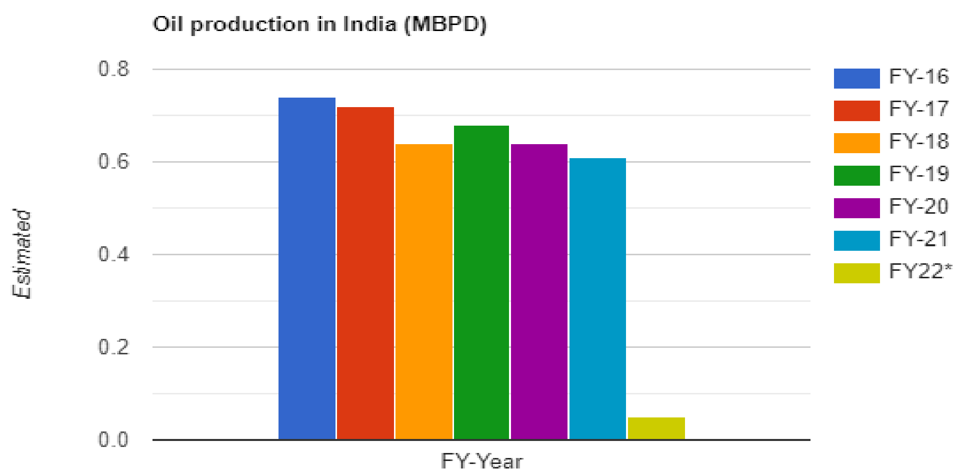
**GROWTH PROSPECTS**

While there exist several growth prospects, the fact that crude oil can be easily transported from the Middle East to India serves as an essential factor. Amongst other perks, the nation also offers cost-effective refining technologies. The growth prospects remain enormous in the contemporary economic structure, wherein the energy sector is only bound to an exponential increase.

**GROWTH EXPANSION**

Ranked the third largest global energy consumer, India's diesel demand is expected to double to 163 MT by 2029-30.





Source: IBEF | *Until April 2021

| Major Heads | Actual 2020-21 | Revised 2021-22 | Budget 2022-23 | % change |
|---|---|---|---|---|
| LPG subsidy | 35,195 | 6,517 | 5,813 | -11% |
| Kerosene subsidy | 3,259 | - | - | - |
| SPR | 2,428 | 374 | 811 | 117% |
| Pipeline and seismic programme | 971 | 1,537 | 1,798 | 17% |
| Others | 337 | 418 | 518 | 25% |
| **Total** | **42,190** | **8,846** | **8,940** | **1%** |

Note: SPR = Strategic Petroleum Reserves. Others include PM JI-VAN yojana, among others.
Sources: Union Budget Documents 2022-23; PRS

# PHARMACEUTICALS AND CHEMICALS

## INTRODUCTION

India's pharmaceutical industry ranks as a frontrunner among the country's science-based industries, with wide-ranging capabilities in the complex fields of drug manufacture and technology. India has a diverse population of more than 1.2 billion and is home to institutions and a hub of contract manufacturers and researchers. Indian economy stands as the third-largest based on the purchasing power parity (PPP) and, on the global level, eleventh largest by nominal Gross Domestic Product (GDP). India is today one of the top emerging markets in the global pharmaceutical industry. The sector is highly knowledge-based, and its steady growth positively contributes to the Indian economy. The organized nature of the Indian pharmaceutical sector, especially the availability of specialized vaccine manufacturers, attracts several companies.

The growth of the Indian pharmaceutical industry in terms of infrastructure development, technology base, and the range of products is tremendous. The industry's strength lies in world-class technology, cost-effective production of 90 percent of bulk drugs and all required formulations, rich biodiversity, competitive research & development (R&D) costs, and over 20 percent export growth rate.

## ROLE OF GOVERNMENT IN THE INDIAN PHARMACEUTICAL INDUSTRY TO ACHIEVE VISION 2030

The Pharmaceutical industry is expected to grow at its current pace of 7-8%. The four bold aspirations for the sector to target vision 2030 are:

- Growth in the domestic market with increased accessibility and affordability
- Potential innovations in next-generation innovative products
- Strong holding the US market by increasing ANDA filing for upcoming off-patent drugs and possible pricing offers
- Growth in new markets such as Japan and China while competing with the other Asian neighbours

## GOVERNMENT INITIATIVES

With an increasing number of bulk drugs going off patent and the capability of Indian scientists in process technology, the share of Indian pharma products in the world market is expected to rise further. The recent amendments in India's patent law hold much promise for the pharmaceutical industry. Although the grant of product patents has restricted the reverse engineering techniques, generic players are aggressively pitching in to protect their version. Now undoubtedly, the tilt is towards new drug development. This will facilitate relaxation in the drug price control mechanism. Over recent years, the patent filings, prosecution, and granting of patents in the pharmaceutical and allied fields have increased. Similarly, the number of patent infringement litigations, patent oppositions / revocation and Intellectual Property Appellate Board proceedings has kept pace.

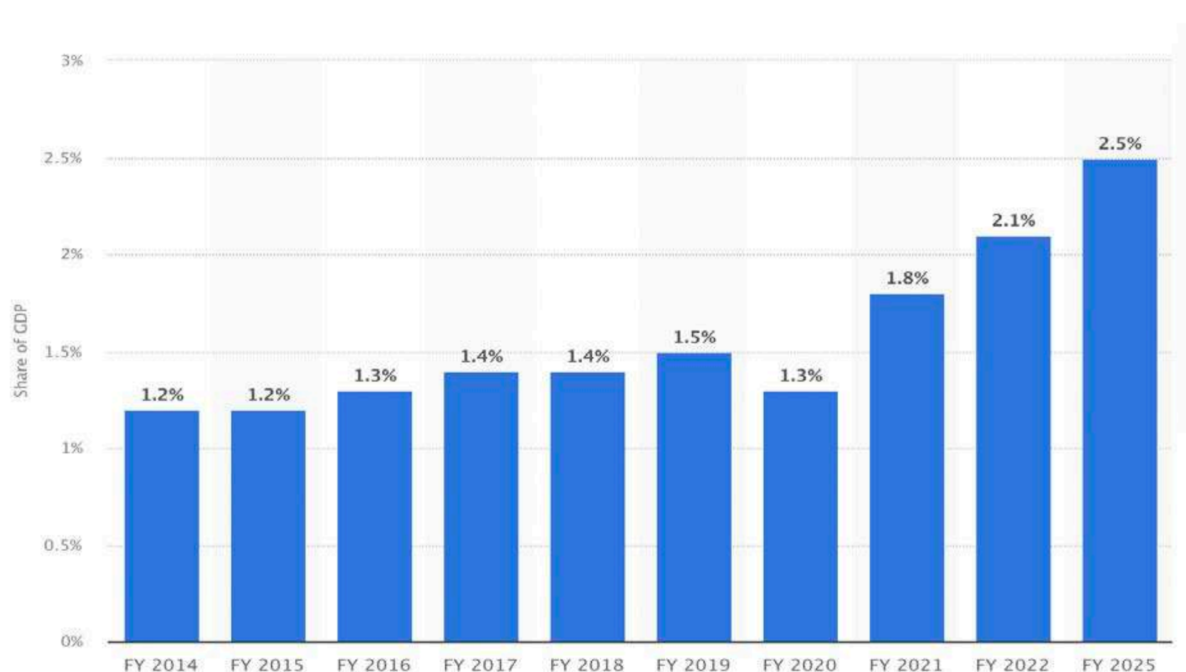
Further, the global pharmaceutical majors are awaiting statutory data exclusivity. The Government of India is currently pursuing the issue through an inter-ministerial committee. A data exclusivity law will go a long way in attracting global players to India in their quest for cost-competitive new drug development.

The Aayushman Bharat Scheme is the most extensive government-funded healthcare program, which is expected to benefit 100 million low-income families in the country by covering up to INR 5 lakhs (US $7,723.2) per family per year for secondary and tertiary care hospitalization.

In 2020, the government of India unveiled 'Pharma Vision 2020' to make India a global leader in end-to-end drug manufacture. The government has also introduced mechanisms such as the drug price control order and the national pharmaceutical pricing authority to deal with the affordability and availability of medicines.

## MARKET SIZE AND SHARE

**Government Healthcare Expenditure as a share of GDP in India from Financial Year 2014-2022, with an estimate for 2025**



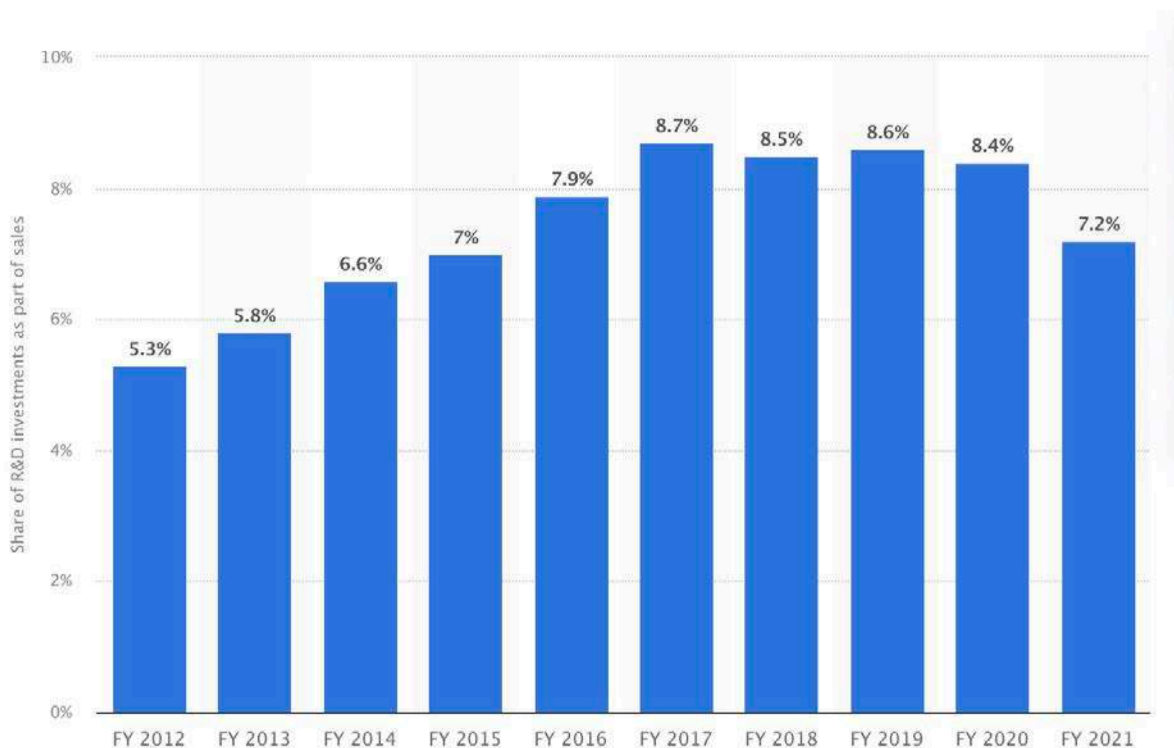

*SOURCE: https://www.statista.com/*

The pharmaceutical industry is valued at US $65 billion in 2022 and is projected to reach US $130 billion by 2030. The onset of the pandemic has only contributed to realizing the value and contribution of the pharmaceutical sector to the whole economic framework.

India's biotechnology industry, in its operational framework, consists of the biopharmaceuticals, bio-services, bio-agriculture, bio-industry, and bio informatics and is

projected to grow at an average growth rate of around 30 percent a year and reach an estimated valuation of US $150 billion by 2030. Biopharma, comprising vaccines, therapeutics, and diagnostics, is the largest sub-sector contributing nearly 62 percent of the total revenues at INR 12,600 crore (the US $1.89 billion). Indian drug and pharmaceutical exports stood at US $24.60 billion in FY22 and US $24.44 billion in FY21.

**R&D Investments as a share of sales by the leading Indian Pharma Companies from Financial Year 2012-2021**

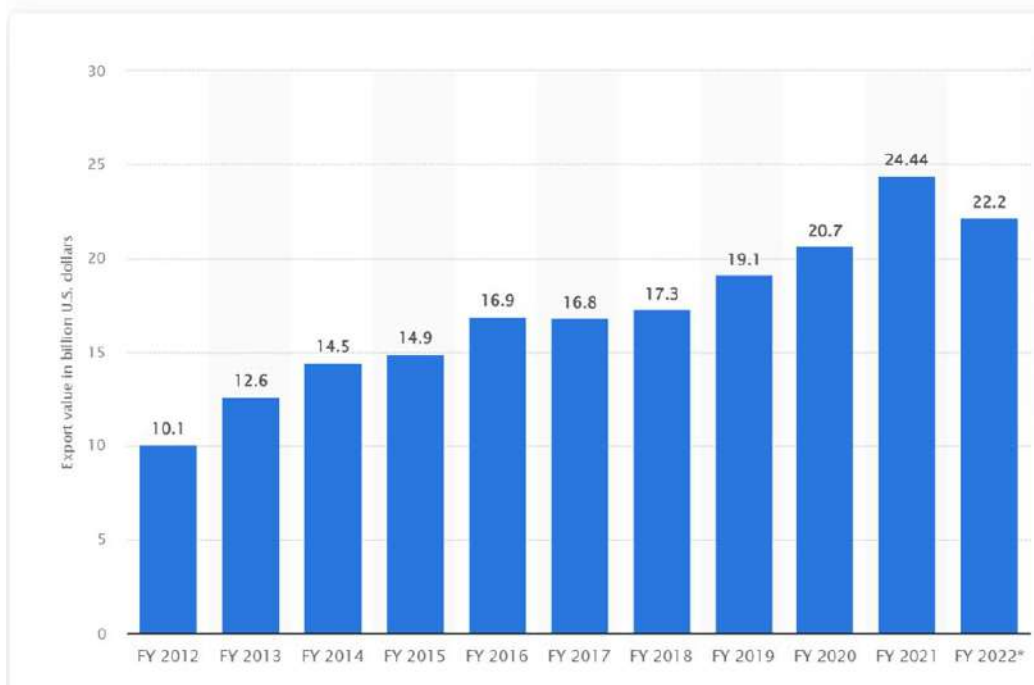



*SOURCE: https://www.statista.com/*

The key driver in the Indian Generic Pharmaceutical Industry is the sheer amount of intellectual talent in the form of scientists in organic/medicinal chemistry formulation science, biotechnology, microbiology, etc., design and regulatory compliant running of manufacturing facilities, legal capabilities and resources, techno marketing capabilities, access to funds at a reasonable cost, APIs/Formulation Development DMFs/ANDAs, Specialty Generics R&D and filings, Patent filings, manufacturing infrastructure for pharma/biopharmaceuticals, and market access. In addition, there are new technologies like Biocatalysts, Organ catalysis, and Nanotechnology, which have already made forays into the Indian Research and Development field and are having a significant influence on the industry.

**Value of Indian Pharmaceutical Exports from Financial Year 2012-2022**

*(in billion U.S. dollars)*




*SOURCE: https://www.statista.com/*

Finally, developments in the health insurance sector also indicate increasing opportunities for pharma manufacturers. The Government of India proposes to allow further foreign participation in the insurance industry. This, along with aggressive marketing by the local companies, promises a bonanza for the pharma industry with increased capacity to pay for costly drugs. Fringe benefits tax has also been exempted on the medical samples supplied to doctors. There has been a reduction of customs duty on certain life-saving medications.

**List of foreign investors in the pharmaceutical sector in India:**

- Teva Pharmaceuticals (Israel)
- Nipro Corporation (Japan)
- Procter & Gamble (USA)
- Pfizer (USA)
- Glaxo Smith Kline (United Kingdom)
- Johnson & Johnson (USA)
- Otsuka Pharmaceutical (Japan)
- AstraZeneca (Sweden-UK)

## CONCLUSION

The well-established Indian chemical industry is highly heterogeneous, encompassing many products, including organic and inorganic chemicals, dyestuffs, paints, pesticides, and specialty chemicals. The industry has with stood challenges from the international market and has seen continuous growth in its exports. Some prominent chemical industries include caustic soda, soda ash, carbon black, phenol, acetic acid, methanol, and azo dyes.

Superior quality, cost effectiveness, and advanced technology coupled with an enormous variety of medicines ensure that India continues to be one of the most lucrative pharma markets in the world. The rapidly growing Indian pharmaceutical industry has been ranked $3^{rd}$ in terms of pharmaceutical production by volume and $14^{th}$ by value.

# POWER

## INTRODUCTION

Power is an essential infrastructure on which a country's socio-economic development depends. The affordable availability of power is critical in sustaining the growth of all the sectors of an economy. This further helps to make domestic markets competitive and improve standard of living of people.

India is the world's 3rd largest producer and consumer of electricity and its power sector is one of the most diversified ones in the world. Sources of power generation range from conventional sources such as coal, lignite, natural gas, oil, hydro and nuclear power to viable non-conventional sources such as wind, solar, and agriculture and domestic waste.

The electrification process had commenced in India almost concurrently with the developed world in 1880s establishing a small hydroelectric power station in Darjeeling. However, commercial production and distribution started in 1889 in Calcutta (now Kolkata). Legal provisions to support and regulate the sector were implemented through the Indian Electricity Act of 1910. Under the Constitution of India, electricity is a concurrent subject under entry 38 in List III of the Seventh Schedule.

In 1948, the Electricity (Supply) Act 1948 paved the way for establishing Electricity Boards in the States of the Union. All new power generation, transmission, and distribution in the rural sector and the urban centres (which were not served by private utilities) came under the purview of State and Central Government agencies. State Electricity Boards (SEBs) were formed in all the States. As a result, the power sector was brought under Government’s control; and was chiefly funded from Government budgets in the form of long-term and concession interest loans.

However, in 1991, the Government of India embarked upon a massive clean-up exercise encompassing all policies having financial involvement of Governments- both at the level of Union and States. The present legislation regulating the power sector is the Electricity Act, 2003. The Act provides an enabling framework for accelerated and more efficient development of the power sector and aims to separate the generation, transmission, and distribution of power in the country. The Act seeks to encourage competition with appropriate regulatory intervention. Competition is expected to yield efficient gains and in turn, result in the availability of quality electricity supply to consumers at competitive rates.

## REGULATION AND ADMINISTRATION

As stated earlier, electricity is a concurrent subject at Entry 38 in List 3 of Schedule VII of the Constitution. Therefore, in consultation with the State Governments and Electricity Commissions, the Central Government provides for the policies to be framed regarding the electricity supply industry.

The electricity sector in India is regulated by the Ministry of Power, which started functioning independently on 2nd July 1992. The Ministry of Power is responsible for

developing electrical energy, planning, policy formulation, processing projects for investment decisions, training and workforce development, administration, and enacting legislation about power generation, transmission, and electricity distribution. The Ministry of Power is also responsible for the administration of the Electricity Act, 2003 and Electricity Conservation Act, 2001 and for making amendments therein in compliance with the Government's objectives.

## THE ELECTRICITY ACT, 2003

The introduction of the Electricity Act has guided the reform and restructuring of the electricity sector in India. This Act consolidates all the laws in relation to the generation, trading, transmission, distribution, and use of electricity, taking measures for the development of this sector, promoting competition therein, protecting consumer's interest and electricity supply to all areas, rationalization of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, the constitution of Central Electricity Authority, Regulatory Commissions and establishment of Appellate Tribunal and for matters connected in addition to that or incidental thereto.

With the adoption of the Electricity Act, 2003, the Central Government issued a National Electricity Policy, 2005, which provided for the overall governance of the development and regulation of Electricity sector in India. The National Electricity Policy, 2005 is now being revised, and a draft of the new National Electricity Policy, 2022-27 is being prepared by the Government to focus on the regulatory arrangements for the future.

For achieving its objectives, the Act creates a liberal framework for power development and a competitive environment by facilitating private investment, de-licensing generation (except for hydro generation/nuclear) and distribution (in rural areas), and providing for multiple licensing in distribution. The Electricity Act also sets out stringent provisions for controlling the theft of electricity and focuses on revenue recovery in cases of unauthorized use of electricity. It obliges States to restructure Electricity Boards and mandates the creation of Regulatory Commissions that are to determine retail tariffs from time to time. On the whole, the Electricity Act provides for a liberal framework by opening access in transmission from the outset and in the distribution in phases (to be allowed by SERCs).

Following are some essential features of the Electricity Act:

- The Electricity Act, 2003 has created a non-discriminatory open access in transmission, i.e., all consumers with loads above 1 MW enjoy open access since 4th January 2009.
- The Act requires the Central Government to prepare a National Electricity Policy in consultation with State Governments and thrusts the completion of rural electrification. The essential aspects of the National Electricity Policy notified under the Act have already been highlighted earlier.
- The Act provides for license-free generation and distribution in rural areas. It also provides for the de-licensing of generation and allowance of captive generation. Hydro projects would, however, need clearance from the Central Electricity Authority as per the Act.

- Private licensees in transmission and entry in distribution through an independent network are also provided under the Act. Moreover, the Act provides for the distribution licensees to freely undertake generation and generating companies to freely take up distribution businesses.
- Under the Act, as mentioned earlier, trading in power has been recognized as a distinct activity.
- There exists a transmission utility at the Central as well as State level, which is a government company and has the responsibility of ensuring that the transmission network is developed in a planned and coordinated manner to meet the requirements of the sector. The load dispatch function can be kept with the transmission utility or separated. In case of separation, the load dispatch function must remain with the State Government organization/company.
- There exists open access in transmission from the outset with the provisions for a surcharge for taking care of the current level of cross-subsidy with the surcharge being gradually phased out.
- The SERCs may permit open access in the distribution in phases with a surcharge for current level of cross-subsidy to be gradually phased out.
- Obligation to supply for rural and remote areas standalone systems for generations and distribution is permitted.
- Trading as a specific activity has been recognized. However, the regulatory commissions are empowered to fix ceilings on trading margins if necessary.
- Where there is a direct commercial relationship between a consumer and a generating company or a trader, the price of power is not regulated.
- An appellate tribunal was created for the disposal of appeals against the decisions of the CERC and SERCs so that such matters are disposed off quickly.

## CENTRAL ELECTRICITY AUTHORITY (CEA)

Central Electricity Authority provides technical and economic assistance to the Ministry of Power. The Authority is a statutory body constituted under the erstwhile Electricity (Supply) Act, 1948, from now on replaced by the Electricity Act, 2003, and the office of the CEA is an "Attached Office" of the Ministry of Power. CEA is responsible for preparing the technical standards for the construction of electrical plants, electric lines, and connectivity to the grid. Another vital role of the CEA is the promotion of the integrated operations of the regional power grids and the evolution of a national grid.

CEA is headed by a Chairman, who is also ex-officio Secretary to the Government of India, and comprises six full-time Members of the CEA of the rank of ex-officio Additional Secretary to the Government of India. They are designated as Member (Thermal), Member (Hydro), Member (Economic and Commercial), Member (Power Systems), Member (Planning), and Member (Grid Operation and Distribution).

## APPELLATE TRIBUNAL FOR ELECTRICITY (APRIL)

Appellate Tribunal for Electricity is a judicial body established by the Ministry of Power, Government. of India with effect from (w.e.f) 7th April, 2004. The Tribunal has jurisdiction

throughout India to hear appeals and petitions both under the Electricity Act, 2003 and under the Petroleum and Natural Gas Regulatory Board Act, 2006, against the orders of the Adjudicating officer or the Central Regulatory Commission or State Regulatory Commission, or Joint Commission constituted under the Act of 2003.

The Appellate Tribunal comprises a Hon'ble Chairperson and four members. The four members include two Technical Members, one Judicial Member under the Electricity Act, 2003, and one Technical Member for Petroleum and Natural Gas.

The Tribunal is granted original jurisdiction to hear petitions under Section 121 of the Act and issue directions to all Commissions to perform its statutory functions. The seat of this Tribunal shall ordinarily be at Delhi.

## THE NATIONAL ELECTRICITY POLICY

The National Electricity Policy (NEP), 2005, was implemented after adopting the Electricity Act (EA), 2003. The EA, 2003 is an omnibus legislation that replaced three previous legislation, defining the structure of India's electricity generation and supply business and the regulatory arrangements to manage it efficiently. In light of the splintered constitutional mandate for a "concurrent" subject such as electricity, the Act requires the Union government to prepare a national electricity policy and a tariff policy (Section 3); national policies on standalone systems for rural areas, and a policy for bulk supply and local distribution managed by panchayats, cooperatives, NGOs and franchisees (Sections 4 and 5). The NEP, 2005 provided a roadmap for implementation of the new legislation and the new unbundled, institutional arrangements to achieve the objectives of inclusion through electricity access, economic growth through the supply of quality power at reasonable prices and private sector participation in ramping up capacity, while enhancing efficiency through competition.

The 3rd NEP was announced in 2018. It covers 2 five year periods 2017-2022 and 2022-2027. Its renewable energy target is 175 GW by 2022. The NEP predicts 46 GW of coal-fired power expansions between 2022-2027.

The share of non-fossil-based installed capacity (Nuclear + Hydro + Renewable Sources) is predicted to reach 46.8% by the end of 2021-22 and 56.5% by the end of 2026-27, notwithstanding the installation of 50,025 MW of coal-based capacity during 2017-22.

It proposes no new coal-fired power plants beyond those now under development (Carbon Brief, 2017) and 57% non-fossil electric capacity by 2027(Carbon Brief, 2017). It also targets Twenty percent renewable energy by 2022 and 24 percent by 2027. India has adjusted its renewable energy capacity addition target to 175 GW (100GW solar, 60GW wind, 10GW biomass, and 5GW small-hydro) by 2022, based on the country's renewable energy potential and investor/stakeholder commitment.

## NON-CONVENTIONAL ENERGY (RENEWABLE)

Conventional energy sources are generally non-renewable sources that have been used for a long time. The energy sources produced continuously in nature are inexhaustible and are

called non-conventional energy or renewable sources of energy. Figure-1 provides the pictorial views of different forms of non-conventional energy sources and renewable energy sources options, respectively.

Different non-conventional sources are briefly discussed as follows (Figure - 1): –

Figure -1: Types of non conventional energy sources

**1. Solar energy**

Solar energy has been the most readily available and accessible energy source since prehistoric times. Solar energy can be utilized through two different routes: solar thermal routes and solar electric (solar photovoltaic) routes. The solar thermal route uses the sun's heat to produce hot water or air, cook food, dry materials, etc. Solar photovoltaic route uses the sun's heat to deliver electricity to light homes and buildings, running motors and pumps, electric appliances etc. In the solar thermal route, solar energy can be converted into thermal energy with the help of solar collectors and receivers known as solar thermal devices.

**2. Wind energy**

Wind energy is the harnessing of wind power to produce electricity. The kinetic energy of the wind is converted to electrical energy. When solar radiation enters the earth's atmosphere, different regions of the atmosphere are heated to varying degrees because of the earth's curvature. This heating is higher at the equator and lowest at the poles. Since air tends to flow from warmer to cooler regions, this causes airflows what we call as winds. They are harnessed in windmills and wind turbines to produce power. Now wind power is harnessed to generate electricity on a larger scale with better technology.

**3. Bio-energy**

Bio-energy, in the form of biogas, which is derived from biomass, is expected to become one of the vital energy resources for global sustainable development. Biomass is a renewable energy resource derived from the carbonaceous waste of various human and natural activities. Biomass does not emit carbon dioxide in the atmosphere as it absorbs the same amount of

carbon in growing as it releases when consumed as a fuel. Its advantage is that it can generate electricity with the same equipment that is now used for burning fossil fuels. Bio-energy is used for cooking, mechanical applications, pumping, power generation, etc.

**4. Hydro energy**

Hydro energy is the potential energy of falling water, captured and converted to mechanical energy by waterwheels. It powered the start of the industrial revolution. Wherever good head, or elevation change, could be found, rivers and streams were dammed and mills were built. Water under pressure flows through a turbine and causes it to spin. The Turbine is connected to a generator which produces electricity.

**5. Ocean energy**

The ocean contains two types of energy: thermal energy from the sun's heat and mechanical energy from the tides and waves. Ocean thermal energy is used for many applications including electricity generation. Ocean mechanical energy is quite different from ocean thermal energy. Even though the sun affects all ocean activities, tides are driven primarily by the moon's gravitational pull and waves are predominantly driven by the winds. A barrage (dam) is typically used to convert tidal energy into electricity by forcing the water through turbines, and activating a generator.

**6. Energy from Wastes**

An estimated 50 million tons of solid waste is generated annually in the urban areas of India. In India, there is a great potentiality of generating about 2,600 MW of power from urban and municipal wastes and approximately 1,300 MW from industrial wastes, respectively. A total of 48 projects with an aggregate capacity of about 69.62 MW have been installed in the country thereby utilizing only 1.8% of the potential.

## CONVENTIONAL ENERGY (NON-RENEWABLE)

**1. Coal**

Coal is the most abundant conventional energy source that could last for at least 200 years. It is a black-brown sedimentary rock. Coal forms when plant remains convert into lignite and then into anthracite. This involves a long process that takes place over a long period. Coal is used for various purposes such as heating the house, as fuel for boilers and steam engines,

and generating electricity by thermal plants. It constitutes about 55% of country's energy need.

**2. Oil**

Out of all the conventional energy sources, oil is used abundantly all over. Considering oil is one of India's most essential traditional energy sources, the resources for the same are even smaller. The extraction of oil from deposits is known as oil resources.

**3. Petroleum and Natural Gas**

Petroleum is a mixture of hydrocarbons like alkanes and cycloalkanes. In crude form, black liquid is known as petroleum, and a natural gas formation occurs when the gas comes in contact with the petroleum layer. Natural gas is a mixture of 50-90% of Methane, Ethane, Propane, Butane, and Hydrogen sulphide. After refining and purifying, crude petroleum is used as petrol, diesel, lubricating oil, plastic, etc. Natural gas is also making a significant contribution to the household sector. It causes less air pollution as compared to other fossil fuels.

**4. Fuel Woods**

Rural people use the fuelwood for their day-to-day cooking, which comes from natural forests and plantations. The availability of fuelwood has become difficult due to rapid deforestation. We can avoid this problem by planting more trees on degraded forest land, cultivable wasteland, barren and grazing land.

**5. Thermal Power Plant**

Power stations burn many fossil fuels to heat water to produce steam, which further runs the turbine to generate electricity. The transmission of electricity is more efficient than transporting coal or petroleum over the same distance. It is called the thermal plant because fuel is burnt to produce heat energy converted into electrical energy.

**6. Nuclear energy**

A small amount of radioactive substance can produce energy through nuclear substances worldwide. To obtain atomic energy, nuclear reactions are essential and there are about 300 nuclear reactions. Nuclear power is one of the most environmental friendly conventional sources of energy as it produces fewer greenhouse gas emissions during electricity production compared to sources like coal power plants. Although in case of accidents, this nuclear energy is released in high amounts into the environment. The nuclear waste left is radioactive and hazardous.

# REAL ESTATE

## INTRODUCTION

"Real estate is an imperishable asset, ever-increasing in value. It is the most solid security that human ingenuity has devised. It is the basis of all security and about the only indestructible security." - *Russell Sage*

Real estate is a real property consisting of anything in relation to land along with the natural or man-made permanent attachments to it like housing units, commercial office spaces, schools, complexes, trees, bridges etc. The Real estate property can either be residential, commercial or industrial. The transactions and practices in relation to Real Estate are governed by the Central Acts of India and local municipal laws of the states.

### The Real Estate (Regulation and Development) Act, 2016

It is an Act of the Parliament of India which seeks to protect home-buyers as well as help in increasing investments in the real estate market. The Act establishes the Real Estate Regulatory Authority **(RERA)** in each State for the Regulation of the real estate sector and also serves as an adjudicating body for quick resolution of real estate disputes. The rest of the provisions were implemented on May 1, 2017.

### RERA Rules

The Act regards that within six months of the RERA Act being enacted, State Governments shall implement rules for carrying out the provisions of the Act. The Central Government on October 31, 2016 and the Real Estate (Regulation and Development) Rules, 2016 (Rules), were implemented. The Rules so issued by the Central Government are relevant to the five Union Territories without Legislature, viz., Andaman & Nicobar Islands, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep, and Chandigarh.

## IMPORTANT FEATURES OF RERA

- **Security:** A separate account will be maintained for at least 70% of the buyer's and investor's finance. Builders would only be allotted money in regard to the costs related to construction of land. Advanced payment of not more than ten per cent of the property's cost can be asked by the developers or the builders before the signing of the sale agreement.

- **Transparency:** The builders are required to present the original documents and papers for any project that they are assigned to. They cannot incorporate any change without the permission of the buyer.

- **Fairness:** Builders are instructed to sell all properties and land based on carpet area and not super built-up area. In case, a project has been delayed, the buyers have the right to their entire Investment or can opt to be invested and get a monthly Investment on their money.

- **Quality:** Any defect experienced by the buyer should be sorted out by the builder within a time period of five years of purchase. The issue must be resolved within thirty days of the complaint.

- **Authorisation:** Advertisement, selling, purchasing, investing or booking of a plot without registration with the regulator is prohibited. After registration, RERA provides a unique registration-wise project number to any investment advertisements that are issued.

The List of Laws of India applicable to Real Estate Transactions:

- The Transfer of Property Act, 1882
- The Indian Easements Act, 1882
- The Indian Stamp Act, 1899
- The Registration Act, 1908
- The Specific Relief Act, 1963
- Power of Attorney Act, 1882
- The Urban Land (Ceiling & regularisation) Act, 1976 (revoked in most states, including Maharashtra)
- The Land Acquisition Act, 1894
- The Land Acquisition, Rehabilitation and Resettlement Act, 2013
- The Indian Evidence Act, 1872
- The Consumer Protection Act, 2019
- The Arbitration & Conciliation Act, 1996
- Income Tax Act, 1961
- The Wealth Tax Act, 1957
- The Co-operative Societies Act, 1912
- The Multi-State Co-operative Societies Act, 2002
- Service Tax provisions
- Foreign Exchange Management Act, 1999 / Foreign Direct Investment Policy
- SEBI norms for Real Estate Mutual Funds
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Central Registry) Rules, 2011
- The Indian Contract Act, 1872
- Securities And Exchange Board Of India (Real Estate Investment Trusts) (Amendment) Regulations, 2021

Other than the Central laws, there are separate laws in every State governing the real estate transactions such as rent control, property tax etc.

## INDUSTRIAL PARK

"Industrial Park" is a project in which quality infrastructure in the form of plots of developed land or built-up space or a combination with common facilities is developed and made available to all the allotted units for the purposes of industrial activity.

As per the Consolidated Policy, FDI up to 100% is permitted under the automatic route in Industrial Park. Further, FDI up to 100% on the automatic route is allowed in Construction development projects, etc. prescribing therein, inter-alia, the conditions for minimum

capitalisation, minimum area requirements and lock-in of original Investment subject to certain conditions laid down in the Consolidated Policy. FDI up to 100% under the automatic route is allowed both in setting up new and in established industrial parks and would not be subject to the conditions applicable for construction development projects etc. spelt out under points 1-4 above, provided the Industrial Parks meet with the under-mentioned conditions:

i. It comprises a minimum of 10 units with no single unit occupying in excess of 50 per cent of the allocable area; and

ii. The minimum percentage of the area to be allocated for industrial activity is not less than 66 per cent of the total allocable area.

Certain tax benefits are available to any entity which only develops, operates, maintains an Industrial Park. However, in order to get the said tax benefits, the said entity has to get itself registered and notified with the Indian Income Tax Authority under 'Industrial Park Scheme, 2008'.

**REAL ESTATE VENTURE CAPITAL**

Real estate venture capital is a form of private equity that provides capital to newer businesses that have high growth potential in the real estate industry. Those investing in the company are called venture capitalists and can be institutional investors, hedge funds, or investment firms. These venture capitalists provide the necessary capital to help the company grow and expand in their designated field, giving them the push, they need from small start-ups to big companies.

Real estate venture capital comes in many shapes and forms, providing capital to almost any asset class in real estate, including commercial real estate, residential real estate, or real estate technology. Venture funds or VC funds pool money from accredited investors, who are high-net-worth individuals designating a single fund manager or group of fund managers to identify emerging businesses that have the growth potential to invest in. The venture fund may enter into a joint venture with the chosen company, gain a portion of the company shares in exchange for capital, or work out other financing terms, but it often receives a large payoff if the company does, in fact, succeed.

**REAL ESTATE MUTUAL FUNDS**

On June 26, 2006, the SEBI cleared the pathway for Real Estate Mutual Funds. Moving ahead, on April 25, 2008, SEBI announced amendments to the SEBI (Mutual Funds) Regulations, 1996, that permit to pave the way for the launch of Real Estate Mutual Funds **(REMFs).** The Act was last amended on January 25, 2022, under the Securities and Exchange Board of India (Mutual Funds) (Amendment) Regulations, 2022.

The REMF scheme is one which invests directly or indirectly in real estate assets or other permissible assets. Some of the key features of REMFs as allowed by SEBI are as follows:

- Existing mutual funds are eligible to launch REMFs if they have an adequate number of experienced key personnel/directors.

- Every REMF scheme shall be close-ended, and its units shall be listed on a recognised stock exchange, provided that the redemption of a REMF scheme may be done in a staggered manner.
- The units issued by REMF shall not confer any right on the unit holders to use the real estate assets held by the scheme, and any provision to the contrary in the trust deed or in terms shall be void.
- The net asset value (NAV) of the scheme shall be calculated and declared at the close of each business day on the basis of the most current valuation of the real estate assets held by the scheme and accrued income thereon if any.
- At least 35% of the net assets of the scheme shall be invested directly in real estate assets.
- Each asset shall be valued by two values, which are accredited by a credit rating agency, every 90 days from the date of purchase.
- Caps have been imposed on investments in a single city, single project, etc.

The amended regulations have also specified accounting and valuation norms pertaining to REMF schemes.

**REAL ESTATE INVESTMENT TRUSTS (REITS)**

Bearing in mind that REITs have become a preferred public property investment vehicle around the world and can become the investment vehicle of choice for institutional and retail investors who are interested in participating in real estate ownership, management and development, SEBI, in the year 2008, issued a discussion paper on this subject.

**Key points of the paper are highlighted below:**

i. REITs would invest directly in real estate projects after collecting funds from investors through stock exchanges.

ii. Banks, public financial institutions, insurance companies and corporate houses can be trustees of REITs.

iii. REITs would be created under the Indian Trusts Act, 1882.

iv. REITs will be close ended and the schemes shall be compulsorily listed on the stock exchange.

v. REITs would be barred from making investments in vacant land subject to the guidelines laid down by SEBI.

**INVESTMENT IN REAL ESTATE BY NRIs AND PIOs**

An NRI or PIO is not allowed to invest in real estate business i.e., dealing in land and immovable property with a view to profit or earning. Under the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, NRIs and PIOs have been given general permission to acquire any immovable property in India other than agricultural/plantation/farm house. However, PIOs may only purchase such

property from funds received in India by way of inward remittance from any place outside India or from funds held in a non-resident account maintained in accordance with the provisions of FEMA.

**BUDGET 2022 IN REGARDS TO REAL ESTATE AND HOUSING**

The Union Budget, 2022 presented on February 1 was efficient and satisfactory in regards with "Affordable Housing" and "Housing for all" for a significant part of the population. Through the budget, in the light of the current pandemic situation, the Government rendered support to the Real Estate by allocating Rs 48,000 crore under PMAY for urban and rural in FY23.

The Government prioritised "Housing for all" agenda and initiated various measures to aid the population without a house in attaining one.

The NH Motorway network will also be expanded by 25,000 kilometres in 2022-23, with the Government mobilising Rs 20,000 crore to supplement public resources. Further, the Finance Minister announced Rs 48,000 crore towards the Affordable Housing Scheme (PMAY).

For the next decade, the focus on affordable housing will be the driving force in India's real estate sector. The contribution of real estate to India's GDP is expected to rise from US$200 billion per year to US$ 1trillion by 2030. This accounts for 12-15 percent of India's GDP and will be the country's largest employer.

To benefit both parties i.e., the Real estate developer and the allottee, the advantage of not only Tax holiday but additional interest has also been incorporated in the Affordable housing projects and scheme.

Tax exemptions have also been proposed to encourage and aid affordable rental housing for migrant labour and workers to relieve the pressure in the rental home market project and helping the migrant labour working in the unorganised sector.

Real estate laws regulate property transaction thereby safeguarding the rights in the property concerned. The issues related to the property that is governed under the Real Estate Laws include the formulation of legal contracts, deeds and agreements, resolution of disputes regarding property distribution or possession, buying, selling, acquisition, leasing and disposition of different types of properties, taxation, planning and monitoring of construction of real estate and other related issues involved in real estate foreclosures.

**SHARIAH-COMPLIANT INVESTMENTS IN INDIA**

Shariah (Islamic Law) is defined as a body of divine laws, rules, code of conduct and teachings which are intended to benefit the individual and society. Shariah-compliant funds on the other hand are investment vehicles which are fully compliant with the principles of Shariah law. The underlining objective of Shariah is the happiness and well-being of human beings and achieving this with an equitable balance between wealth creation and consumption.

Islamic banking and finance is a new concept which has developed in recent years. This can be attributed to the fact that many Islamic nations have seen an increase in financial wealth

mainly due to a surge in exports and high oil prices. This increase in income is fuelling an increasing demand for Shariah compliant offerings.

The Sharia or Islamic law covers all aspects of life and there is no separation between temporal and religious matters. Thus, Sharia provides the basic premise on which Islamic commercial and financial transactions are carried out. However, the Sharia is not a codified body of law. It is a set of rules interpreted by Islamic scholars whose views reflect those of the community of which they are a part. It is derived from a number of sources including the primary source of Quran and guided by Islamic economics.

Money, according to Islamic law, has no innate value. Money is merely a measure of worth, not a property; it is a means of exchange or a unit of measurement, not an asset. Money, in order to provide use, must have been transformed into a commodity. The principles of commercial and financial transactions are hence based on the philosophy that money is not a commodity and therefore, profit cannot be earned on its simple utilization. To generate profit, money needs to be utilized by an entrepreneur. Therefore, in accordance with the principles of Islamic economics, money is only viewed as "potential capital" and it needs to be invested in business to turn it into capital i.e. be viewed as a commodity.

Collection and payment of interest (called 'Riba' in Islamic discourse) is prohibited under Islamic law. An investment in an unlawful or haraam business (e.g. alcohol, gambling, arms etc.) is prohibited. Ethical investment is the only acceptable form of investment.

Shariah-compliant investments are governed under Shariah Law and the principles of Islam. They are considered as a special branch of ethical investing.

**<u>Under Islamic banking, the conditions for investing in shares are:</u>**

1. It is prohibited to acquire the shares of the companies providing financial services on interest like conventional banks, insurance companies or companies manufacturing, selling or offering liquors, pork meat, or involved in gambling, night club activities, pornography, gold trading, advertising and media (except newspapers under Shariah).

2. If the main business of the companies is halal (lawful) like automobiles, textiles etc., but they deposit their surplus amounts in an interest-bearing account or borrow money on interest, the shareholder shall disapprove such dealings.

3. If income from interest-bearing accounts is included in the income of the company, the proportion of such income in the dividend paid to the shareholder must be given to charity and must not be retained by the investor.

4. The shares of a company are negotiable only if the company owns some illiquid assets. If all the assets of a company are in liquid form, i.e. in the form of money, they cannot be purchased or sold except on par value, because in this case the share represents money only and the money cannot be traded in except at par.

**Here are some of the ways in which an Islamic Bank will utilize the funds:**

1. **Ijarah:** The literal meaning of the term in Islamic fiqh is "to give something on rent". A finance company buys an asset and leases it out to users for a fee. The asset must be used by Shariah compliant companies and both parties should know what it is being used for.
2. **Musharaka**: A finance company and the customer buy an asset in joint ownership. The periodical payment from the customer goes towards increasing his equity in the asset until he gains complete ownership. The company makes money from the profits as long as it owns part of the asset.
3. **Murabha**: A finance company buys an asset and sells it to a user at a profit. The ownership is transferred to the user who pays back the amount in instalments. The rate of return is fixed in advance and is for the time value of the money.
4. **Takaful:** Takaful is a communal insurance where liabilities are shared by the community.

Around 50% of Indian stocks are believed to be of Shariah compliance, but this is unrealized due to non-availability of data on Shariah based investments. Both local and global investors find Indian stock market a better place to invest as they have areas like IT, pharmaceuticals, automobile, energy, cement, steel and mining. Thus, Islamic investment options available in India are wider and much better than the availability of the same in many Islamic countries.

According to a study conducted by Mumbai-based Idafa Investment Pvt. Ltd., the number of Shariah's compliant stocks in India is much higher than in all the Muslim countries put together, thus providing enormous scope of parking money by Islamic investors. According to Talha Sareshwala, CFO of Parsoli Corporation, out of 6,000 stocks listed on BSE, 4,200 conform to the shariah principles. The market capitalization of these stocks is nearly 61 % of the total market capitalization of the stocks listed on BSE. This figure is higher when compared together with a number of predominantly Islamic countries such as Malaysia, Pakistan and Bahrain.

'Out of the 1000 NSE listed companies, 335 are Shariah compliant investments. The market capitalization of these stocks' accounts for approximately 61% of the total market capitalization of companies listed on NSE.

Companies like Wealth city has tied up with Religare, a Ranbaxy Group company to bring the best of Stock Markets, Mutual Funds, Portfolio Management Services, Real Estate Investment, Wealth Management Services, etc. all in an Ethical / Shariah Compliant Way.

**It offers services like-**

- Investments in Stocks / Shares
- IPOs, Mutual Funds
- PMS & SIP's
- Real Estate
- Online trading
- Retirement / Pension Plans
- Tax & Hajj Savings
- Expert Advisory
- Dedicated Support by Calls, SMS and e-mails

The regulations of Shariah-compliant investments mean that companies involved in certain activities will be filtered out of a Shariah-compliant fund, **mainly includes**:

- Conventional Commerce (non-islamic banking, finance, insurance, etc.)
- Alcohol/ Tobacco
- Pork-related food products and non-halal food products, other such connected activities)
- Gambling
- Adult entertainment
- Weapons and Defence

Islamic Law prohibits the interest collection and its payment by lenders and investors. The Islamic banks, for earning money without charging interest, take part in a particular amount of profit and loss the business generates.

There are certain accounting restrictions in Shariah investment, **which are:**

- Companies maintaining a debt-to-equity ratio of less than 33%
- Ruling out businesses with high percentage borrowings which means focusing on stable businesses
- Companies permitted to have less than 45% of accounts receivable as a percentage of debt to equity

The Shariah Investment screening process is mostly termed as 'negative screening' of ethical funds using ESG (environment, social and governance) standard. Moreover, there is a Shariah Board for its funds comprising of Islamic scholars who keep a check on all companies under it of whether they meet all the rules and regulations.

Under this Islamic Law Investment, different kind of funds have different policies as per to the beliefs and interpretations of its advisory board. Such investors are told to consult the fund's prospectus to meet its own principles before finally investing.

This extra layer of rules under Shariah-compliant Investments restricts fund managers from certain areas which could grow or shrink from returns over time.

Due to the screening process end results, there comes a sectoral prejudice towards healthcare and information technology.

Shariah-compliant Investments completely keeps its beliefs and rules at the top, keeping in mind of which Investment rules are setup. Therefore, it remains limited at present as it does not tend to evolve new knowledge and ideas in the field of Investment.

**THE INDIAN CONTRACT ACT 1872**

The current legal system in India provides opportunities for making Sharia compliant investments. The Indian Contract Act lays down that “all agreements are contracts if they are made by the free consent of parties, competent to contract, for a lawful consideration and with a lawful object”. A contract validly made is enforceable in law. The parties are free to enter into any contract for lawful consideration and with lawful object. The courts in India honour the agreements reached between the parties and do not sit in judgment on the terms and conditions of the contract. Thus, local laws facilitate entering into investment contracts which are Sharia compliant. Hence, it is possible to structure a contract, in a manner that complies with the requirements of the Indian Contract Act and other relevant statutes as also the principles laid down by Sharia. In case anyone is interested in making investment in India in a manner that conforms to the requirement of Sharia, the deal may be structured in an appropriate manner to meet the concerns and requirements of the investor.

**FOREIGN EXCHANGE MANAGEMENT ACT, 1999**

The Foreign Exchange Management Act is investment friendly. It has already attracted a large number of international investors as it provides for full current account convertibility and enables the profits from investments (which could also be Shariah compliant in nature) to be legally remitted outside India. A foreign investor may invest in equities of an Indian company. Investment can be made in most of the sectors, except for sectors reserved for small-scale industries and certain other strategic sectors like defence, atomic energy etc. In the vast majority of sectors, Foreign Direct Investment (FDI) is allowed through an automatic route, meaning that it is permitted without the need for prior regulatory clearance. As a result, obtaining FDI in most sectors does not necessitate prior approval from the government. Eligible investors can invest automatically in most sectors of the Indian economy. However, the name of the collaborators, details of allotment, copy of the foreign collaboration agreement, the foreign inward remittance certificate from the authorized dealer and other specified information is to be filed with the RBI within thirty days of bringing in the investment and again within thirty days of issuing any shares. An investor may lend money to an Indian Company or may carry on business in India by opening a branch office of a foreign company or by establishing a wholly owned subsidiary or by entering into a Joint Venture with an Indian company to carry on any business or manufacturing activity. Offshore Venture Capital Funds/companies are allowed to invest in domestic venture capital undertaking as well as other companies through the automatic route, subject only to SEBI regulations and sector specific caps on FDI. It is pertinent to mention that in comparison to FDI, the price restrictions with respect to purchase of shares do not apply in case of investment by FVCI. It

is possible to structure all such transaction in a manner which is Shariah compliant and meets the investor specific requirements.

## SHARIAH-COMPLIANT INVESTMENTS IN INDIA

In India, Investments can be done in the form of mutual funds in Shariah-compliant Mutual Funds. They do not invest in companies engaged in alcohol and interest generating businesses because of their Islamic beliefs and rules.

These mutual fund companies are only three in number in India, **these basically are:**

- TATA Ethical
- Taurus Ethical
- Reliance ETF Shariah BeES

TATA Ethical and Taurus Ethical are actively managed multi-cap schemes and Reliance ETF Shariah BeES is an exchange traded fund that invests in the Nifty 50 Shariah Index.

The progress of Islamic investments in India has exceeded due to internal demand and external supply. The internal demand has risen due to the growing of Muslim population in the country, being the second largest Muslim populated country in the world. Moreover, there is ample of awareness of Islamic financial products considering that Muslim community in India have a high savings record. The external supply has risen due to the huge number of Indian companies complying with economic laws of Shariah, becoming a sure destination for Islamic Investments.

### Joint Venture

A joint venture can prove to be advantageous for a foreign investor in the following ways:

a. There is already an established distribution or marketing set up of the Indian partner.
b. Available financial resources of the Indian partner.
c. The contacts of the Indian partner that help ease the process of setting up operations.

There are no separate legislations/ laws for joint ventures in India and laws governing domestic companies apply equally to joint ventures.

Some of the broad and important clauses/ provisions which ought to be included in the joint venture agreement are as follows:

- **Approvals:** the joint venture agreement is subject to the Reserve Bank of India (RBI) and Foreign Investment Promotion Board (FIPB) policies.
- **Finance:** This provision sets out the way in which finances are to be raised for the business. It endorses the measure of starting speculation and the commitments to be made.
- **Object:** The objects, scope, extent and the end product of the joint venture should be specified.
- **Shareholdings:** This mentions the shareholding ratio between the parties, the class of shares to be issued and the rights attached thereto. The clause also contains information about the shareholder’s meetings, voting rights, future issue of share capital, transfer of shares etc.

- **Management:** The contribution of the board of directors, provisions relating to meetings and resolutions, the terms and conditions for expansion of business, appointment and removal of the senior management and service agreements are also stated in this clause.
- **Deadlock:** This clause pertains to situations of deadlock between the parties. The aim is to bring about a mechanism of resolution in case of such deadlock.
- **Resolution of disputes:** This clause defines a dispute, along with the appropriate method to settle the said dispute. These are generally resolved using methods like arbitration or mediation. Litigation may also be resorted to, but it is generally discouraged.
- **Confidentiality**: This clause is in the nature of a prohibitory clause. It entails provisions for the preservation of the company's secrets and strategic information.
- **Termination and Agreement:** This clause should mention the circumstances under which a joint venture can be terminated. These circumstances include factors such as breach of agreements, insolvency, etc. It also mentions the consequences of the termination, if any. Often a 'Force majeure' clause can also be added to the above, in order to protect those parties who are victims of events beyond their control.

**Limited Liability Partnership (LLP)**

LLP is regulated by Limited Liability Partnership Act, 2008 and Limited Liability Partnership Rules, 2009. An LLP should have a minimum of two designated partners who are individuals, with at least one of them being residents of India

Incorporation of LLP by foreign investors is allowed in sectors where 100 per cent FDI is allowed through automatic route. LLPs with FDI are not allowed to operate in agricultural or plantation activity, print media or real estate sector.

LLP is a new corporate form in India. It provides the benefits of limited liability to a company and allows its members the flexibility of organizing their internal management on the basis of a mutual agreement.

# SPECIAL ECONOMIC ZONES

On 1st April 2000, the Government of India, with the intent to provide a boost to Indian exports, introduced the Special Economic Zones Scheme under the Export and Import Policy (now referred as "Foreign Trade Policy") (Policy) with the objectives of providing an internationally competitive and hassle-free environment for earning of foreign exchange, inviting Foreign Direct Investment (FDI), facilitating transfer of technology and generation of employment. The Policy, with certain amendments, was brought out into a special legislation in the form of the "Special Economic Zones Act, 2005" and rules made there under the "Special Economic Zones Rules, 2006".

Special Economic Zones **(SEZ)** in India are areas that are subject to different economic regulations than other regions within the same country. The economic regulations of these zones are conducive and gather FDI. FDI is any investment made by an individual or a firm in its country into business interests located in another country. When a business is conducted in an SEZ, there are additional economic advantages like tax incentives and opportunities to pay lower tariffs.

SEZ are created for the purpose to facilitate rapid economic growth in certain geographic areas. Economic Growth is achieved by leveraging tax incentives to attract foreign dollars and technological advancement. SEZs can increase export levels for the implementing countries. It also creates a high level of bureaucracy due to their regulatory requirements.

In India, SEZ are being established to deal with infrastructural deficiencies, procedural complexities, bureaucratic hassles and barriers from monetary, fiscal, taxation, trade, tariff and labour policies. SEZ are established as industrial enclaves for speeding up the process of industrialization.

**Investors have the option to either seek:**

1. to be a SEZ developer (Developer)
2. to establish a SEZ Unit
3. to be a SEZ Developer and establish a SEZ Unit.

A SEZ can be developed and managed by any person (i.e., individual, NRIs, Indian or foreign companies, firms, HUF etc.) or by the Central Government or State Government and their agencies. An SEZ can also be set up in the joint sector by the Central Government or State Government and their agencies. A SEZ can also be set up in the joint sector by both the State Governments and their agencies and a private person.

### LAW RELATED TO SPECIAL ECONOMIC ZONE's

The Government of India introduced the SEZ policy in April 2000 in the country. As in 2007, more than 500 SEZs were proposed, 220 of which have already been created. Presently, 379 SEZs are notified, out of which 265 are operational. Out of which, about 64% of the SEZs are located in five states – Tamil Nadu, Telangana, Karnataka, Andhra Pradesh and Maharashtra.

SEZ were announced as a part of the Export-Import policy in India. The Government announced that these zones were deemed to be foreign territory for the purposes of trade operations and tariffs. Moreover, they are to provide an internationally competitive and a convenient environment for exports.

Anything imported may be duty free but sales in the Domestic Tariff Area by SEZ were subject to payment of full custom duty and as per the import policy. The April 2000 policy provided for setting up SEZs in the private, public or joint sectors. In 2004, the Department of Commerce announced the Foreign Trade Policy 2004-2009 under which the Special Economic Zone Act, 2005 and the Special Economic Zone Rules, 2006 were introduced to regulate and promote the development of industrial enclaves. As per the Act, SEZ became a duty-free enclave treated as foreign territory for trade operations and tariffs. After the Act came up, no license was required for import and no routine examination to be conducted by custom authorities.

The Act provides immunity to SEZ units and its developers from all indirect and direct taxes. It also provides freedom to subcontract and permits manufacturing, trading and service activities in the SEZ. The Centre has made it mandatory that all proposals of SEZs should have a certificate from the State Governments stating that the land being used is a non-agricultural land.

**PROCEDURE FOR SETTING UP A UNIT IN PRIVATE SEZ AND APPROVAL MECHANISM**

1. For setting up a unit in Private SEZ, the applicant has to apply online at https://sezonline-ndml.co.in and submit the print out of the online filled in Form F, duly signed along with the following documents:

    a. Print out of online form-F of SEZ Rules, 2006 duly filled in with each page of application/relevant documents duly signed.

    b. A DD of Rs.5000/- in favour of "Pay & Accounts Officer, Ministry of Commerce & Industry, Department of Commerce, payable at New Delhi".

    c. Affidavit in proper format on non-judicial stamp paper of Rs. 100/- duly notarized.

    d. Copy of PAN Card of firm/company.

    e. Complete Project Report incorporating all relevant information on the project & giving therein feasibility report, promoters/directors bio-data, process flow chart, cost of the project and means of finance with break up details, projected profitability statement. Details of present activities of the applicant company/firm.

    f. Copy of Memorandum & Articles of Association (M&AoA) along with Certificate of Incorporation in case of Pvt. Ltd. or Ltd. /LLP Company. It may be ensured by applicant that the nomenclature of proposed activities is mentioned in MOA.

g. Form INC 22 in support of Regd. Office address in case of company and self-certified copy of Regd. lease deed in support of Head Office address in case of Firm.

h. Form-32 of appointment of directors (other than the first directors as mentioned in M&AoA) of company. In case of cessation of first director(s), Form 32/DIR 11-12 showing their cessation may also be submitted.

i. Copy of Board Resolution of authorised director/person in case of company and copy of power of attorney/authority in case of partnership firms.

j. Copy of Registered Partnership deed in case of partnership firm/LLP.

2. Copies of residential address proof (Passport/Ration Card/Voter ID/Driving Licence), PAN Card and IT returns (for last three years - along with annexures/computation sheet) in respect of all partners/Proprietor, as the case may be.
3. Copy of Buy-back agreement/marketing tie up/orders received, if any.
4. Undertaking to fulfil the applicable environmental and pollution control norms in respect of proposed project.
5. Copy of Import-Export code (IEC), if already obtained.
6. If a company/firm is already incorporated/ working, copies of COMPLETE audited balance sheet of the company/firm for last three years. In case of new company/firm, copies of ITRs (along with annexures) of promoters/partners for last three years or documents in support of source of finance.
7. Separate lists of imported & indigenous capital goods and raw material with cost break up corresponding to the requirement shown in Form F.
8. Copy of sanction letter from bank/Financial Inst. in support of loan/financial assistance, if any, for the proposed project.
9. Current shareholding details (viz Name of shareholder, No. and percentage of shares held) of applicant company/firm duly certified by CA.
10. Provisional offer of space from Developer/Co-Developer for FIVE years.
11. Specific Information pertaining to Income Tax Department, to be submitted with Project Application to DC office, NSEZ :

a. Assessment details/PAN

b. Nature of source of Investment

c. Whether any exemption is being claimed? under which section?

d. Whether Income Tax Department has disallowed exemption any time?

e. Any penalty imposed by I.T. Department, if yes, give details.

f. Details of transactions with sister concerns raising issue of transfer pricing.

g. Year of production.

All the above documents/copies should be duly signed/self-certified/stamped.

1. Proposals are placed before the Approval Committee or Board, as the case may be, in terms of Rule 17 & 18 of the SEZ Rules, 2006. In case the project is approved, the applicant is issued Letter of approval (LOA).
2. On receipt of the LOA, the unit has to accept the terms and conditions of the LOA within the stipulated time and take further action as per terms & conditions mentioned in the said LOA for implementation of the project.
3. For implementation of the LOA, the unit has to execute Bond cum legal undertaking in form-H of SEZ Rules on a non-judicial stamp paper of Rs. 100/- bought from within the state where the SEZ/unit is located and also get the same notarized by a Notary Public registered from the same State.
4. Before doing any activities of export/import in the SEZ, an SEZ unit must obtain IEC.
5. The SEZ Unit must obtain a Registration-cum-Membership Certificate from the EPCES for availing exemptions, drawbacks and concessions under the SEZ provisions.
6. As per Rule 18 (2)(ii) of SEZ Rules, an SEZ unit is required to submit copy of registered lease deed to Development Commissioner concerned within six months from the issuance of LOA.

**INDIA'S POSITION IN THE WORLD**

India had a successful start in the direction of establishing SEZs in 1969. India opened new lines for private sector and allowed sector-specific SEZ to develop on a particular area of land. Flexibilities in Labour laws which is absent in the Indian SEZ provides a disadvantage of being a federal democratic government. However, India has tried to make up for all its disadvantages by offering fiscal standard operating procedure. Reserve Bank of India has expressed concern about the revenue losses and the uneven pattern of development. It insisted on considering the revenue implications of the taxation benefits.

**CURRENT SITUATION**

SEZ are testing to implement liberal market economy principles. Some drawbacks concerning SEZs that are coming up maybe as follows:

1. Relocation of industries for tax concessions
2. Large-scale acquisition of land by developers leading to displacement of farmers with less compensation
3. Acquisition of highly agricultural land giving serious implications for food security
4. Misuse of land by developers
5. Uneven growth exceeding regional inequalities

The main concern arising pertains around the notion that developing SEZs involves huge displacement of farmers, for this it is important to follow a systematic approach ensuring balance of interests. Therefore, State Governments are told to first prioritize land for acquisition of waste and barren land and also single cropped agricultural land. The

government also announced the new National policy of Rehabilitation and Resettlement 2007. It would provide land compensation for acquisition of land for SEZs.

The role of SEZ in promoting new knowledge, technologies, innovation and technology transfers remain to be limited. As new generation SEZ emerging, new knowledge and technology scope may widen. Hence, it is on the government to have a pro-active approach in strengthening new scopes.

As it is known to all that SEZs have a huge potential in benefitting the government as well as the developer so proper checks are needed on emerging opportunities, protecting interests of SEZ workers and finding linkages between SEZ and the domestic economy.

**THE FUTURE**

"*The Special Economic Zones Act will be replaced with a new legislation that will enable the states to become partners in Development of Enterprise and Service Hubs".*Smt. Nirmala Sitharaman, the Union Minister for Finance and Corporate Affairs, made this statement in Parliament while delivering the Union Budget for 2022–2023. She continued by saying that this would apply to all sizable current and new industrial enclaves in order to maximise the use of the available infrastructure and improve export competitiveness.

She also suggested a number of actions to enhance the allure of GIFT City.

**GIFT-IFSC**

To facilitate the availability of top-tier human resources for financial services and technology, the finance minister proposed that world-class foreign universities and institutions be permitted to offer courses in financial management, fintech, science, technology, engineering, and mathematics in the GIFT City free from domestic regulations, with the exception of those by IFSCA.

**INTERNATIONAL ARBITRATION CENTRE IN GIFT CITY**

Smt. Sitharaman also suggested the establishment of an international arbitration centre in GIFT City for the prompt resolution of issues governed by international law. She also stated that the GIFT City would facilitate services for international capital for sustainable and climate finance in the nation.

**SPECIAL ECONOMIC ZONES (THIRD AMENDMENT) RULES, 2022**

Work from Home (WFH) for Special Economic Zones is permitted for a maximum of one year and may be extended to a maximum of 50% of all employees, including contractual workers, according to Department of Commerce notifications. SEZ development commissioners are now able to prolong it for more than a year and for more than half of the total workforce. The notice gives SEZ units with employees who are already WFH Notification a transition period of 90 days to request approval. This will help a lot of IT/ITES workers who are employed in SEZs and it fills a long-standing need for the sector.

A new rule, known as Rule 43A - Work from Home in Special Economic Zones Rules, 2006, has been announced by the Department of Commerce for all Special Economic Zones. The announcement was made in response to the industry's request for a national Work From Home (WFH) policy that applies to all Special Economic Zones. Before finalising the

notification, the Department of Commerce undertook many rounds of discussions with various parties.

The category of employees of a unit in a SEZ eligible to work from home under the notification provided by Rule 43A include Employees of IT/ITeS SEZ units, temporarily disabled workers, travellers, and off-site workers are among the groups that fall under this category.

According to the revised announcement, WFH may be expanded to a maximum of 50% of the unit's total workforce, including contractual workers. The Development Commissioner (DC) of SEZs has the discretion to approve a higher number of employees (more than 50%) for any genuine reason that is documented in writing. Work from home is now permitted for up to one year. However, upon request from units, the DC may further extend it for a further duration of one year at a time. The announcement has established a transition period of 90 days for SEZ units whose employees are already working from home to request approval.

For WFH to conduct approved operations of the units, SEZ Units will offer equipment and secure connectivity, and the authorization to remove the equipment is concurrent with the authorization given to an employee.

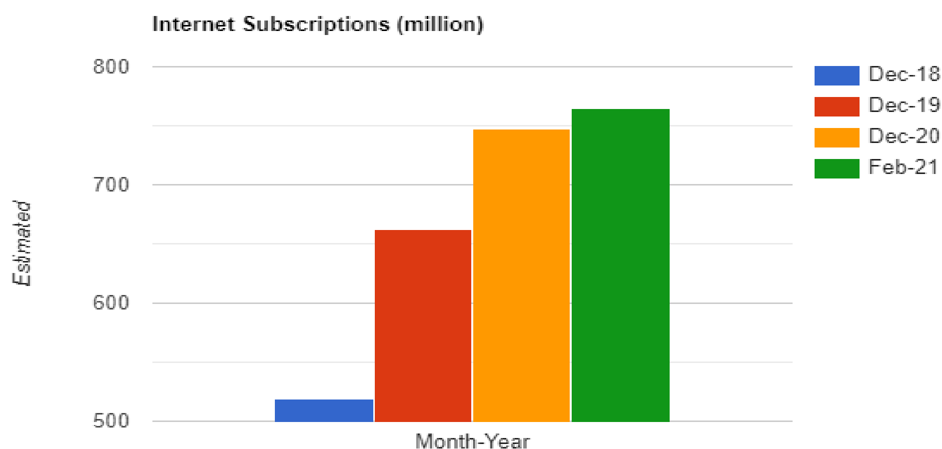
# TELECOMMUNICATION

## INTRODUCTION

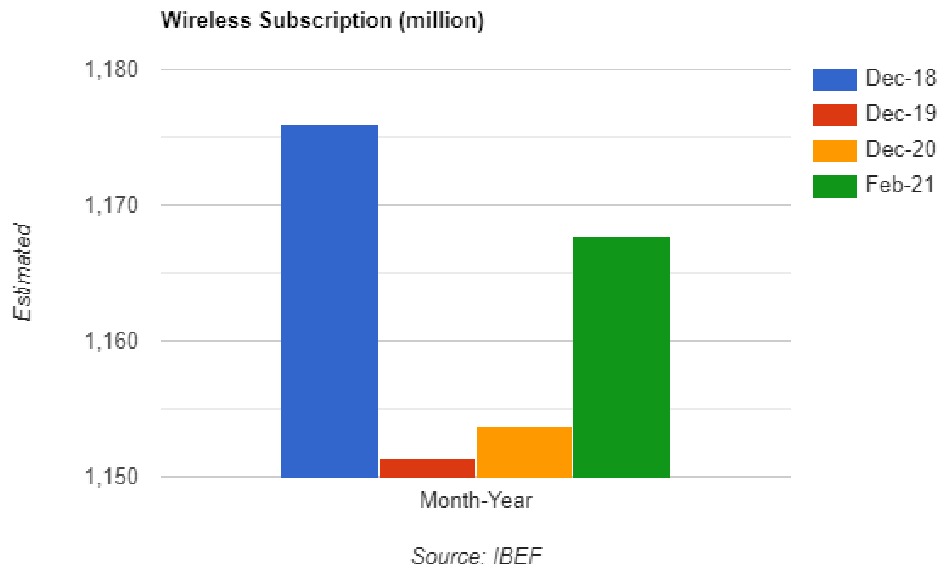
The Indian Telecommunication sector is one of the most dynamic sectors in the country and was one of the very few sectors which withstood the spiralling effect of the recent economic meltdown owing to the challenges put forth by the pandemic. This rapid growth has been facilitated through various proactive and positive decisions of the Government and contributions by both the public and the private sectors. The progressive approach has culminated in the liberal policies of the Government that provide easy market access to the telecom equipment and a much better regulatory framework than before for the purpose of offering telecom services to the Indian consumers at affordable prices. Presently, all the telecom services have been opened for private participation.

The Indian telecommunication sector is 2nd largest in the world with over 1.16 billion users (Aug 2023). India is at the onset of 5G technology and aims to be the first in the world to get the technology with a widespread reach. In India, 100 % FDI is allowed in telecommunication sector; up to 49% FDI is allowed via the automatic route and beyond 49% through the government channels. 4.8 billion downloads of mobile applications were registered in India in first three months of 2021. The policies formulated by the present NDA Government, has drastically cut down the usage charges which is major contributor behind escalation in usage of the telecommunication services in the Country. Gross revenue of the telecom sector stood at Rs. 64,801 Crore in the first quarter of Financial year 2022.

Rising demand for a wide range of telecom equipment, particularly in the area of mobile telecommunication, has provided excellent opportunities to domestic and foreign investors in the manufacturing sector. The numbers illustrate the growth vividly. The dynamics of the sector has stirred the global players more than ever and hence investments in the sector are also on the rise. The sector has also undergone a substantial change in terms of mobile versus fixed phones and public versus private participation.




Source: IBEF




*Source: IBEF*

Investors can look to capture the gains of the Indian telecom so that they can boom and diversify their operations outside developed economies that are marked by saturated telecom markets and lower GDP growth rates. Most of the regulatory ambiguities are being gradually cleared which has heightened interest of investors in the Indian telecom sector.

India opened its telecom sector as a part of economic reforms initiated in 1991. While the formal opening of the Indian telecom services sector began in 1994 with the National Telecom Policy (NTP 1994), the sector witnessed the first concrete move towards establishing a liberalized telecom sector with the establishment of the TRAI in the year 1997. With the advent of the New Telecom Policy of 1999 (NTP 99), the sector has been further liberalized and the licensing of all telecom services is carried out under the policy framework of NTP 99.

A number of new policy initiatives have been taken to implement the NTP 99 in a time bound manner, which are intended to introduce greater degree of competition among the telecom operators.

**INIATIATIVES TAKEN BY THE GOVERNMENT**

The objective of the telecom policy is to provide telecommunication services throughout India including villages at affordable and reasonable rates. Companies which are registered in India would be allowed to participate in the expansion of telecom network and these companies would also be required to maintain balance in urban and village areas.

Pilot projects would be encouraged by the government in order to access new technology and services. Suitable arrangements shall be made in order to implement the telecom policy like fair competition, promotion and protection the interest of the consumers. The government also introduced 'Digital India' a program under which all the sectors like healthcare, travel etc, will be connected through internet.

**TOP TELECOM INDUSTRY TRENDS (Latest)**

1. IoT Devices (Internet of Things)
2. Evolution of communication technologies
3. Technology & 5G (Network)
4. AI (Artificial Intelligence)
5. Content with high resolution
6. Cybersecurity
7. Cloud Computing
8. Increase in communication channels
9. SDNs (Software Defined Networks)
10. Edge computing

**TELECOMMUNICATION LAWS IN INDIA**

The telecom sector in India is more than 165 years old, and in those times, only posts were the main forms of communication in India. In 1950, the electric telegraph started for the first time between Kolkata and Diamond harbour (Kolkata), and in 1851 it was opened for the use of British East India Company. Till 1984, the telecom sector was under the control of the government and in 1990's it was the first time when the government was opened for private investment in the telecom sector. The Telecom Regulatory Authority of India (TRAI) was setup in the year 1995, which eventually resulted in the limited elimination of Governmental interference in deciding the tariffs.

**The legislations which govern the telecom sector are:**

1. The Telecom Regulatory Authority of India, 1997

The act provides for the establishment of the Telecom Regulatory Authority of India (TRAI) and the Telecom Disputes Settlement and Appellate Tribunal (TDSAT) which also provides mechanisms to regulate the telecommunication services, adjudicate disputes, dispose of appeals and to protect the interests of service providers and consumers of the telecom sector, and to promote and ensure orderly growth of the telecom sector.

2. Information Technology Act, 2000

The Act provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information and to facilitate electronic filing of documents with the Government agencies.

3. The Indian Telegraph Act, 1885

The act paves the way for enabling the Indian Government to exercise exclusive jurisdiction and privileges for establishing, maintaining, operating, licensing of all forms of wired and wireless communications within Indian territory.

4. The India Wireless Telegraphy Act, 1933

The legislation strives to regulate the possession of wireless telegraphy apparatus in the country. The Telecom Regulatory Authority of India Act, 1997- (TRAI) is the primary

legislation which governs the telecom sector in the country. The main objective of the act is to setup TRAI (Telecom Regulatory Authority of India) and TDSAT (Telecom Dispute Settlement Appellate Tribunal).

The objectives behind establishing the two institutions established under the TRAI Act has largely revolved around the need to regulate the challenges surrounding the telecommunication services, readily and to harmoniously adjudicate disputes, dispose off appeals and protect the interest of all stakeholders i.e., the service providers and the consumers.

**RECENT DEVELOPMENTS**

- In Union Budget 2022-23, the Department of Telecommunications was allocated Rs. 84,587 Crore (US $ 11.11 billion).
- In 2021, Japan and India signed an MoU to increase pathways paving the way for enhancing cooperation between the two countries on the telecommunications front.
- In 2021-22, the Department of Telecommunications has been allocated Rs.58,737.00 crore (US$ 8 billion). 56% allocation is towards revenue expenditure and the remaining 44% is towards capital expenditure.
- The Governmental policy thrust in the telecommunication sector indeed provides for a brilliant opportunity for prospective investors to chart through untraveled territories as the promising aspects of the sector being to unravel.
- Under the Department of Telecom, the Union Cabinet authorised a Rs. 12,195 crore (US$ 1.65 billion) production-linked incentive (PLI) plan for telecom and networking equipment. The Production-linked Incentive (PLI) Scheme approved 31 enterprises on October 14, 2021, including 16 MSMEs and 15 Non-MSMEs (eight domestic and seven overseas). The Department of Telecommunications (DoT) has created a sixth generation (6G) innovation group to help push the development of 6G technologies.
- The Department of Telecommunications was given Rs. 84,587 crore (US$ 11.11 billion) in the Union Budget 2022-23. Revenue spending received 36% of the budget, while capital spending received 64%.
- Between April 2000 and December 2021, FDI into the telecom sector totalled US$ 38.25 billion.

# TRADING

## INTRODUCTION

India, as a result of the economic reforms of 1991, opened its doors to liberalization, privatization and globalization. The 1990s saw India moving from a controlled economy to a market driven economy in consonance with other global economies as barriers were removed and deregulation was introduced to boost the entry of private and international players into the Indian markets. Earlier, Indian traders required import licenses for importing capital goods and merchandise, and there were excessively restrictive 'lists' of freely importable goods, where imported goods were permitted, duties were ridiculously steep, thus encouraging grey channels for trade of foreign goods.

The Government now allows the import of most items except those coming within the ambit of a negative list (mostly defence and strategic industries), which has resulted in India becoming an extremely profitable and diverse market.

## FOREIGN TRADE POLICY

1. The Foreign Trade Policy (FTP) was brought forth by the Indian Government to increase the export of goods and services. Imports in India can be completed under the Open General License, with most imported items being categorized as such while the importer is liable to pay import tariff. The following are the major thrusts into the Foreign Trade Policy:
    a. Unshackling of controls and creating an atmosphere of trust and transparency to unleash the innate entrepreneurship of our businessmen, industrialists and traders.
    b. Simplifying procedures and bringing down transaction costs.
    c. Neutralizing the incidence of all levies and duties on inputs used in export products based on the fundamental principle that duties and levies should not be exported.
    d. Facilitating the development of India as a global hub for manufacturing, trading and services.
    e. Identifying and nurturing special focus areas which would generate additional employment opportunities, particularly in semi-urban and rural areas, and developing a series of 'initiatives' for all of them.
    f. Facilitating technological and infrastructural upgradation of all the sectors of the Indian economy, especially through import of capital goods and equipment, thereby increasing value addition and productivity, while attaining internationally accepted standards of quality.
    g. Avoiding inverted duty structures and ensuring that our domestic sectors are not disadvantaged in the Free Trade Agreements/Regional Trade Agreements/ Preferential Trade Agreements that we enter into in order to enhance our exports.
    h. Upgrading of infrastructural network, both physical and virtual, related to the entire Foreign Trade Chain, to international standards.

i. Revitalizing the Board of Trade by redefining its role, giving it due recognition and inducting experts on Trade Policy.

j. Activating our embassies as key players in our export strategy and linking our commercial wings abroad through an electronic platform for real time trade intelligence and enquiry dissemination.

2. There exist two ways in which tariffs are normally levied and classified, namely, specific tariffs and ad-valorem tariffs. As on date, import and export of items in India is classified into three categories namely, (a) Prohibited items, (b) Restricted items including items reserved for STEs or requiring permission etc., and (c) Freely importable.
3. Negative List: With regards to export and import, negative list implies the list of items which are not permitted to be freely imported or exported. However, in the context of Free Trade Agreement (FTA), the "negative list" would mean that everything except the services and goods listed, could be taxed, making the exempted goods and services cheaper.
4. Imports can be made into India under the Open General License ('OGL'), with most imported items falling under its purview. OGL is a blanket permit to all legally registered industrial units to import items without restriction. Those goods, which are not covered under OGL, are listed in the negative list of imports which comprise of the following 3 categories:
    - **Prohibited** – The FTP has prescribed lists of goods which are completely forbidden from being imported into India and includes goods like tallow, ivory products, poultry, fats or oils of animal origin, animal rennet and wild animals including their parts and products etc.
    - **Restricted** - The FTP has also prescribed a list of goods which are restricted from being imported into India. These goods are those for which the demand is satisfactorily met by the Indian market. They may be imported only against a license / authorization or in terms of a public notice issued in this regard and includes consumer goods; drugs and pharmaceuticals; chemicals and allied items; precious, semi-precious and other stones; seeds, plants and animals; insecticides and pesticides; electronic items; safety, security and related items etc.
    - **Canalized** – The FTP has prescribed a list of items which can be imported only through certain designated public sector agencies specified in the ITC (HS). They include crude oil, bulk agricultural products and some pharmacy products.

**<u>The following kinds of trading are also permitted, subject to the provisions of the Foreign Trade Policy:</u>**

1. Companies for providing after sales services.
2. Domestic trading of products of joint ventures is permitted at the wholesale level for such trading companies who wish to market manufactured products on behalf of their joint ventures in which they have equity participation in India.
3. Trading of hi-tech items/items requiring specialised after-sales services.

4. Trading of items for social sector.
5. Trading of medical and diagnostic items.
6. Domestic sourcing of products for exports.
7. Test marketing of such items for which a company has approval for its manufacturing process, provided such test marketing facility will be for a period of two years, and investment in setting up manufacturing facilities commences simultaneously with its test marketing.
8. Foreign Direct Investment (FDI) up to 100 percent is permitted for e-commerce activities subject to the condition that such companies shall engage only in business-to-business (B2B) e-commerce and not in retail trading.
9. Capital goods can be imported under a license known as Export Promotion Capital Goods Scheme (EPCGS) at concessional duty rates, which is subject to the fulfilment of export obligation for the finished goods, on part of the importer, within a specified time frame.

Transit of goods through India or to countries adjacent to India shall be regulated in accordance with the bilateral treaties between India and those countries.

Registration with the concerned licensing authority is a precondition for the import of goods. In order to export or import, an Importer-Exporter Code (IEC) needs to be obtained from the concerned Licensing Authority. Further, import licenses may be procured from the Director General of Foreign Trade (DGFT).

**OBJECTIVES OF THE FOREIGN TRADE POLICY 2021- 2026**

1. Strives to enable a stable and sustainable policy ecosystem, furthering foreign trade in merchandise and services;
2. Strives to link government initiatives like "Make in India", Digital India and Skill India;
3. To enable diversity in India's export commodities by aiding various sectors of the economy to gain globally.
4. Is expected to harmoniously construct a framework for WTO-compliant tax incentives, easy credit access, infrastructure upgrade, less subsidy, more support, tax breaks, digitization, e-commerce and export awareness.
5. Envisages to make merchant exporters and manufacturers, business and industry as partners of the Government in achieving its stated goals and objectives.

**<u>India's Foreign Trade Law Acts include:</u>**

1. The Customs Act, 1962
2. The Customs Tariff Act, 1975
3. The Foreign Exchange Management Act, 1999
4. The Foreign Trade (Regulation)(Amendment) Rules, 2015
5. The Foreign Trade (Development and Regulation) Act, 1992
6. The Special Economic Zones Act, 2005
7. The Central goods and Services Tax Act, 2017

8. Goods and Services Tax (Compensation to States) Act, 2017
9. The Integrated goods and Services Tax Act, 2017
10. The Union Territory goods and Services Tax Act, 2017

**<u>The trade agreements currently in force in India are:</u>**

1. Preferential Trade Agreement Between India and Afghanistan (PTA)
2. Comprehensive Economic Cooperation and Partnership Agreement (CECPA) between The Republic of India and The Republic of Mauritius
3. India Africa Trade Agreement, which includes:

| India Mauritius Trade Agreement | India Senegal Trade Agreement |
|---|---|
| India Nigeria Trade Agreement | India Swaziland Trade Agreement |
| India Mozambique Trade Agreement | India Tanzania Trade Agreement |
| India Rwanda Trade Agreement | India Zaire Trade Agreement |
| India South Africa Trade Agreement | India Zimbabwe Trade Agreement |
| India Sychelles Trade Agreement | India Botswana Trade Agreement |
| India Uganda Trade Agreement | India Cote D Ivory Trade Agreement |
| India Zambia Trade Agreement | India Liberia Trade Agreement |
| India Cameroon Trade Agreement | India Ghana Trade Agreement |
| India Angola Trade Agreement | |

4. Asia Pacific Trade Agreement
5. Comprehensive Economic Cooperation Agreement between India and Association of Southeast Asian Nations (ASEAN), which includes:

| Protocol to Amend the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India |
|---|
| Agreement on Dispute Settlement Mechanism under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India |
| Agreement on Trade in Goods under the Framework Agreement on Comprehensive Economic Cooperation between the Association of Southeast Asian Nations and the Republic of India |
| Understanding on Article 4 of the Trade in Goods Agreement under the Framework Agreement on Comprehensive Economic Cooperation between the Republic of India and the Association of Southeast Asian Nations |

6. Agreement on Trade Agreement on Trade, Commerce And Transit Between India and Bhutan
7. Preferential Trade Agreement (PTA) Between India and Chile.
8. Comprehensive Economic Partnership Agreement between India and Japan (CEPA).

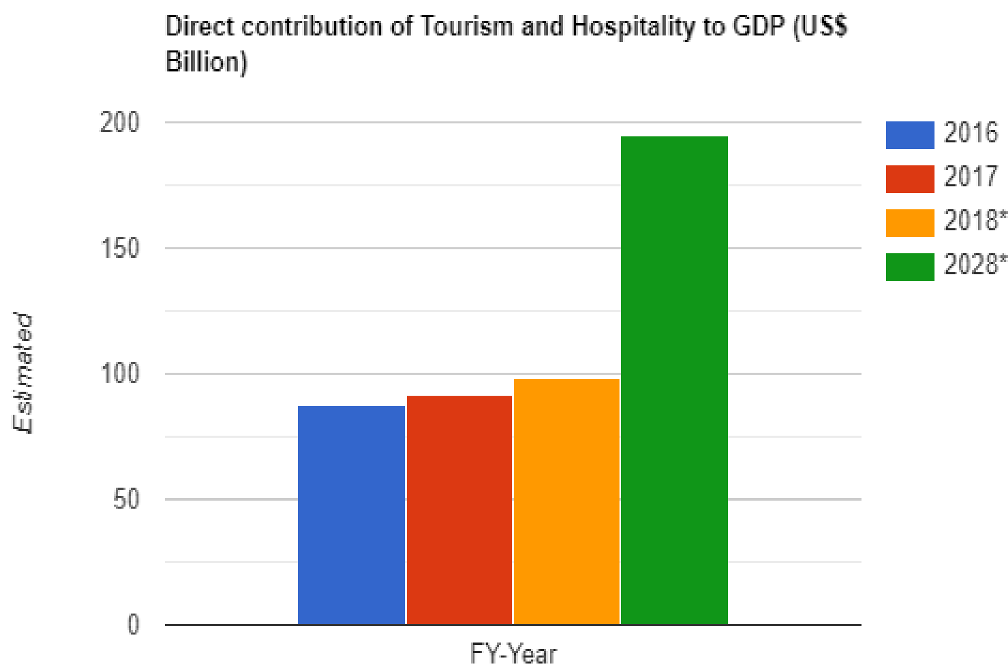
# TRAVEL AND TOURISM

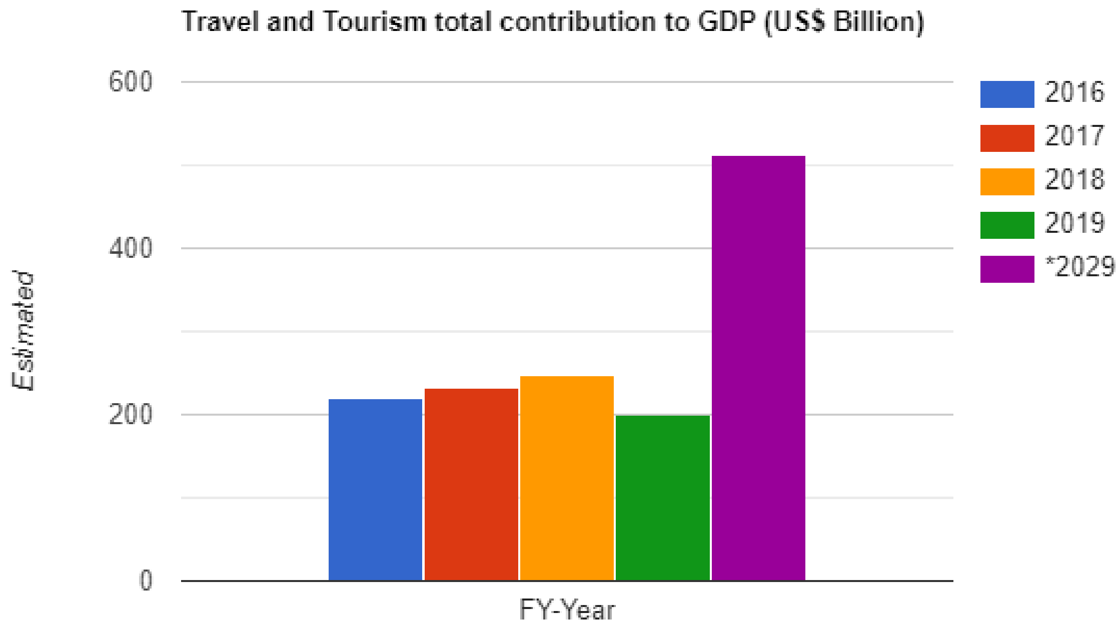
## INTRODUCTION

Due to the plethora of cultural diversities and uniqueness, India today emerges as the biggest destination for investment, travel and business. India offers a variety of categories of tourism like cultural tourism which includes Indian fairs and festivals, Indian cuisine, Indian music and dance, Indian art, spiritual tourism which includes yoga tourism and pilgrimage tourism, nature tourism which includes beach tourism, adventure tourism, hill station tourism and wildlife tourism, medical tourism which includes Ayurveda and other forms of medications, and lastly, historical tourism which includes the Indian palaces, forts and the rich Indian heritage.

Considering the benefits that tourism brings, the Ministry of Tourism, Government of India is continuing with a multi-pronged development strategy with a view to achieve an even higher growth of quality tourism in the near future.

The Indian tourism and hospitality industry is a very crucial service sector. With the rich cultural and historical heritage, Indian tourism sector has significant potential. Indian tourism industry is an important source of employment and foreign exchange for the country. The tourism sector in India provides employment to more than 41.6 million people.






**MARKET SIZE**

Numbers show that 2.74 million foreign tourists visited India in 2020, while the numbers came down to 1.52 million in 2021, owing to the pandemic. However, as per the Indian Tourism Statistics 2022, the NRI arrivals increased by around 52.6% in 2021 as compared to 2020.

The statistics also showed that the tourism sector still remains an important source of foreign exchange earning with the earnings amounting to $ 8.797 billion in 2021.

Using data from the Bureau of Immigration, the Ministry of Tourism prepares a monthly list of foreign visitors arriving (FTAs). According to that data, the following 15 countries had the highest percentage of Foreign Tourist Arrivals in India in January 2022 USA (27.76 percent), Bangladesh (11.85 percent), UK (10.03 percent), Canada (6.97 percent), Australia (6.44 percent), Sri Lanka (4.64 percent), Russian Federation (2.38 percent), Maldives (2.25 percent), Portugal (2.21 percent), Germany (1.70 percent), Nepal (1.63 percent), France (1.41 percent), Singapore (1.07 percent), Italy (1.01 percent).

The percentage of foreign tourists who came to India in January 2022 was highest at Delhi Airport (38.70%), followed by Mumbai Airport (14.95%), Chennai Airport (10.40%), Cochin Airport (5.26%), Ahmedabad Airport (5.23%), Hyderabad Airport (4.90%), Bengaluru Airport (4.83%), Kolkata Airport (4.55%), Haridaspur Land Check Post (3.31%) and Dabolim (Goa) Airport (1.93%). International hotel chains are expanding in the nation, and by 2020 and 2022, they will own a 50% and a 47% share, respectively, of India's tourist and hospitality market.

## GOVERNMENT INITIATIVES

Tourism sector is an attractive sector for investment as 100 per cent FDI is permissible in this sector through the automatic route. Tourism related industry includes travel agencies, tour operating agencies and tourist transport operating agencies, units providing facilities for cultural, adventure and wildlife experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment, amusement, sports and health units for tourists and convention/seminar units and organization. The term ‘hotels’ includes restaurants, beach resorts and other tourist complexes providing accommodation and/or catering and food facilities.

The government of India has taken the following major initiatives to give a boost to the tourism and hospitality sector of India:

1. An app by the name of “Audio Odigos” was developed and launched by the Ministry of Tourism which essentially provides audio guide facility for 12 iconic sites of India.
2. Before the pandemic, in October 2018, the Indian government inaugurated the world’s highest standing statue called the ‘Statue of Unity’ of Sardar Vallabhbhai Patel.
3. The government is also working to achieve 1 per cent share in world's international tourist arrivals by 2021 and 2 per cent share by 2025. Although the set goals were hit by the lockdown but the post-pandemic prospects remain alluring.
4. In September 2019, Japan joined a band of Asian countries such as Taiwan and Korea among others to enter into the Indian tourism market with the aim to edge their way into the country's travel calendar, target tourists with food, culture and adventure
5. The Ministry of Tourism is running a scheme under which the National Tourism Awards are given to Travel Agents and Tour Operators including the best Adventure Tour Operator, the best Domestic Tour Operator, the most Innovative Tour Operator, the Best Mice Operator, the best Tourist Transport Operator, the best Hotels in different categories, Outstanding performers in Publishing, etc. Awards are also given to the meritorious students of the institutes of Hotel Management and Indian Institute of Tourism & Travel Management.
6. The travel market in India is estimated to reach US$125 billion by FY27 from an estimated US$75 billion in FY20. International tourist arrivals are expected to reach 30.5 million by 2028. Alongside, the medical tourism sector is estimated to increase at a CAGR of 21.1 % from 2021-28.

The growth momentum in domestic and international travel is expected to receive a further boost with more budget airlines/lower air-fares, open sky policies and expected improvements in travel infrastructure (roads, airports, railways). India represents one of the most potential medical tourism markets in the world. Factors such as low cost, scale and range of treatments provided by India differentiate it from other medical tourism destinations. The growth in India’s medical tourism market is expected to serve as a boon for several associated industries also, including hotel industry, medical equipment industry and pharmaceutical industry.

**Major Laws Governing Tourism in India:**

1. The Passport (Entry into India) Act, 1920 :-
   The legislation provides for the issuance of passports of Indian citizens along with regulating and scrutinizing the passports of Foreign nationals coming to India.
2. The Foreigners Registration Act, 1939.
   The act provides for the registration of foreigners in India.
3. The Foreigners Act, 1946 :-
   The Legislation confers powers on the Central Government on all aspects pertaining to foreigners in India.

The laws for investment in the Indian tourism sector for companies, groups and people based outside India are stated in the topic of venture capital.

The nation has earned unparallel fame for the availability of a diverse plethora of tourist hotspots which are especially popular amongst foreign tourists. Obtaining a tourist visa is also an easy process. Though the necessity to comply with legal formalities does act as an obstruction, steps have been initiated to improve the existing framework.

**CONCLUSION**

As the world recovers from the post-pandemic effects, the growth prospects in the Travel and Tourism industry depend heavily on tourist-sentiments i.e., the willingness to travel. The growth prospects have seen good projections and are substantiated by the moderate number of tourists travelling even during the pandemic.

# VENTURE CAPITAL

## INTRODUCTION

Venture capital is a type of "private equity financing" that is done to aid the start-ups or emerging companies at early stage.

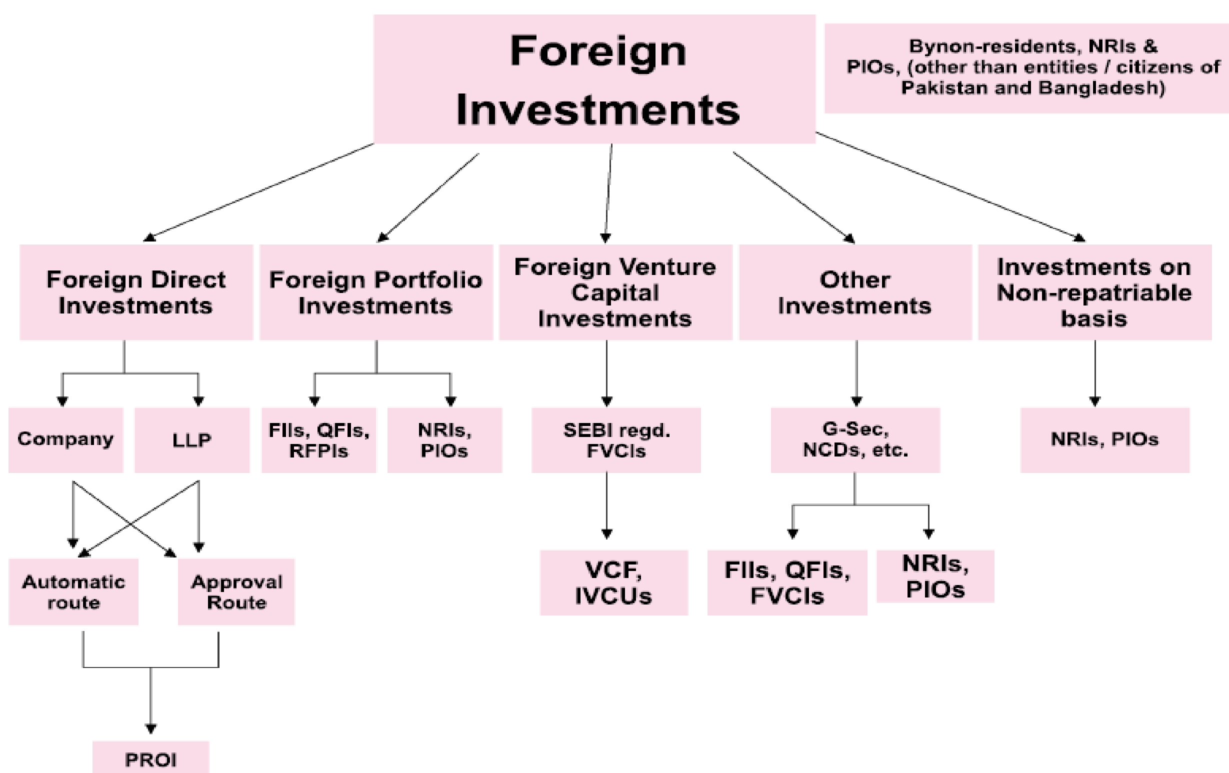
Domestic and offshore venture capital funds investing in India are governed by SEBI. The legal framework within which venture capital funds operate are broadly covered within the ambit of the SEBI Act, 1992, SEBI (Foreign Venture Capital Investors) Regulations, 2000 (FVCI Regulations), SEBI (Alternative Investment Funds) Regulations, 2012 (**"AIF Regulations"**) and the SEBI (Venture Capital Funds) Regulations, 1996 (VCF Regulations).

Overtaking all prior year records, the year 2023 saw a record number of venture capital (VC) and private equity (PE) funds with a focus on India raise new capital for investments in the nation's numerous digital start-ups. This is true even though VC and PE round activity is down and inflationary pressures are high.

According to a Silicon Valley Bank report, India-focused VC firms raised a staggering $14.1 billion in funding to invest in businesses in the first half of 2022. When compared to the previous year, when VC firms only raised $4.2 billion for Indian businesses, this is a more than 3-fold increase.

According to Silicon Valley Bank, the US launched the Indo-Pacific Economic Framework in May 2022, five years after withdrawing from the Trans-Pacific Partnership. This trade agreement with India, Southeast Asian countries, Australia, New Zealand, Japan, and South Korea further increased investor confidence in India.

## FOREIGN VENTURE CAPITAL INVESTOR




A Foreign Venture Capital Investor (FVCI) as defined under the FVCI Regulations means an investor incorporated and established outside India, registered under the FVCI Regulations and one that proposes to make investments in accordance with the FVCI Regulations. It is pertinent to note that it is not mandatory to register the overseas fund with SEBI under the FVCI Regulations; in that case any investment made by such unregistered fund would be treated as FDI. FVCI investments that are subject to the following conditions: -

a. It shall disclose its investment strategy to the SEBI;
b. It can invest its total funds in one DVCF (Domestic Venture Capital Funds) defined later;
c. It shall make investments as follows:

(A) At least 66.67 per cent of the investible funds shall be invested in unlisted equity shares or equity linked instruments of Venture Capital Undertakings (VCUs) (defined later);

(B) Not more than 33.33 per cent of the investible funds may be invested by way of:

- Subscription to the initial public offer of a VCU whose shares are proposed to be listed;
- Debt or debt instrument of a VCU in which the FVCI has already made an investment by way of equity;
- Preferential allotment of equity shares of a listed company subject to a lock in period of one year;

- The equity shares or equity-linked instruments of a financially weak company or a sick industrial company whose shares are listed;
- Special purpose vehicles which are created for the purpose of facilitating or promoting investment in accordance with the FVCI Regulations;

d. It shall disclose the duration of life cycle of the fund.

The investment conditions/ restrictions stipulated in (iii) above must be achieved by the FVCI by the end of its life cycle. VCUs have been defined to mean domestic companies, which are not engaged in activities which have been classified under the Negative List specified by SEBI and whose shares are not listed on a recognized stock exchange in India. The Negative List, as provided in Schedule III to the FVCI Regulations and Schedule III to the VCF Regulations, as amended by the SEBI (Foreign Venture Capital Investors) (Amendment) Regulations, 2004 and the SEBI (Venture Capital Funds) (Amendment) Regulations, 2006 respectively, includes the following:

1. Non-banking financial services excluding those Non-Banking Financial companies, which are registered with Reserve Bank of India and have been categorized as Equipment Leasing or Hire Purchase companies.
2. Gold financing excluding those companies which are engaged in gold financing for jewellery.
3. Activities not permitted under the Industrial Policy of Government of India.
4. Any other activity, which may be specified by SEBI in consultation with the Government of India from time to time.

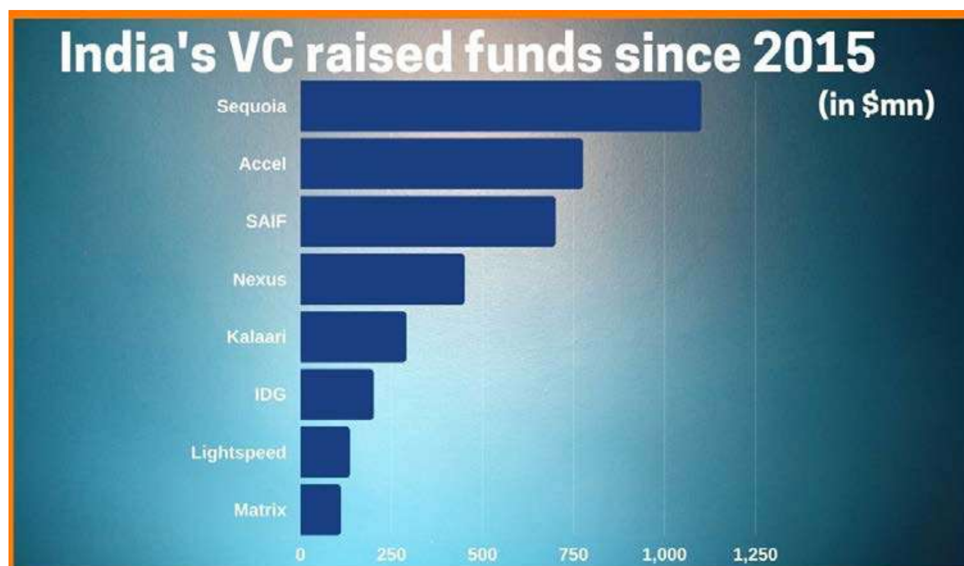



*Figure 1Source: https://startuptalky.com/list-venture-capital-firms-in-india/*

DVCFs are allowed to raise monies from investors whether Indian, foreign or non-resident Indians by issuing units. However, the DVCF cannot issue any document or advertisement inviting offers from the public for subscription or purchase of its units and can raise monies only through private placement of its units.

Minimum investment to be accepted from any investor should be 500,000 except in the case of investors who are employees, principal officers or directors of the DVCF, or directors of the trustee company or trustees where the DVCF has been established as a trust, employees of the fund manager or asset management company where lower amounts may be accepted.

Each DVCF is required to have a minimum firm capital commitment from its investors of ` 50 million before the start of operations by the DVCF.

All investments made or to be made by a DVCF are subject to the following conditions:

a. A DVCF shall disclose the investment strategy at the time of application for registration.
b. A DVCF cannot invest more than 25 per cent of its corpus in one VCU.
c. A DVCF can invest in securities of foreign companies subject to such conditions or guidelines that may be stipulated or issued by the Reserve Bank of India and the SEBI from time to time.
d. A DVCF is not permitted to invest in associate companies. An "associate company" is defined to mean as a company in which a director or trustee or sponsor or settlor of the DVCF or the asset management company holds either individually or collectively, equity shares in excess of 15 per cent of the paid-up equity share capital of VCU.
e. A DVCF shall make investments subject to the following conditions and restrictions:
    - At least 66.67 per cent of the investible funds shall be invested in unlisted equity shares or equity linked instruments of VCUs.
    - Not more than 33.33 per cent of the investible funds can be invested by way of:

(1) Subscription to the initial public offer of a VCU whose shares are proposed to be listed;

(2) Debt or debt instrument of a VCU in which the DVCF has already made an investment by way of equity;

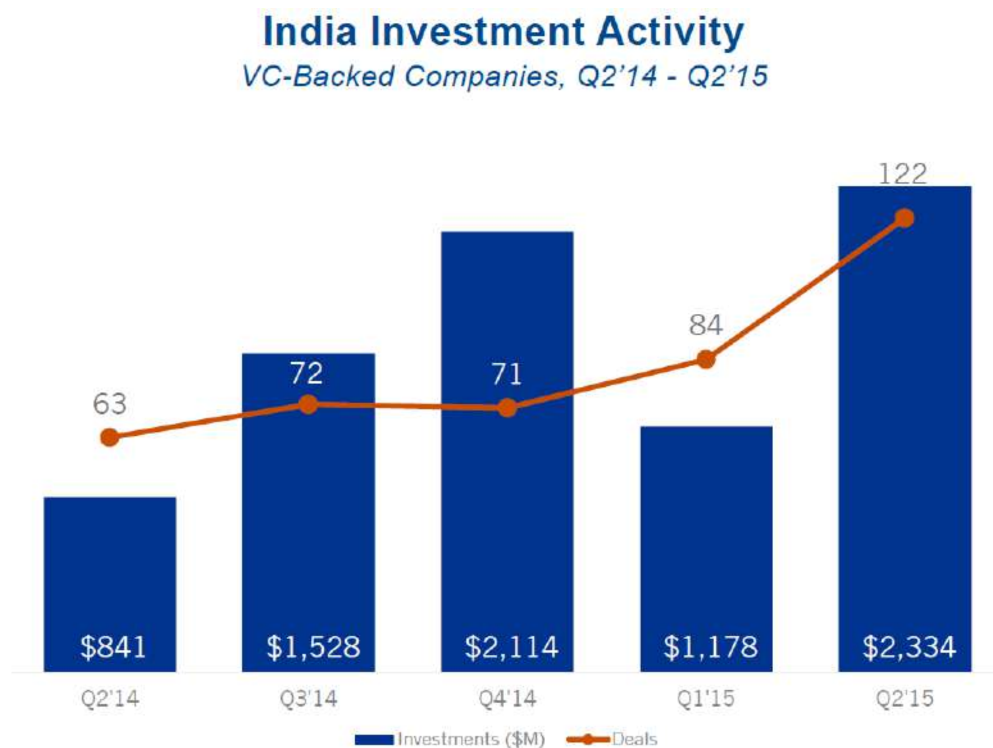
(3) Preferential allotment of equity shares of a listed company subject to lock in period of one year;

(4) The equity shares or equity-linked instruments of a financially weak company or a sick industrial company whose shares are listed;

(5) Special purpose vehicles created by the DVCF for the purpose of facilitating or promoting investment in accordance with the VCF Regulations.

f. A DVCF has to disclose the duration of life cycle of the fund.

The investment conditions/ restrictions stipulated in (v) above must be achieved by the DVCF by the end of its life cycle.




The SEBI has, vide the Securities and Exchange Board of India (Venture Capital Funds) (Amendment) Regulations, 2010 dated April 13, 2010, permitted DVCFs to invest in securities listed on SME exchange by entering into an agreement with merchant banker to subscribe to the unsubscribed portion of the issue or to receive or deliver securities in the process of market making under Chapter XA of the Securities and Exchange Board of India

(Issue of Capital and Disclosure Requirements) Regulations, 2009 and the conditions/ restrictions on investment as stated above shall not apply in case of acquisition or sale of securities pursuant to such subscription or market making.

The SEBI has, vide the Securities and Exchange Board of India (Venture Capital Funds) (Amendment) Regulations, 2006 dated January 25, 2006, permitted DVCFs to invest in securities of foreign companies subject to the conditions or guidelines of the Reserve Bank of India and SEBI.

The SEBI has also increased the application and registration for DVCFs to 0.1 million and 1 million respectively, vide (Venture Capital Funds) (Amendment) Regulations, 2006 dated September 4, 2006. However, vide SEBI (Payment of Fees) (Amendment) Regulations, 2008 dated March 31, 2008, the registration fees have been brought back to 0.5 million.

**FOREIGN EXCHANGE MANAGEMENT ACT, 1999**

Regulation 5 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (FEMA Regulations) provide that an FVCI registered with SEBI may make investment in a DVCF or an Indian VCU in the manner and subject to the terms and conditions specified in Schedule 6. Schedule 6 of the FEMA Regulations provides that:

(i) A registered FVCI may, through SEBI, apply to the Reserve Bank of India for permission to invest in Indian VCU or in a DVCF or in a scheme floated by such DVCFs. Permission may be granted by the Reserve Bank subject to such terms and conditions as may be considered necessary.

(ii) The registered FVCI permitted by the Reserve Bank, may purchase equity/equity linked instruments/debt/debt instruments, debentures of an Indian VCU or of a DVCF through initial public offer or private placement or in units of schemes/funds set up by a DVCF.

(iii) The amount of consideration for investment in DVCFs and Indian VCUs shall be paid out of inward remittances from abroad through normal banking channels or out of funds held in an account maintained with a designated branch of an authorized dealer.

It is pertinent to mention that in comparison to FDI, the price restrictions with respect to purchase of shares do not apply in case of investment by FVCI.

Venture Capital Companies are those who invest in small companies or start-ups having potential to grow into highly profitable ventures. It plays a vital role in the growth and progress of innovative entrepreneurships in the country. Initially venture capital funding was exercised only by financial institutions and organizations, which encouraged the corporates in the private sector with debt as a device of funding.

Capital ventures funds in India are segregated on the basis of their promoters:

- Those which are promoted by Central government-controlled finance organizations like TDICI by ICI.
- Capital venture funds like SBI-Cap which are encouraged by public sectors banks
- Indus Venture Fund and akin promoted by private sector and foreign banks,
- Those promoted by state government controlled financial organizations Andhra Pradesh Venture Capital Limited (APVCL) by Andhra Pradesh State Finance Corporation (APSFC).

**DOMESTIC CAPITAL VENTURE FUND**

Domestic capital venture funds (DVCF) according to the rules and regulations of VCF refers to the fund initiated and constituted in the form of a trust or a company and is registered under the following regulations:

- It has a dedicated pool of capital.
- Raised in a method designated in the rules and regulations
- Invests in accordance with the rules and regulations
- DVCFs are permitted to attain investments and money from investors whether Indian, foreign or NRI. By way of issue of units.
- It cannot provide any document or advertisement to summon offers and proposals from the public for subscription or purchase of its units and can raise monies only through private placements of its units.

**MAJOR LAWS ON VENTURE CAPITAL IN INDIA**

- SEBI Act, 2002;
- SEBI (foreign venture investors) Regulations, 2000;
- SEBI (Venture capital funds) Regulations, 1996.
- FEMA Act, 1999;
- FERA Act, 1973.

An investor based outside India investing in Venture Capital Funds (VCF) and Venture Capital Undertakings (VCU) is governed by FEMA Act, FERA Act and SEBI regulations. However, an investor based within India investing in India is only governed by SEBI regulations. It is mandatory for a foreign investor to register itself with SEBI before it makes any investment in venture capital in India.

Following are the basic requirements for a foreign investor before making an investment in India:

- It is based anywhere outside India;
- It is registered with SEBI;
- It should be willing to make investment in venture capital funds or venture capital undertakings.

The FVCI can be a company including body corporate or a trust or a society also. The SEBI is also empowered to impose certain terms and conditions on the applicant before getting it registered as FVCI. The FVCI is also required to get a general permission from Reserve Bank of India (RBI).

**GENERAL DUTIES OF THE INVESTOR**

- Every foreign investor has to maintain book of accounts, records and documents and keep the same for 8 years;
- The investor has to produce the records before the board as and when called by them;
- The foreign investor has to enter into an agreement with domestic custodian;
- Domestic custodian has to monitor investment of FCVI in India;
- Furnishing of periodic reports to the Board;
- Furnishing any such information as maybe called by the Board;
- The FCVI has to open a bank account for foreign currency denominated accounts.

**CONDITIONS FOR INVESTMENT**

- An FCVI can invest 100% funds in a domestic VCF under SEBI Regulations.
- It should invest at-least 66.67% of its funds in unlisted equity share.
- It can invest 33.33% of its shares by Subscribing to initial public offer.
- Investing in debt or debt instrument of the VCU given it has already invested by way of equity in such a VCU;
- Preferential allotment or designation of equity shares of a listed company subject to lock in period of 1 year;
- Investment by subscription or purchase within the equity shares or equity-linked securities of a financially weak listed company or industrial listed company.
- Investment by way of subscription or purchase in Special Purpose Vehicles created for the prime aim of aiding or encouraging investment in conformity with these rules and regulations.
- Every FVCI has a fixed life cycle. It has to mandatorily disclose life cycle of its fund before making any investment and also it should disclose all the investment strategy to SEBI before it makes any investment in India.

# WHOLESALE AND RETAIL TRADE

## INTRODUCTION

Rising income levels, education and a global exposure are causing a fundamental shift in the Indian middle class purchasing and shopping habits. This underlies the scope of growth in the organized retail trade market in India. Retailing through formats such as supermarkets, hypermarkets, department stores and other specialty chains are increasing and the organized retail sector is expected to grow at about 13 per cent per annum. The country's retail sector is the second-largest employer after agriculture, with retail trade employing 35.06 million and wholesale trade generating an additional employment of 5.48 million. Food is the largest segment in terms of its contribution to the total value of the retail market, followed by fashion and fashion accessories. It is estimated that India's consumer class will grow nearly twelve-fold (from 50 million at present to 583 million) by 2025, with more than 23 million people taking their place among the world's wealthiest citizens. Ranks fourth in the world in terms of size.

Fuelled by the real estate development in the country manifested by the increasing construction of shopping malls, the share of organised retail in total Indian retail trade is projected to grow at 40 per cent per annum. Also, currently valued at $ 7.74 billion in 2023, the Indian luxury retail market is expected to grow to $ 30 billion by 2022, at an estimated growth rate of 25 per cent per annum, making India the twelfth-largest luxury retail market in the world.

Another significant portion of the retail market in India is the rural market that has of late sought to be tapped in various ways by all the partners especially the FMCG sector players.

Rural India accounts for more than 70 per cent of all Indian households and close to two-fifths of the total consumption pie. Robust consumption in the rural economy is one of the key factors that has contributed to India's consistent growth, even during the 2008–09 global economic slowdown. According to industry estimates, India's rural economy constitutes 45 per cent of its GDP. A large number of organisations derive a significant proportion of their overall sales from small cities, which reflects the growing economic importance of India's rural consumer. Retail companies have realised the importance of tapping the rural consumer base. For example, Hindustan Unilever has seen 45% of its sales coming from rural markets.

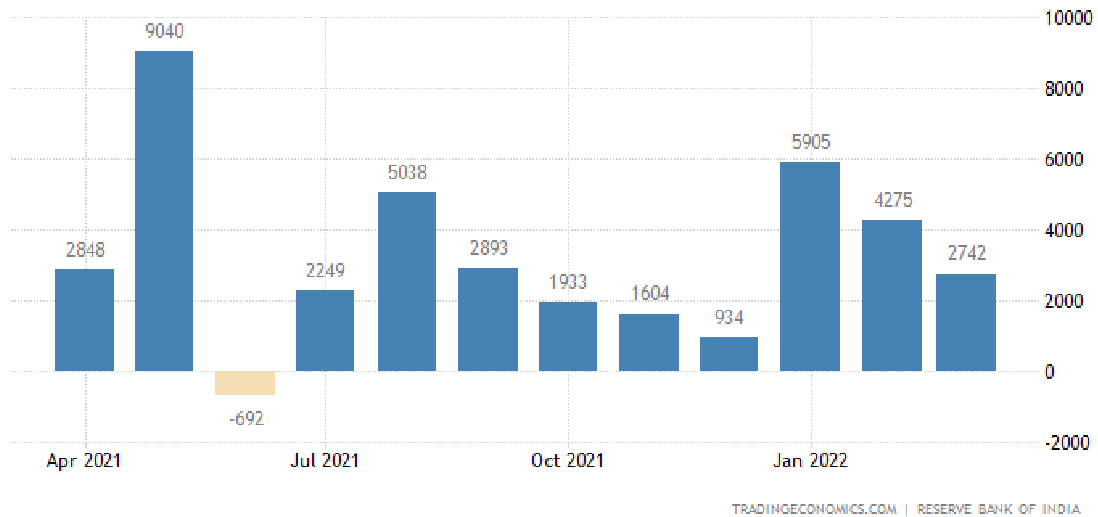
## FOREIGN DIRECT INVESTMENT IN RETAIL

The Government of India, in 2006, allowed FDI up to 51 per cent with prior FIPB approval, in the retail trade of 'Single Brand' products. This is, inter alia, aimed at attracting investments in production and marketing, improving the availability of such goods for the consumer, encouraging increased sourcing of goods from India and enhancing competitiveness of Indian enterprises through access to global design technologies and management practices. This is subject to the following conditions-

- Products to be sold should be of a 'Single Brand' only.
- Products should be sold under the same brand internationally.

- 'Single Brand' product retailing would cover only products, which are branded during manufacturing.

FDI is allowed only with prior approval of the Government of India. The applications would first be processed in the Department of Industrial Policy & Promotion to determine whether the products that are proposed to be sold satisfy the notified guidelines, before being considered by the FIPB for Government approval.




The application should specifically indicate the product/product categories which are proposed to be sold under a 'Single Brand'. Any addition to the product/product categories to be sold under 'Single Brand' would require a fresh approval of the Government. Retailing of sub-brands within the single brand is also permissible; however, the application should specifically state the sub-brands and the product categories. Further, the application should also set out a list of countries in which similar retail stores have been set up for the purpose of retailing products under the single brand and the sub-brands, if applicable.

FDI is not permissible in multi-brand retailing though a discussion paper put by the Government in public domain indicates that there may be a possibility of a liberalization of policy in this regard albeit subject to certain conditions.

Overall category breakdown of retail in India

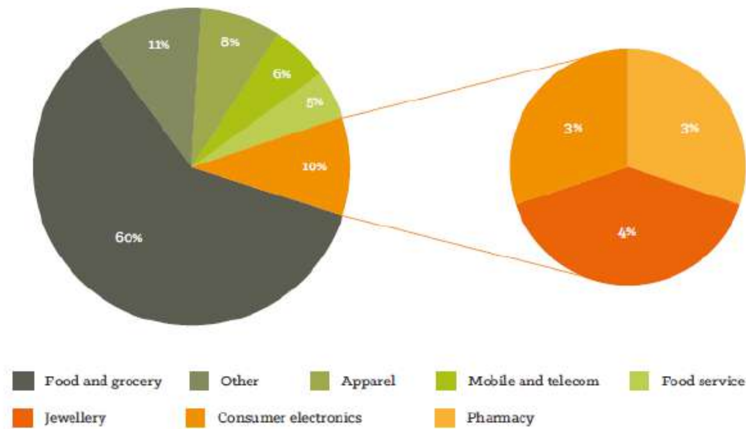



*Figure 8 - Category split of overall Indian retail*[15]

Leading industrial houses in the country and from across the world are investing in the sector. Retailing through non-traditional channels such as fuelling stations, direct selling and home shopping television is on the rise. Traditionally, though, retail trading has been carried out through small neighbourhood shops run by a family or few individuals. Mostly such shops are a source of livelihood for these families and individuals. Therefore, the opening up of the retail sector to foreign investment has not been encouraged until recently.

FDI in retail trading was opened up in 2006 and is still subject to certain conditions as explained above. Accordingly, while several brands have accessed the Indian market through setting up of joint ventures in India with Indian partners, many have opted to make inroads into the Indian retail market pie through alternative strategies such as franchise route or through wholesale trading. Some are also considering setting up manufacturing facilities in India given that India combines the benefits of cheap and abundant labour and the second largest market. These are being discussed below:

**Franchise:**

- Foreign company licenses brand name and technology to local partner against which they receive royalty and fees. With a recent liberalization in policy allowing remittance without any caps towards royalty and fees on the one hand and certain guidelines being notified for wholesale trading (as discussed below), the franchise route is likely to become the preferred option for those who do not want to set up joint ventures in India.
- In case master franchisee is appointed for region or country, he has the right to appoint local franchisees.

- Examples - Tommy Hilfiger, SPAR International, Costa Coffee, Hertz, Radisson, Kentucky Fried Chicken (KFC), Domino's Pizza, T.G.I. Friday's, Ruby Tuesday, Subway, Mothercare and McDonald's.
- In fact, several prominent Indian players have also increased their penetration in the Indian market using this route. Prominent among these are Park Avenue, Narula's, Sagar Ratna, Color Plus, Liberty, Woodlands etc.

**Manufacturing:**

- Foreign company sets up Indian arm for production and manufacturing within India with or without a local partner. The advantage of this route is that there are no restrictions on the retailing of products manufactured in India. This is law since FDI upto 100% under the automatic route is allowed for manufacturing activities and these can be freely sold. FDI upto 100% under the automatic route is permissible for most manufacturing activities.
- Example - Bata.

**Distribution:**

- This can work as a part of the franchise model.
- Foreign company sets up local distribution office.
- Supply products to Indian retailers to sell.
- Also set up franchised outlets for brand.
- Examples - Swarovski, Hugo Boss, etc.

**Wholesale trading:**

- Cash and Carry operations.
- 100 per cent FDI permitted under the automatic route.
- Examples - Metro Cash & Carry, Bharti - Walmart venture.

However, vide Circular 1 of 2010 the Government has issued certain clarifications and guidelines for wholesale cash and carry trading. Cash & Carry Wholesale trading/ Wholesale trading means sale of goods/merchandise to retailers, industrial, commercial, institutional or other professional business users or to other wholesalers and related subordinated service providers. Therefore, wholesale trading is sales for the purpose of trade, business and profession and not sale for the purpose of personal consumption. The type of customers to whom the sale is made is the determining factor for wholesale trading and not the size of volume of sales. Wholesale trading includes resale, processing and thereafter sale, bulk imports with export/ex-bounded warehouse business sales and B2B e-Commerce.

**The Government has set out the following guidelines with respect to Cash & Carry Wholesale trading/Wholesale trading:**

1. For undertaking Wholesale Trading, requisite licenses, registrations/permits, as specified under the relevant Acts Regulations/Rules/Orders of the State Government/Government Body/Government Authority/Local Self-Government Body under that State Government should be obtained.
2. Except in the case of sales to the Government, sales made by the wholesaler would be considered as 'cash & carry wholesale trading/wholesale trading' with valid business customers, only when the sales are made to the following entities, which fulfil any one of the four conditions set out below.
    a. Entities holding sales tax/VAT registration/service tax/excise duty registration; or
    b. Entities holding trade licenses i.e. a license/registration/certificate/membership under Shops and Establishment Act, issued by the Government Authority/ Government Body/Local Self-Government Authority, reflecting that the entity/person holding the license/registration certificate/membership certificate, as the case maybe, is itself/himself/herself engaged in a business involving commercial activity; or
    c. Entities holding permits/license etc. for undertaking retail trade (like tehbazari and similar license for hawkers) for Government Authorities/Local Self Government Bodies; or
    d. Institutions having certificate of incorporation or registration as a society or registration as public trust for their self-consumption.
3. Full records indicating all the details of such sales like name of entity, kind of entity, registration/license/ permit etc. number, amount of sale etc. should be maintained on a day to day basis.
4. Wholesale Trading of goods would be permitted among companies of the same group. However, such wholesale trading to group companies taken together should not exceed 25% of the total turnover of the wholesale venture.
5. Wholesale Trading can be undertaken as per normal business practice, including extending credit facilities subject to applicable regulations.
6. A Wholesale/ Cash & Carry trader cannot open retail shops to sell to the customers directly.

The above guidelines have meant that some prominent players may have to revisit their operating model in which the foreign partner set up an entity for wholesale trading and engaged in sourcing while all sales made by such entity engaged in wholesale trading were made to a group company set up by the Indian partner to engage in retail.

# FOOD PROCESSING LAWS

The law which first dealt with food safety in India was the Prevention of Food Adulteration Act, 1954. It controls and synchronizes the food industry in order to manage it effectively. However due to the changing requirement of the food industry, The Food Safety and Standards Act was introduced in 2006**.** This law superseded and repealed all prior laws. The latest law in this regard is the National Food Security Act, 2013 also known as the Right to Food Act, which relates to the public distribution system and the latest amendment is the Food Safety and Standards (Food Products Standards and Food Additives) Sixth Amendment Regulations, 2021. In July 2021, Food Safety and Standard Authority of India (FSSAI) committed to ensure food safety for a healthy future.

**THE NATIONAL FOOD SECURITY ACT, 2013 (NFSA)**

The enactment of the Act on July 5, 2013 marks a remarkable shift in the approach to food security from *welfare to rights-based approach*. The Act legally entitles upto 75% of the rural population and 50% of the urban population to receive subsidized food grains under Targeted Public Distribution System. About two third's of the population therefore is covered under the Act to receive highly subsidized food grains.

Under Section 39(1) of NFSA, the Central Government may, in consultation with the State Governments and by notification, make rules to carry out the provisions of the Act. The following Rules have been notified by the Central Government:

a. Provisioning of Funds to State Governments for Short Supply of Food grains Rules, 2014.
b. Food Security Allowance Rules, 2015.
c. Food security (assistance to State Government Rules) 2015.
d. Cash Transfer of Food Subsidy Rules, 2015.
e. Notification of WCD and HRD.

**THE FOOD SAFETY AND STANDARDS ACT, 2006**

**Regulating Authorities-**

- Food Safety and Standard Authority of India (FSSAI)
- State Food Safety Authority (SFSA)

The FSSAI was established having the object of laying down science-based standards for articles of food to regulate their manufacture, storage, distribution, sale and import with the sole target of providing with save and hygienic food for human consumption. It was made possible after the addition of "Adulteration of foodstuff and other goods" to the concurrent list in the Indian Constitution.

The Act gives statutory powers to the Food Safety and Standards Authority of India (FSSAI) to regulate persons engaged in manufacture, marketing, processing, handling, transportation, import and sale of food. The statute abides by the international regulations and practices to envisage a framework which has a single widow guide to the people engaged in the food processing related industry in India.

**Key features:-**

- ***Packaging and Labeling:*** The Act and Regulations issued within its ambit regulate various facets of such packaging and labeling.
- ***Signage and Customer Notice*: ** Section 24 provides that, no one shall engage himself in any unfair trade practice/malpractice for the purpose of sale, supply, use and consumption of articles of consumption or adopt any deceptive trade practice of making any statement whether orally or in writing which falsely represents that food is of a quality, quantity, standard or grade consumption; make false or deceptive representation of the usefulness or need for the product or gives public any guarantee of the efficacy that is not based on an adequate or scientific justification.
- ***Licensing and Health and Sanitary Permits:*** Under the license and registration regulation, the food business operators in the country are required to be compulsorily registered or licensed as per the regulations under Food Safety and Standards Act. No individual will begin any food business except if a legitimate permit is moved by the food administrator.
- Rules, regulations and controlling of imported food in the country.
- Provision for food recall.
- Surveillance of such matters.
- Enforcement structure and organizational structure of FSSAI.
- Envisages large network of food labs.
- Provides for Justice Dispensation system for fast-track disposal of cases like Food Safety Appellate Tribunal and Special Courts.
- Balancing of domestic standards with the international food standard norms.
- Covering Health Foods, supplements, nutraceuticals

**Policy framework**

Automatic approval for foreign equity up to 100 percent is available for most of the processed food items excepting those reserved for small-scale sector, which are subject to certain conditions. Most of the processed food items have been exempted from the purview of licensing under the Industries (Development & Regulation) Act, 1951. However, alcoholic beverages are subject to licensing requirements by the excise departments of the respective states.

**Incentives**

In order to promote Investment in the food-processing sector, several policy initiatives have been taken in recent years. The liberalized policy regime, with specific incentives for high priority food processing sector, provides a very conducive environment for investments and exports of food items.

100% export-oriented agro-product units are permitted to sell up to 50% in domestic market. No import duty is payable on capital goods and raw material for 100% export-oriented units. Exemption on earnings from export activities from corporate taxes is also available. Income

Tax rebate is allowed for 100% of profits for 5 years and 25% of profits for the next 5 years, for new industries to process, preserve and package fruits and vegetables. Since 1999, food processing industry has been declared a priority sector for lending by banks. NABARD has created a refinancing window with a corpus of $204.92 million for agro processing infrastructure and market development.

**FDI in the Food Processing**: 100% is permissible under the automatic route in food processing industries. 100% FDI is allowed subject to approval from the Government for trading, including through e-commerce in respect of food products manufactured or produced in India.

**Government initiatives under Atma-nirbhar Bharat for food processing laws-**

- Mega food parks
- PMFME – Pradhan Mantri Formalization of Micro Food Processing Enterprises Scheme
- Operation Green (TOP to TOTAL)
- Building the infrastructure of Cold Chain in Rural India to preserve crops of the farmers.

**Beverages**

Goldstein Market Intelligence analyzes the forecast of India's packaged non-alcoholic beverages market to grow at a CAGR of 16.2% during the forecast period 2017-2030. Further, the market is anticipated to reach USD 20.4 billion by the end of the forecast period as more people are trading up to packaged drinks. The fruit-drinks category is one of the fastest growing in the beverages market. Sports and energy drinks, which currently have a low penetration in the Indian market, have sufficient potential to grow. They are considered a socially-acceptable alternative to alcoholic beverages.

The market for alcoholic beverages has been growing consistently. Approaching the milestone of one million cases a year, the Indian wine market has also recorded an impressive growth rate. Global wine majors have already set up shop in India to tap the vast potential. Out of the total consumption of grape wine in India, around 80% wine consumption is from the major cities.

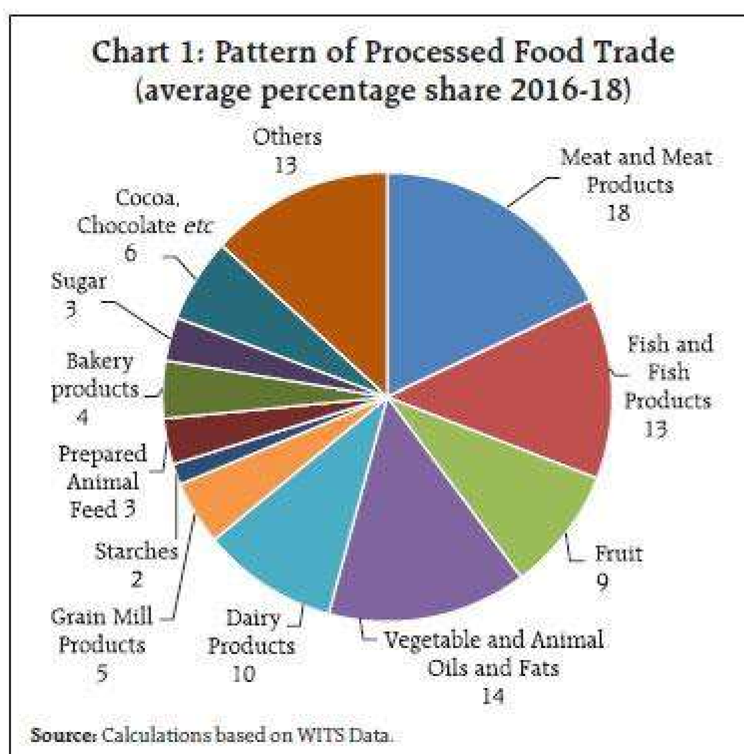
## OPPORTUNITIES:

- India's population of about 1.25 billion with a population growth rate of over 1.0% per annum makes India a large and attractive market for food products. Its 350 million strong urban middle class with its changing food habits is indicative of the huge potential for agriculture products and processed food in the country.

- Income levels across population segments have been growing in India. The increase in the income levels of the Indian population and the emergence of the consumer class that has higher propensity to spend, offers great growth opportunities for companies across various sectors.

- A large proportion of the Indian population is relatively young - in the age group of 20-59 years. This group is also high in consumption and therefore, this trend is expected to provide a further boost to the growth of consumption in India.

- Urban consumers in India have become more exposed to western lifestyles through overseas travel and presence of foreign media in India. Increase in the population of working women and increasing prevalence of nuclear double income families, especially in urban areas, are other trends shaping lifestyles. The food-processing sector has been impacted by these trends, as there has been an increase in the demand for processed, ready-to-cook and ready-to-eat food.
- The Government has introduced several schemes to provide financial assistance for setting up and modernizing of food processing units, creation of infrastructure, support for research and development and human resource development in addition to other promotional measures to encourage the growth of the processed food sector.
- Rapid urbanization, increased literacy, changing life-style, more women in work force and rising per capita income have all caused rapid growth and changes in the demand pattern, leading to several new opportunities for processed food.
- The relatively low cost but skilled workforce available in the country coupled with an easy and low-cost availability of vast sources of raw materials, make India a very attractive place for setting up of low-cost production units for domestic and export markets.




The food processing sector in India is amongst the most attractive and rapidly growing sectors in India for both foreign and domestic investors. The national policy on food processing aims at increasing the level of food processing by 25% by the year 2025. Further, according to consultancy firm McKinsey & Co., the retail food sector in India is likely to grow from around $70 billion in 2008 to $150 billion by 2025.

Despite its vast raw material base, India accounts for very less of the international food trade. While India has abundant food supply, the processed food industry is still in its nascent stages. Despite being the powerhouse of global food, as per WTO's Trade Statistics, share of India's agricultural exports and imports in the world agriculture trade in 2017 was 2.27% and 1.90%, respectively. India's agri-imports were worth Rs.1.51 lakh crores in 2019-20, and Rs.1.44 lakh crores in 2020-21, up to February 28, 2021. Even during the difficult time of pandemic lockdown, India took care to not to disturb the world food supply chain and continued to export and India's agriculture exports increased by 7 times and imports by 8 times, in 15 years. The food processing sector contributes 12.8 per cent to the Indian GDP.

- Accounts for 13% of exports and 6% of industrial investments
- Market size of USD 1.3 billion
- Expected rise of 8% to 20% by 2030
- Pradhan Mantri Kisan Sampada Yojana (PMKSY)
- Product linked incentive scheme
- By 2025 the Indian Food Processing market is estimated to reach USD 535 Billion and growing at CAGR of 15.2%.

**NOTES**

FoxMandal was established in 1896 with Mr. J. K. Fox and Mr. G. C. Mandal, joining together to establish one of the first Indo-British partnerships. FoxMandal boasting of an unparalleled legal tradition of being the legal advisor for the East India Company, the Government of India and the successive Governments of the Presidency of Bombay.

The firm has offices in India, UK and Bangladesh including Bangalore, Chennai, Dhaka, Hyderabad, Kolkata, London, Mumbai, New Delhi, Noida and Surat. FM is a well-reputed full service law firm presenting an appropriate mix of the necessary legal expertise, industry specialization and commercial acumen. Our offices situated in all the important regions in India ensure that our clients receive cost-effective, value added and fully integrated services.

Over the years, FoxMandal has been ranked as the top firm in India by various international journals. **Mr. Som Mandal is recipient of Economic Times Excellence in Leadership Award in August 2022**. In the **year 2020 "Legal Comprehensive"** recognised **Mr. Som Mandal** amongst one of the best **"TOP 100 Lawyers in the world".** In the **year 2019** FoxMandal was awarded "**Times Power Icons**" award for exemplary contribution in the field of **"Global Legal Service".** In 2018 AI (Acquisition International) awarded FoxMandal Global Excellence Award **"National Law firm of the year 2018-India"**. In 2018 ICFM (Inter Continental Finance & Law Magazine nominated FoxMandal as one of the top 100 leading firms in the world. FM was also acknowledged by "**ACQ5 Law Awards 2017"** for **"National Law Firm of the Year"** for work done across all areas. FM was also acknowledged by "**Who's Who Legal (WWL) 2016**" and "**Mr. Som Mandal was featured as a top legal consultant in Energy and Mining sector in India**". FM was recognized by "**Legal 500 magazine 2015 edition**" for work done across all areas. FM was awarded the "**India Law Firm Awards 2014"** for the best **Corporate Commercial Law Firm** by "**India Business Law Journal (IBLJ)**". FM was featured in **"The lawyers - 2014 Asia Pacific 150"** amongst **"Top 10 Indian law firms"**. FM won "**Acquisition International M&A award 2014"**. FM was awarded the "**Disinvestment law firm of the year – India"** by **Intercontinental finance magazine (ICFM)**, 2014. FM won the **"Acquisition international Dispute Resolution Firm of the Year Award 2013".** The firm won **"Intercontinental Finance 2012 Global Award"**. FM was awarded the best **"Dispute Resolution Law Firm 2012 Finance Monthly Law Awards"**. FM won **"The Best National Law Firm, 2008"** award by the **International Legal Alliance Summit & Awards, 2008** at Paris and distinguished during the International Legal Awards Ceremony amongst the leading law firms from 22 countries. We have been awarded the **"Employer of Choice, 2008"**, a response among over 15,000 lawyers region-wide by **ALB** (**Asian Legal Business**). FoxMandal has been recognized with **"Client Choice Award, 2007**" in India from more than 1,300 individual assessments received from corporate counsel worldwide by **ILO (International Law Office), the Official Partner to the International Bar Association,** for FM stands apart for the excellent client care and the quality of service. It has been awarded for the law firms' ability to add real value to their clients' business above and beyond the other players in the market. Amongst others, we have been adjudged as **"The Best Law Firm of the Year"** for India in 2006 by **IFLR** (International Financial Law Review), a Euromoney publication.

The firm's strength is its team of experienced and trained lawyers who treasure the value of diligence and knowledge as well as creativity and innovation in addressing their client's needs. FM aims to offer to its clients, legal advice that meets the clients' needs and expectations, and in this it has been hugely successful as is evidenced by the firm's ratings by various international journals.

For further information on the firm and the various practice areas, visit our website: www.foxmandal.com