National Library of Canada
Bibliothèque nationale du Canada

Canadian Theses Service
Services des thèses canadiennes

Ottawa, Canada
K1A 0N4

CANADIAN THESES

THÈSES CANADIENNES

NOTICE

The quality of this microfiche is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Previously copyrighted materials (journal articles, published tests, etc.) are not filmed.

Reproduction in full or in part of this film is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30.

AVIS

La qualité de cette microfiche dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

Les documents qui font déjà l'objet d'un droit d'auteur (articles de revue, examens publiés, etc.) ne sont pas microfilmés.

La reproduction, même partielle, de ce microfilm est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30.

THIS DISSERTATION HAS BEEN MICROFILMED EXACTLY AS RECEIVED

LA THÈSE A ÉTÉ MICROFILMÉE TELLE QUE NOUS L'AVONS REÇUE

NL-339 (r. 86/06)

Canada

THE UNIVERSITY OF ALBERTA

REGULATION OF FOREIGN INVESTMENT IN INDIA

BY

NAVEEN KUMAR MAHAMWAL

A THESIS

SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS

FACULTY OF LAW

EDMONTON, ALBERTA
SPRING 1987

Permission has been granted to the National Library of Canada to microfilm this thesis and to lend or sell copies of the film.

The author (copyright owner) has reserved other publication rights, and neither the thesis nor extensive extracts from it may be printed or otherwise reproduced without his/her written permission.

L'autorisation a été accordée à la Bibliothèque nationale du Canada de microfilmer cette thèse et de prêter ou de vendre des exemplaires du film.

L'auteur (titulaire du droit d'auteur) se réserve les autres droits de publication; ni la thèse ni de longs extraits de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation écrite.

ISBN 0-315-37844-1

THE UNIVERSITY OF ALBERTA

RELEASE FORM

Name of Author Naveen Kumar Mahamwal

Title of Thesis Regulation of Foreign Investment in India

Degree for which Thesis was presented MASTERS OF LAWS

YEAR THIS DEGREE GRANTED Spring 1987

Permission is hereby granted to THE UNIVERSITY OF ALBERTA LIBRARY to reproduce single copies of this thesis and to lend or sell such copies for private, scholarly or scientific research purposes only.

The author reserves other publication rights, and neither the thesis nor extensive extracts from it may be printed or otherwise reproduced without the author's written permission.

SIGNED N.K. Mahamwal

PERMANENT ADDRESS:

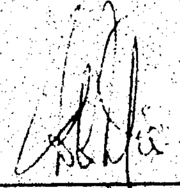
Munsiff & Judicial Magistrate,
Class-I
State of Rajasthan
c/o Raj. High Court Jodhpur
Jodhpur (Raj.)
India

DATED Nov 21, 1986

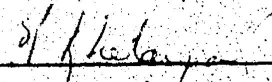
THE UNIVERSITY OF ALBERTA

FACULTY OF GRADUATE STUDIES AND RESEARCH

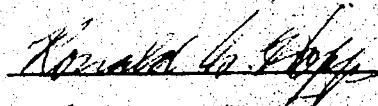
The undersigned certify that they have read and recommend to the Faculty of Graduate Studies and Research, for acceptance, a thesis entitled Regulation of Foreign Investment in India submitted by Naveen Kumar Mahamwal in partial fulfillment of the requirements for the degree of MASTERS OF LAWS.

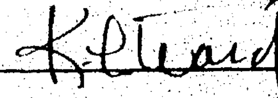


Supervisor



Co-supervisor





Date November 17, 1986

ABSTRACT

India is the seventh largest country with the second highest population in the world. The country's economy today is in a process of rapid development. During the last three decades, the country has made considerable progress in practically every field. This study has been undertaken to examine foreign investment policy of India and discuss various enactments in so far as they relate to the regulation of foreign investments.

A country's policy towards foreign investment depends largely on its natural and human resources, economic and political systems and level of technological development. India inherited a colonial economy with an impoverished and narrow industrial base. After independence in 1947, Five Year Plans were formulated and implemented. During the first three Five Year Plans (1951-66), the country made rapid strides in technological development and the government's approach became increasingly selective towards foreign investment. Besides, the government's policy has always been one of economic and technological self-reliance and self-sufficiency. In recent years, the Government of India has liberalized foreign investment policy with a view to update its technological base and promote export-oriented and import substitution ventures. Presently, India looks upon foreign investment as a vehicle for the transfer of technology.

Although foreign investment does not fall into the category of top priorities of India, its importance for the country's economic and industrial development can not be denied. The country should so frame its foreign investment policy, that it attracts beneficial foreign

investments and closes the door for investments that adversely affect the country's economy, self-sufficiency, development of indigenous technology and growth of local enterprises.

Current foreign investment policy limits foreign investors to minority equity participation, generally, but majority foreign equity participation is also permitted to the companies engaged in priority sector production, export-oriented production or requiring sophisticated technology in their operations. Majority foreign equity has a number of disadvantages like foreign control over the project and market, technological dependence, loss of economic independence, reflection of foreign laws, economic and industrial priorities and import of foreign cultural values. Therefore, the government should not permit majority foreign equity to foreign investors unless the importation of that particular technology is very essential in the national interest and no other source exists for obtaining the technology.

As a result of the government's selective approach regarding technical and financial collaboration, the flow of technology has stopped in a number of areas and India is lagging behind in technology in those areas. The government should open more fields for technical collaborations, of course, with minority equity participation, in order to allow continuous flow of technology.

PREFACE

Regulation of foreign investment is one of the most complicated and debatable issues in [illegible] world. There can be no uniform foreign investment policy which is good for all the [illegible] the world. For example, the U.S.A. and Japan have two opposite approaches toward foreign investment but the economy of both the countries is flourishing. Moreover, a country's foreign investment policy continues to change from time to time, according to its economic situation, political environment, priorities, technological and industrial development.

The central concern of this study is to examine the policy and legal and procedural aspects of foreign investment in India, an important country in the third world. An endeavour has been made to discuss the foreign investment policy of the country from an economic as well as technological development point of view. In addition to this, an attempt has been made to study international joint-ventures in reference to India. The study consists of 6 chapters. Chapter I is introductory; Chapter II relates to foreign investment and collaboration policy; Chapter III concerns the legal aspect of foreign investment; Chapter IV deals with procedure for foreign investment; Chapter V deals with international joint-ventures; and the final chapter consists of conclusions and recommendations for Indian foreign investment policy.

I must acknowledge with a deep sense of gratitude, my indebtedness to Dr. S.P. Khetarpal and Professor Walter Mis, Faculty of Law, University of Alberta for their able guidance and supervision in writing this thesis. It would not be an exaggeration to say that, but for their

enduring encouragement it would not have been possible for me to complete this study. Not only did they take great pains to go through the manuscripts minutely and precisely, but provided guidance and encouragement at every step from the beginning to the end. If this be the least good, or there be any flint of fire in these imperfect pages, it is all due to their guidance, supervision and inspiration and praise be to them.

I must express my heartiest and utmost thanks to Dr. Kenneth Ward for his having consented to act as the external examiner.

I must not forget to take the opportunity of expressing my gratitude to Professor R. G. Hopp, Faculty of Law, University of Alberta for his serving on the examination committee.

Not formally, but earnestly, I am thankful to Professor M. Litman, Director, Graduate Studies, Faculty of Law and Professor L.N. Klar, former Director, Graduate Studies, Faculty of Law for their co-operation in pursuing my studies at the University of Alberta.

I am also grateful to Mr. Niel A. Campbell, Librarian, Law Library, University of Alberta and his staff for their help in getting books and journals from the faculty library.

I would be failing in my duty if I did not express my thanks to Mr. Sunder Kumar, Consulate, Indian High Commission Ottawa for his co-operation in providing relevant books and documents from his office.

Last but not least, I take this opportunity of expressing my gratitude to Mrs. Hanna Roppelt who helped me by typing out these pages.

Naveen Mahamwal

TABLE OF CONTENTS

CHAPTER PAGE

I. INTRODUCTION 1
Footnotes Chapter 1 6

II. FOREIGN INVESTMENT AND COLLABORATION POLICY 7

A. DEVELOPMENT OF FOREIGN INVESTMENT POLICY 9

1. Early Developments (Pre-1961 situation) 9
2. Developments Betwee 1961 to 1969 10
3. Developments between 1970 to 1983 13
(a) Remittances for Dividend and Technical collaboration 14
(b) Adverse Balance of Payments 14
(c) Foreign Exchange Guidelines of 1973. 15
(d) 1976 Amendmends to Foreign Exchange Guidelines 16
(e) Industrial Policy Statement of 1977. 17
(f) Prohibited Activities to Foreign Capital 18
(g) Industrial Policy Statement of 1980 . 19
(h) Technology Policy 1983 20
4. Recent Policy Liberalizations 20

B. PRESENT FOREIGN INVESTMENT POLICY 22

1. Equity Participation 23
2. Effect of Majority Foreign Equity Limits 24
3. Preferred Industries for Foreign Investment.. 31
4. Industries in Free Trade Zones 32
5. Investment from Oil Exporting Developing (OED) countries 33
6. Investment by Non-residents of Indian Origin 34
(a) Investment in Indian Banks 34
(i) Ordinary Non-Resident Account 34
(ii) Non-resident External Account 34
(b) Investment in Government Securities. Units, etc. 35
(c) Investment in Industry 35
(i) Without Right of Repatriation 35
(ii) With Right of Repatriation .. 37
(d) Investment in Immovable Property ... 39
(e) Special Facilities Available to Non-residents of Indian Origin....... 40
(f) Tax Concessions to Non-resident Investors of Indian Origin 41

CHAPTER	PAGE

C. STATISTICAL ASPECT OF FOREIGN INVESTMENT 42
Footnotes Chapter II 47

III. LEGAL ASPECTS OF FOREIGN INVESTMENT 52

A. THE COMPANIES ACT, 1956 52
1. Branches of Foreign Companies 52
2. Incorporation of Indian Company 55
(a) Types of Companies 55
(b) Procedure for Incorporation 56
(i) Preparation of Memorandum of Association 56
(ii) Preparation of Articles of Association 57
(iii) Registration of the Company 58

B. THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951 58

C. THE INDUSTRIAL POLICY RESOLUTION, 1956 60

D. THE FOREIGN EXCHANGE REGULATION ACT, 1973 61

E. THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969............................ 65

F. INCOME TAC ACT, 1961 68
1. Corporate Taxation 68
(a) Rates of Income Tax on Companies .. 69
(b) Deductions 69
(c) Tax Incentives 72
(i) Tax Holidays 72
(ii) Tax Concessions in Backward Areas 72
(iii) Tax Concessions for small Scale Industrial Undertakings Set Up in Rural Areas 73
(iv) Tax Holidays for New Industrial Undertakings in Free Trade Zones . 73
(v) Investment Allowance 73
(vi) Deduction for Export Turnover 74
(vii) Tax-exemption for Foreign Technicians 74
2. Foreign Investment and Income Tax 74
(a) Taxation of World-wide Earnings ... 75
(b) High Tax Rates 76

G. THE COMPANIES (PROFITS) SURTAX ACT, 1964 79
Footnotes Chapter III 81

CHAPTER PAGE

IV. FOREIGN INVESTMENT APPROVALS AND APPROVAL PROCEDURE 84

A. APPROVALS 84

B. APROVAL PROCEDURE 84
Footnotes Chapter IV 91

V. INTERNATIONAL JOINT-VENTURES AND INDIA 92

A. OBJECTIVES OF INTERNATIONAL JOINT-VENTURES 93

B. IMPORTANCE OF TRANSFER OF TECHNOLOGY 94

C. INDIAN EXPERIENCE ON TRANSFER OF TECHNOLOGY 98

D. INDIAN JOINT VENTURES 99
1. Foreign Joint Ventures in India 99
2. Indian Joint-Ventures Abroad 100
3. Third Country Joint-Ventures 101

E. NON-RESIDENTS OF INDIAN ORIGIN AND JOINT-VENTURES ... 102
Footnotes Chapter V 104

VI. CONCLUSIONS 107

A. LEGISLATION 109

B. GENERAL POLICY 110

C. MAJORITY FOREIGN EQUITY 111

D. EFFECT OF SELECTIVE APPROACH TOWARDS FOREIGN
COLLABORATION AND TRANSFER OF TECHNOLOGY 112

E. JAPANESE INVESTMENT IN INDIA AND ITS IMPLICATIONS .. 114

F. COMPANY LAW 117

G. ANTITRUST LAW 117

H. INCOME TAX LAW 118

I. APPROVAL PROCEDURE 120

J. RECOMMENDATIONS 121
Footnotes Chapter VI 124

BIBLIOGRAPHY 125

APPENDIX I Foreign Exchange Guidelines of 1973 128

APPENDIX II Priority Industries 135

CHAPTER		PAGE
APPENDIX III	Clarification and Amplification of Guidelines issued for Administering Section 29	139
APPENDIX IV	Illustrative List of Industries where no foreign collaboration, financial or technical is considered necessary	142
APPENDIX V	Illustrative List of Products which would be Eligible for Special Facilities on the ground of 100% Exports	144
APPENDIX VI	LIST OF INDUSTRIES INCLUDED IN THE 1ST SCHEDULE TO THE INDUSTRIES (Development and Regulation) Act, 1951	146
APPENDIX VII	Conditions for Exemption from Licensing in respect of Units with Investment in Fixed Assets not exceeding Rs. 50 million ...	152
APPENDIX VIII	LIST OF ITEMS RESERVED FOR PRODUCTION IN SMALL SCALE SECTOR	153
APPENDIX IX	LIST OF INDUSTRIES GOVERNED BY SPECIAL REGULATIONS	180
APPENDIX X	LIST OF INDUSTRIES RESERVED FOR PUBLIC SECTOR	183
APPENDIX XI	LIST OF INDUSTRIES OPEN TO PUBLIC AND PRIVATE SECTORS	184
APPENDIX XII	NUMBER OF FOREIGN COLLABORATIONS APPROVED BY THE GOVERNMENT OF INDIA DURING THE PERIOD 1977-1983	185
APPENDIX XIII	Foreign collaborations sanctioned in India from 1957-1984	186

LIST OF TABLES

Table	Description	Page
I	Foreign Collaborations and Investment in India Approvals	43
II	Quantum of Foreign Investment Approvals during 1983	45
III	Non-resident Capital Inflow	46
IV	Corporate Tax Rates 1985 - 86	70
V	Corporate Tax Rates 1986 - 87	71

LIST OF CHARTS

Chart	Description	Page
	Present set-up of the SIA	87

CHAPTER I

INTRODUCTION

India occupies an important place on the world's industrial map. The country has made rapid economic progress since its independence in 1947. India inherited a colonial economy in which whatever development took place was designed to enable colonial powers to take away India's raw material at throwaway prices and sell the end products finished in England at very high prices. The country had a very bad economic situation at the time of Independence.[1] There was no food, no electricity, no roads. India had to import simple manufactured articles like pens, pencils, needles, cloth, pins, etc. to say nothing of automobiles and other sophisticated machinery. But today's India manufactures highly sophisticated aircrafts, builds its own atomic reactors and erects steel plants abroad.[2] No field of science and technology has been left untouched - be it nuclear technology, space technology or antarctica expeditions. Presently, India is the world's eighth largest producer of industrial goods,[3] with the fifteenth largest G.N.P.[4] and is the world's number one manufacturer of textiles and textile machinery.[5]

The purpose of this study is to examine the foreign investment policy of India and to discuss various enactments in so far as they relate to regulate foreign investment. An attempt has also been made to study future effects of the policy on economic and industrial development of the country.

The major areas of concern in regard to regulation of foreign investment are: (a) sharing of the ownership and control of resources

between foreign enterprises and host governments; (b) regulation of the activities of foreign enterprises. It may be recalled that the Group of the Eminent Persons[6] in their report to the United Nations has called upon host countries to develop effective regulatory mechanisms in both these areas in order to ensure that foreign enterprises would conform to national development plans.

The foreign investment area can be looked at from a cost-benefit viewpoint. The host country has something the investor needs dearly, that of easy access to domestic markets, access to cheap labour, raw materials etc. The host country would like the added employment, foreign capital inflow and widened solid industrial base, with all of its inherent spinoffs. The control a foreign country exercises over its foreign investment allows it to weigh these relative needs and to bargain for concessions and trade-offs. The host government will throw in a tax break or subsidy and in turn will demand export requirements, local content requirements, location of the plant in a specified area, local equity participation, etc. In most situations it is the host country which has the upper hand (unless it is an extremely poor country unable to meet its basic needs) and may extract concessions from investors for allowing them to access the local markets and tap domestic resources. The problem arises in balancing a country's needs for foreign investment to spur employment and industrialization, and its desire to control ownership of its resources and to ensure that nationals play a leading role in directing and controlling its economy.

From the above, it is clear that all countries look more favourably upon foreign investments which provide an opportunity for domestic equity participation, export promotion, technology transfer and local employment.

Many countries have "local equity participation" as a virtual necessity before foreign investment proposals will be approved. Greece for example, requires government participation in large projects where the investment exceeds 400 m drachmas ($4m Cdn app.)[7]; Italy and the United Kingdom will sometimes tie access to domestic capital markets to local equity participation.[8] India allows foreign equity up to a maximum of 40% unless the industry is wholly export oriented or involves sophisticated technology not available in the country.[9] Japan considers permitting joint ventures where local equity is in majority.[10]

Most countries exert some degree of foreign investment control. Throughout the world the varying degrees of control range from very strict control, as in Japan and Mexico, to an almost totally open system as in the United States or the Netherlands.[11] The reasoning behind these investment controls is not uniform. Generally they can be traced back to social and/or cultural backgrounds, political strategy, and are very rarely primarily the result of the host country's overall economic performance. Indeed, it is often noted that there is very little correlation between national economic performance and the degree of liberalism or restrictionism pursued by a given country.[12] Examples in this regard are the United States and Japan, two countries whose economies are performing well and yet are at opposite ends of the foreign investment control policies.

Most countries, at the very least, impose controls to protect key sectors from being controlled by foreigners. The areas almost universally protected are: natural resources, culturally sensitive areas such as publishing, radio, television, transportation, national defence related (and support) industries, banking, insurance and public

utilities.[13] Other countries have as a general political philosophy that foreigners are not to be permitted to control "any" significant segment of the nation's economy.[14] All controls are designed to restrict foreign investment in part (to varying degrees), and serve as a tool for directing foreign investment into certain key areas. This may be based on the host country's desire to promote certain industries, to develop certain underdeveloped geographic areas of the country or to complement the domestic government's policy towards certain planned growth areas of the economy or national priorities.

Different countries adopt different techniques for restricting foreign investments depending upon its economic, social and political structure and the need of the host country. One technique is the imposition of domestic borrowing restrictions.[15] This compels investment to be financed from abroad only and may be applied to all foreign investments or only to foreign takeover of domestic enterprises. Such a restriction helps in strengthening the balance of payments and is an indirect method of controlling foreign direct investment. Italy uses such a restriction and essentially prohibits domestic financing of non-productive direct investment (i.e. takeover of existing companies) yet permits local financing for productive (new business) foreign investments.[16]

Another method of excluding foreign investments has been the restrictions, through the Articles of Association of a company, of the right of non-nationals to acquire shares in a company.[17] This method is excellent for preventing takeovers and serves to encourage foreign investments to take the shape of mergers or joint-ventures. Variations of this are seen through the use of different classes of shares, whereby

a majority of voting shares would have to remain in the hands of nationals or where foreigners are restricted to a certain type of shares (i.e. non-voting). Further control may be imposed through the requirement of a minimum number of nationals on the Board of Directors of a foreign company (e.g. Scandinavian countries, Japan).[18] Australia and Britain also prefer to see the majority of their nationals on the Board of Directors.

An important method of restricting foreign investment is to set a requirement of a minimum local equity participation, so that the control remains in the national hands. Specifying the fields of investment and nature of industries for foreign investors is another way of restricting foreign investment.

An endeavour has been made to examine various aspects of foreign investments in India and international joint-ventures in respect to India during the course of this study. The study is comprised of 6 Chapters.

Chapter I deals with the nature of the subject, control of foreign investment and various techniques adopted for restricting foreign investments.

Chapter II deals with foreign investment and collaboration policy.

Chapter III examines various legal aspects of foreign investment in India.

Chapter IV describes the approvals and approval procedure for foreign investments.

Chapter V deals with international joint-ventures, especially in relation to India.

Chapter VI consists of conclusions of this study and includes some recommendations.

Footnotes - Chapter I

[1] High Commission of India, Ottawa, India at a Glance (1985), at 3.

[2] Id.

[3] Id.

[4] Department of Economics and Statistics, Tata Services Ltd., Statistical Outline of India (1984), at 14.

[5] Publication Divisions, Ministry of Information and Broadcasting. Government of India, India 1984, at 357.

[6] U.N. Doc. E/5500/Rev. 1st/ESA/6 (1974), The Impact of Multinational Corporations on Development and on International Relations., at 33, 59 to 62.

[7] P. Artisien, P. Buckley, "Investment legislations in Greece, Portugal and Spain" (1984), 17 J. World Trade Law. 513, at 516.

[8] Foreign Direct Investment in Canada - Gray Report (1972), Government of Canada Publication, at 330.

[9] K.V. Iyer & L.R. Kumar, Foreign Collaboration in Industry (1984), Vol. II at ECR 21-30; Guidelines for Administering Section 29 of Foreign Exchange Regulation Act, 1973, Dt. Dec. 20, 1973; Clarification and Amplification of Guidelines issued for Administering Section 29 of FERA, 1973, Dt. April 16, 1976.

[10] P. Reynolds, "Foreign Investment in Japan" (1983), 18 Texas International Law Journal 175, at 190.

[11] Supra, note 8, at 330.

[12] Id., at 331.

[13] Id., at 335.

[14] Supra, note 10, at 189.

[15] Supra, note 8, at 332.

[16] Id., at 334.

[17] Id., at 333.

[18] Id., at 336.

CHAPTER II

FOREIGN INVESTMENT AND COLLABORATION POLICY

A country's foreign investment policy largely depends on its natural and human resources, economic system and technological developments. India is a fast developing country on the world map. The country is rich in natural resources and manpower[1] and as mentioned in Chapter I, has made considerable economic and industrial progress since its independence. Presently, India ranks among the world's top ten industrial powers,[2] with the fourteenth largest G.D.P.,[3] a relatively solid industrial base, and a large pool of skilled manpower has been created. India has the world's third largest pool of scientific and technical personnel.[4] In addition, there is a large reservoir of skilled and unskilled labour. As a result the country now manufactures a variety of finished products for domestic use as well as export. Presently, foreign investment is allowed where it would lead to a transfer of technology needed by the country and in export-oriented ventures.[5] Government's approach to foreign investment is becoming increasingly selective due to the technological advancements made within the country. The maximum foreign equity ceiling varies from 40% to 100% depending upon the nature of industry, export of products and availability of technical knowhow in the country.

The Industrical Policy Resolution,1948,[6] modified in 1956,[7] has provided the basis for the process of industrialization in India. The Industries (Development and Regulation) Act, 1951,[8] has been the major legal instrument through which this policy has been implemented. Under this Act, a licence is necessary for: (a) the establishment of new industries; (b) taking up the manufacture of new articles in an

existing industrial undertaking; and (c) substantially expanding the capacity of a manufacturing undertaking in an existing line of manufacture. Every entrepreneur - Indian or foreign - has to get a license under this Act. The Act also confers upon the Central Government broad powers over registered and licensed industrial undertakings: (a) to make investigations into their operations and to issue directions for changes; (b) for management and change of the industries; and (c) to control the supply, distribution and prices of their products. The Central Government has so far hardly invoked these powers vis-a-vis foreign enterprises except in the context of the price control of certain items which happen to be produced by foreign manufacturers in addition to Indian manufacturers. As for the general regulation of the foreign enterprises operating in India, the Industrial Policy Resolution, 1948, has envisaged a comprehensive piece of legislation on the subject. But no such law was enacted. Presently, all the major regulatory enactments are generally applicable to all enterprises whether Indian or foreign, although some of them contain certain special provisions concerning foreign enterprises.

India welcomes foreign investment and technology in those areas where such investment is required in the national interest. The need for foreign technology is dictated by the country's requirement to update its technological base. Technology may be accompanied by foreign equity participation though there has been a marked preference for the outright purchase of technology. The considerations determining the form of foreign investment are dependent on the status of the particular industry in the country, the need for the future growth of the industry, the nature of the technology required, and the benefits which can be derived from foreign participation in an Indian concern. In recent

years, the Indian Government has been promoting foreign collaborations as a means of increasing the manufacture of export oriented products.

A. DEVELOPMENT OF FOREIGN INVESTMENT POLICY

Foreign corporate investment in India has taken three forms: (i) branches (ii) subsidiaries and (iii) others with minority participation. Branches, which are referred to as "foreign companies" in section 591 of the Companies Act, 1956,[9] are places of business of companies incorporated elsewhere than in India. According to the Reserve Bank of India classification, a subsidiary is an Indian Company wherein a single foreign company is holding more than 50 percent of its equity capital and minority participation occurs wherein the share of foreign company in equity capital of an Indian Company is 50 percent or less. In addition to these three categories, a foreign company may enter into technical collaboration agreements with Indian companies in accordance with the rules and regulations laid down by the Government of India.

1. Early Developments (Pre-1961 Situation)

The basic policy governing foreign corporate investment in India can be traced in a statement[10] made by the first Prime Minister of India Mr. Jawahar Lal Nehru to the Parliament, on April 6, 1949. The principles enunciated therein may be briefly summarized as follows:

(1) Existing foreign enterprises would be accorded 'national treatment'. "Government does not intend to place any restrictions or impose any conditions which are not applicable to similar Indian enterprises."[11]

(2) New foreign capital would be encouraged: "Government would so frame its policy, as to enable further foreign capital to be invested in

India on terms and conditions that are mutually advantageous."[12]

(3) Remittance of profits and repatriation of capital would be allowed subject to balance of payment considerations.

(4) Fair compensation would be paid in case any foreign enterprise is compulsorily acquired.

(5) Although majority ownership by Indians was preferred, "Government would not object to foreign capital having control of a concern for a limited period, if it is to be found in the national interest and each individual case will be dealt with on its merits."[13]

(6) Vital importance is attached to rapid Indianization of personnel, but "Government would not object to the employment of non-Indians in posts requiring technical skill and experience, when Indians of requisite qualifications are not available."[14]

This policy statement did not specify areas in which foreign capital would be welcomed. However, the general policy of the government has been to allow only such foreign financial and technical collaborations as are in line with the priorities and targets set out in the Five Year Plans. Fresh foreign investment is not generally allowed in banking, financial, commercial and trading activities and in consumer industries which could be developed with indigenous knowhow.

2. Developments Between 1961 to 1969

With the launching of the Second Five Year Plan (1956-61), there was a sizeable increase in technical collaboration agreements.[15] Th adversely affected India's foreign exchange reserves and "towards theis close of fifties, with increasing foreign exchange stringency, minority foreign capital participation gained acceptance; foreign enterprise took to equity participation to provide the foreign exchange component for the import of machinery and equipment."[16]

In May 1961, Government of India issued a Press Note regarding importation of foreign technology and foreign investment which stated as follows:

> Basically the policy regarding foreign investments would be to attract foreign capital in those fields in which the country needs to develop in pursuance of the plan targets. While Government have been generally encouraging the investment of private foreign capital in the country, it is to be recognized that this has necessarily to be on a selective basis. If any project is approved for development in the private sector and, if imported plant and machinery are required, foreign capital investment would ordinarily be welcome as a form of financing the project.[17]

As stated by Iyer and Kumar:

> During the period 1951-66, the country made rapid advancement in the field of technology both in the private and public sectors. A number of chemical and engineering companies undertook research programmes. Indigenous technology made notable strides in defence, railways and electronics as well as nuclear energy. In the case of consumer goods industries, the country had not by and large, required any foreign technology even previously and this area further diminished steadily. Government's approach to foreign investment and collaboration, therefore, gradually became increasingly selective.[18]

In February 1966, the Government of India constituted a Committee[19] headed by Dr. A Ramaswamy Mudaliar as Chairman to examine the extent of the importation of foreign technology required for India's development and to suggest general guidelines regarding the type of cases in which foreign collaboration may be allowed. The Committee submitted its report on May 4, 1967.[20]

On the basis of the recommendations of the Mudaliar Committee, on January 25, 1969, the Government of India published lists of industries in which foreign capital and technical participation may be allowed. The 1969 notification[21] by way of illustration categorized industries

into three groups: (a) those in which both financial as well as technical collaboration may be permitted; (b) those in which only technical collaboration may be permitted; and (c) those in which neither of them is permitted.

According to this notification, the objective of regulating foreign financial and technical collaboration is to ensure that foreign capital and technical knowhow is utilized in the manner most advantageous to the country, having regard to the current and future needs of the country and especially, to strengthen effectively its balance of payment position without injuriously affecting the growth of Indian and foreign enterprises already well established in India. In other words, import of foreign capital and technology are allowed subject to three factors; (a) non-availability of comparable indigenous resources; (b) essentiality in the sense of contributing to development; and (c) effect on balance of payments.

On January 25, 1969, the Government of India also issued guidelines regarding foreign collaboration policies and procedures.[22] The foreign collaboration policy was liberalized with a view to bridge technological gaps existing in a number of sectors of economy. Substantially export-oriented units were treated more favourably. The principal features of the guidelines were:

(1) Effective control in a joint venture should rest in Indian hands and accordingly the foreign equity participation beyond 49% should be accepted only in exceptional cases.

(2) While considering proposals for foreign equity participation, due regard must be given to the likely earning or saving of foreign exchange.

(3) Proposal for majority foreign equity participation in new enterprises should be considered only (i) "if the main contribution of the project is in a field of technology where India has made little progress and where a great deal of initial or additional development is necessary" or (b) the amount of foreign exchange required for the project is substantially high or (c) the project is an essentially export-oriented scheme.

(4) The collaboration agreement should not contain any provision for payment of a "minimum amount of royalty related to turnover."

(5) Royalty payment should not exceed a period of 5 years from the date of agreement or from the date of commencement of production provided the production is started within 2 years from the date of agreement.

(6) Companies engaged in trading activities were allowed foreign collaboration where the exclusive object was to increase export.

3. Developments Between 1970 to 1983

Until the middle of the nineteen sixties, the conditions for foreign investment and collaboration were favourable. However, in the sixties, as foreign exchange resources of the country came under increasing pressure, the Government of India started feeling the pinch of the burden of remittances occasioned by the foreign financial and technical collaborations. In 1964, sec. 18-A was added to the Foreign Exchange Regulation Act, 1947,[23] with a view to restricting the scope of activities of foreign controlled companies and from then onward, the government seems to be pursuing a determined policy to reduce the foreign exchange cost of foreign collaboration.

(a) Remittances for Dividend and Technical Collaboration

According to the Reserve Bank of India, between 1964 and 1970, the total investment of subsidiaries rose from Rs. 132.2 crores (1322 million) to Rs. 189.5 crores(1895 million), but the percentage of their share in total capital came down from 77.3 to 70.8 percent[24] during this period. During the same period, the total investment of minority companies increased from Rs. 75.2 crores (752 million) to Rs. 116.3 crores (1163 million), but their share in the total capital came down from 32.9 to 30.3 percent.[25] The dividend remittances of these companies nevertheless, steadily went up during this period. As for subsidiaries, remittances went up from Rs. 16.65 crores (166.5 million) to Rs. 23.76 crores (237.6 million) and as for minority companies, the corresponding figures are Rs. 3.65 crores (36.5 million) and Rs. 6.18 crores (61.8 million).[26] Remittance in connection with technical collaboration during this period rose from Rs. 6.46 crores (64.6 million) to Rs. 12.3 crores (123 million).[27] All these remittances adversely affected foreign exchange reserves of India.

(b) Adverse Balance of Payments

It is beyond the scope of this study to evaluate the overall contribution of foreign collaboration to the Indian economy. However, purely in terms of balance of payments, this impact seems to be adverse. According to the Industrial Licensing Policy Inquiry Committee, during the period 1961 - 1966, all the undertakings having foreign collaboration exported only 2.9 percent of their total output, while their imports amounted to 17.1 percent of the total output.[28] No doubt, these figures are not conclusive in this regard since, in order to assess the net contribution to balance of payments, it must be analyzed how much

India would have imported in the absence of these investments. Nevertheless, the policy statements issued by the government's spokesmen invariably underline the concern of the government regarding the balance of payment impact of foreign investment. Most of the measures which the Indian Government has taken in the seventies and eighties in this regard are really aimed at moderating the drain of foreign exchange resources of the country.

(c) Foreign Exchange Guidelines of 1973

In 1973, the Government of India issued guidelines for administering section 29 of the Foreign Exchange Regulation Act, 1973[29][Appendix I]. These guidelines apply to Indian companies having more than 40% foreign equity holdings and branches of foreign companies operating in India. As per the guidelines, Indian companies engaged in (a) production of priority items i.e., items specified in Appendix I of the Industrial Licensing Policy, February 1973, [Appendix II] or (b) manufacturing activities requiring sophisticated technology, or (c) tea plantations, were asked to dilute their foreign equity to 74%. Indian companies exporting at least 60% of their total production were also asked to bring down their foreign capital to 74%. Indian companies engaged in (a) internal trading and commercial activities, or (b) manufacturing items other than priority products or products requiring sophisticated technology, or (c) plantation activities other than tea production, or (d) any other activities were asked to reduce their foreign equity to 40%.

Similarly branches of foreign companies engaged in the production of priority items or operations involving sophisticated technology, or tea plantation, or exporting 60% of their total production were asked to

convert themselves into Indian companies with foreign equity of not more than 74%. Branches of foreign companies engaged in other activities except internal trading or commercial activities, were required to convert themselves into Indian companies with foreign equity not exceeding 40%.

The above guidelines were meant for companies existing on January 1, 1974. The Government of India had given a certain period to these companies for increasing Indian participation or to convert themselves into Indian companies with appropriate amount of Indian equity, as the case may be. The government also made it clear that the companies not complying with the guidelines within the specified period, will have to wind up their business affairs in India. Thirteen companies did not comply with the above guidelines issued by the Goverment of India and decided to close their establishments in India.[30] The principal companies who wound up their business operations in India were I.B.M., Columbia Gramophone Company, Pneumatic Tool Company Ltd., Bombay, Vans Rais (India) Ltd., Calcutta and Coca Cola.[31]

(d) 1976 Amendmends to Foreign Exchange Guidelines

In 1976, the Government of India introduced major amendments to the FERA guidelines[32] [Appendix III] that apply to existing and prospective foreign investments. Companies using sophisticated technology, engaged in production of priority sector items and those exporting much of their production are treated more liberally than under the Act's original wording. Firms whose output of priority items, activities involving sophisticated technology and exports, make up not less than

75% of their total annual turnover, do not have to reduce their foreign equity to under 74%. Corporations whose exports, production of items of priority sectors and activities involving sophisticated technology combined together account for 60% or more but below 75% may retain up to 51% foreign ownership of equity provided the concerned company undertakes to export at least 10% of its total annual turnover within a period of two years from the date of approval by the Reserve Bank of India. Companies whose exports exceed 40% of their total annual turnover are also allowed to retain up to 51% foreign equity.

(e) Industrial Policy Statement of 1977

In the late seventies the Government of India recognized the necessity of continuous inflow of technology in sophisticated and high priority areas. Accordingly, the Government presented an Industrial Policy Statement[33] to the Parliament on December 23, 1977. The basic principles enunciated in the statement may briefly be summarized as follows:

(i) In order to achieve technological self reliance continuous inflow of technology is necessary in the areas where Indian technology and expertise is not adequately developed, especially in the areas of high priority and operations involving sophisticated technology.

(ii) Preference would be given for outright purchase of the best available technology and subsequently adapting it according to the need of the country.

(iii) Provisions of the Foreign Exchange Regulation Act, 1973 would be strictly enforced in respect to existing foreign companies. After completion of the process of dilution under the Act companies with foreign investment not exceeding 40 percent will be treated on par

with Indian companies in all respects.

(iv) Foreign investment and importation of technology needed for the nation's industrial development would be allowed only on the terms which are considered to be in the national interest.

(v) Where foreign technological knowhow is not needed by the country, existing foreign collaborations will not be renewed and foreign companies operating in these areas will be required to modify their activities in conformity with national priorities and within the frame work of the Foreign Exchange Regulation Act. The government will issue a list of industries where neither financial nor technical collaboration is considered necessary as indigenous technology has fully developed in these fields.

(vi) Generally, majority interest in ownership and effective control should be in Indian hands but the government may make exceptions in cases of highly export-oriented ventures or projects requiring sophisticated technology. In wholly export-oriented cases, a fully owned foreign company (Indian company with 100% foreign equity) may be considered by the government.

(f) Prohibited Activities to Foreign Capital

As mentioned above, the Government of India has issued three lists specifying the areas where (i) foreign investment is permitted, (ii) only technical collaboration is permitted and (iii) neither the financial nor the technical collaboration is permitted. On December 28, 1978, the Government of India issued a Press Note[34] along with an illustrative list of industries where no foreign collaboration (financial or technical) is considered necessary. This list was published in supersession of the above mentioned three lists published in 1969. This

list was also attached as an annexure to the Press Note of May 25, 1981[35] concerning the delegation of power to the Administrative Ministries for according approvals for foreign collaboration proposals except in cases mentioned in the list.

The Government of India has published the above list specifying the industries for which foreign investment is no longer needed, mainly because indigenous technology has been fully developed in these fields. This list of restricted products in specific industries (Metallurgical, electrical, electronics, fertilizers, chemicals, consumer goods etc.) has been given in the Appendix IV.[36] The list is however, illustrative only, since in recent years the Indian Government has permitted foreign investment in hitherto restricted areas also in order to promote the upgrading of technology in those areas. Besides the industries mentioned in the above list, investment in the field of textile industry and textile machinery is strictly banned as India is the world's largest manufacturer of textile machinery and a large number of textile industries are closed and others are facing serious market problems.

(g) Industrial Policy Statement of 1980

It was felt by the Government of India that a number of Indian industries have not been able to compete in the international markets on account of small and uneconomic scale of output. In July 1980, the government issued an Industrial Policy Statement[37] to provide the benefit of modern technology in achieving economies of scale to such industrial undertakings. The Statement lays down that in the cases where a large production will enable a company to compete in world markets and substantially increase exports, the government will favourably consider the introduction of modern technology and permitting

production capacity large enough to make the product competitive in international markets. The Policy Statement also emphasized the importance of Research and Development activities:

> 26. Government will take active measures to facilitate the transfer of technology from efficiently operating units to new units. Companies which have well established R & D organizations, and have demonstrated their ability to absorb, adapt and disseminate modern technology, will be permitted to import such technology as will increase their efficieny and cost-effectiveness.[38]

(h) Technology Policy 1983

The Government of India announced the Technology Policy, 1983,[39] on January 3, 1983. The policy emphasizes self-reliance and achieving technological competence in strategic and critical areas. Import of technology has been given due regard and is visualized in selected fields where domestic technology is not adequately developed. According to the Policy Statement the fundamentals governing the acquisition of foreign technology are:

(i) Import of technology and foreign investment in this regard will be on a selective basis, where need has been established, technology does not exist in the country, or the time taken to generate the technology indigenously would delay the development.

(ii) It is necessary to maintain international competitiveness in product services and technologies which have export potential.

(iii) Ensuring an adequate scale of investment in R & D (Research and Development) for the absorption, adaptation and improvement on, and generation of, new technology.[40]

4. Recent Policy Liberalizations[41]

Recently, the Government of India has made a number of announcements to liberalize industrial policy and procedures, export-import rules and investment incentives. Important announcements in these regards may be summarized as follows:

(1) Exemption of 25 industries from licensing.

(2) A large number of electronic items have been brought out of the scope of the Monopolies & Restrictive Trade Practices (MRTP) Act.

(3) List of industries issued under section 22A of the MRTP Act has been expanded.

(4) The government has enhanced the limit of fixed assets of the companies from Rs. 200 million to Rs. 1000 million for the applicability of the MRTP Act.

(5) Investment limit for the small-scale industries has been increased from Rs. 2 million to Rs. 3.5 million.

(6) Investment limit for the ancillary units has been increased from Rs. 2.5 million to Rs. 4.5 million.

(7) Private entrepreneurs have been allowed to set up industries for manufacturing telecommunication equipment.

(8) Foreign investors and big companies are now allowed to set up electronic components manufacturing units.

(9) Capacity limit for the manufacture of professional electronic equipments and computers has been removed.

(10) All Indian companies have been allowed to manufacture micro/mini computers such as personal computers.

(11) Development and manufacture of electronic softwares has been classified as 'industry'.

(12) The Government of India has declared a definite import-export policy for a period of three years for the first time.

(13) No import license is needed to import 201 items of capital goods by actual users.

(14) The Government of India has increased the limit for import of

technology, knowhow, machinery under Technical Development Fund, from U.S. $ 0.5 million to U.S. $ equivalent to Rs. 10 million.

(15) No license is required for importing computer systems costing below Rs. 10 million.

(16) Basic rate of income-tax on companies has been reduced by 5 per- cent.

(17) Basic rate of income-tax on all companies has been further reduced by 5 percent beginning from April, 1986 and by another 5 percent beginning from April, 1987.

(18) Surcharge and surtax will be abolished from April, 1988.

(19) Tax holiday concession for new units has been extended for 5 more years.

(20) Custom duty on project import has been reduced to 45 percent as against 65 percent earlier.

(21) Abolition of custom duty on equipment for fertilizer project.

(22) Import duty for power projects has been reduced to 25 percent.

(23) Import duty on pulp and wood ships has been abolished.

B. PRESENT FOREIGN INVESTMENT POLICY

Since India has achieved technological capability in a number of fields, the government has identified certain industries in which foreign technology is not considered necessary.[42] Such industries are steel castings, structurals, steel pipes, electrical appliances, textiles and textile machinery, railway wagons, agricultural machinery, vegetable oils and vanaspati (Hydrogenated vegetable oil), machine tools, rubber industries, consumer goods, etc. However, import of technology could be considered in these prohibited industries also, if a

particular technology is needed for updating the existing technology to meet higher domestic requirements or to become competitive in export markets. It means that the importation of technology is permissible in almost all industries that are open to the private sector, if found in the national interest.

1. Equity Participation

Sharing of the ownership between foreign investor and local entrepreneurs is an important factor concerning foreign investment. Foreign investors want to keep the control in their hands while the host government is interested in keeping the control in local hands. According to the Foreign Exchange Regulation Act (FERA) guidelines of 1973 and 1976 [43] (Appendix I and III) and Resolution dated December 31, 1980,[44] generally foreign equity participation is to be in minority and limited to 40 percent, but manufacturing and industrial undertakings are permitted a higher foreign equity ownership on the following conditions:

(1) A company engaged in the production of priority items i.e. items specified in Appendix I of Industrial Licensing Policy, February, 1973, can retain 74 percent foreign ownership of equity. A list of the priority industries has been given in Appendix II.

(2) A company which exports 60 percent of its total production can retain up to 74 percent foreign ownership of equity.

(3) A company whose operations in priority industries (items specified in Appendix I of Industrial Licensing Policy, February, 1973), sophisticated technology and exports account for 75 percent or more of its annual turnover can retain up to 74 percent of foreign ownership of equity.

(4) A company whose exports make up at least 10 percent of turnover, and whose exports, production of items of priority sectors (items

mentioned in Appendix I of the Industrial Licensing Policy, 1973) and activities requiring sophisticated technology cover 60 percent of its annual turnover, can be permitted 51 percent foreign equity ownership.

(5) A company whose exports exceed 40 percent of its total turnover is also permitted to retain 51 percent foreign ownership of equity.

(6) Wholly export oriented units i.e. a unit which exports its entire production can retain 100% foreign ownership of equity. A list of 100% export oriented industries has been given in Appendix V.

A maximum of 5 percent of sales is set for royalty payments and normally no guaranteed payments of royalties are allowed.[45] The duration of technical collaboration agreements is generally to be confined to five years.[46]

2. Effect of Majority Foreign Equity Limits

As mentioned above, current Indian foreign investment policy permits up to 74 percent of foreign equity to the companies engaged in priority sector production or sophisticated technology. Export oriented industries are also permitted higher foreign equity limits. This means that all such companies are allowed majority foreign ownership of equity. As a result of majority of foreign equity in a company's capital, the administrative control of the company passes into foreign hands.

When the foreign companies or foreign-controlled Indian companies acquire the control of a particular industry and there is no local competitor in the market, they exploit the local consumers. Exploitation of India and other developing countries of the third world by foreign-controlled companies can be well explained by taking an

example of the drug industry. The drug industry falls under the list of priority sector production in India and therefore, pharmaceutical companies can retain up to 74% of foreign ownership of equity. In 1978, there were 45 foreign drug companies having more than 40% foreign equity out of which 25 foreign drug companies were holding majority foreign equity (51% and above).[47] Eighteen of these foreign firms belong to the U.S.A., 13 to the U.K., 6 to Switzerland and 4 to West Germany.[48] Exploitation of Indian and other third world developing countrie's drug market by these foreign drug companies is clearly indicated by the following examples:[49]

(1) Foreign drug companies used to sell Tetracycline capsules in India around Rs. 100 to 118 per hundred but when Indian Drugs and Pharmaceuticals Limited (IDPL), a public sector undertaking at Rishikesh, started production and was able to market their capsules at the rate of Rs. 46 per hundred, the foreign companies reduced their prices to Rs. 56 per hundred. It is important to note that when the bulk import prices of Tetracycline and Oxytetracycline were around Rs. 250 per Kg., these companies used to sell capsules for Rs. 100 to 118 per hundred, but when the bulk import prices increased to Rs. 650 and Rs. 749 per Kg., the same foreign companies were able to market the capsules at the rate of Rs. 55 to Rs. 63 per hundred. It was so, because the public sector plant, I.D.P.L. was able to market these products at much cheaper rates.

(2) When an Indian firm, Dey's Medical, started production in West Bengal, foreign companies were compelled to reduce the prices of some drugs from Rs. 5 to Rs. 0.90 per capsule.

(3) Tetracycline was supplied by the American Cyanamide to Cyanamide Pakistan at the rate of $270 per Kg. while the European competitive

price of the same drug was from $24 to $29 per Kg.

(4) The Bristol Company of U.S.A. supplied the same medicine to Bristol Pakistan at the rate of $190 per Kg. and to Bristol Columbia at the rate of $250 per Kg.

(5) "Pfizer", a well known name in antibiotic producers, supplied Deoxycycline (Vibramycine) to Pfizer of Pakistan and Columbia at the rate of $1750 per Kg. while the equivalent drug was being sold in Europe for $24 to $29 per Kg. Thus Pfizer charged 7000 percent profits from the developing countries.

(6) "Pfizer" sold Teramycine to Pakistan at the rate of $100 per Kg. while its price in Europe was only $13 per Kg.

(7) The Bristol Company of America supplied Ampicillin Trihydrate to Bristol Columbia at the rate of $240 per Kg., while its price in Europe was only $150 per Kg.

(8) The American company "Wyeth" supplied an antibiotic called Benzathazine Penicillin to its subsidiaries in Chile at the rate of $215.75, to Columbia at $160 and to Pakistan at $441 while its price in Europe was from $31 to $32.

(9) The American company "Roche" was supplying the tranquilizer Librium to Merck Pakistan at the rate of $245 while its actual price was $21.50 to $25 in the European market.

(10) Merck supplied Antihistamine to its branch in Pakistan at the rate of $1600 per Kg. while its equivalent in Europe was $20.50 per Kg.

(11) These foreign drug companies did not make any innovations in India or other developing countries but introduced only their brand names. The Hathi Committee on Drugs and Pharmaceuticals[50] has clearly pointed out the abuse of their brand names by these foreign

companies. Besides financial exploitation of developing countries, these foreign drug companies experimented with a number of drugs on the citizens of developing countries, which had not yet been introduced in the developed countries.

Foreign controlled companies remit huge profits, dividends, technical collaboration fees and know-how charges to their foreign parent companies which increases the burden of remittance of foreign exchange on India. As per the report of the Estimates Committee of the Parliament, fully owned Indian subsidiaries of foreign companies remitted a sum of Rs. 2114 million by way of dividends, profits and technical fees from 1968 to 1971 out of which remittance towards dividends was Rs. 1051.4 million.[51] Remittances towards profits and technical collaboration fees during the same period amounted to Rs. 388 million and Rs. 516.1 million respectively.[52] The following instances would make it clear how foreign controlled companies make exorbitant profits in India, accumulate capital and subsequently remit to foreign countries:

(a) Grindlay's Bank made an investment of Rs. 1 million but it accumulated total capital and reserves worth 70.4 million pounds (Rs. 1250 million app.).[53] The bank remitted Rs. 42.1 million on account of head office expenses and Rs. 58.8 million by way of dividends during the years 1966 - 1971.[54]

(b) The Colgate company had an original paid up capital of Rs. 150,000 but its annual turnover as on Dec. 31, 1973, was Rs. 170050902 (Rs. 170 million app.).[55]

(c) Hindustan Lever had the initial investment of Rs. 20 million but its built-up capital amounted to Rs. 170 million in 1974.[56]

(d) Pfizer with a capital of Rs. 2.658 million made a net profit of Rs. 16.6 million in 1975.[57]

(e) "Cadbury Fry Private Ltd.", which is a wholly owned Indian subsidiary of the British company "Cadbury Scooper Overseas Ltd." (London), had a share capital of Rs. 1296100[illegible] in 1972 while the company remitted Rs. 32404500 in 1975 and Rs. 35623300 in 1976 as dividends which represents about 250 percent of the original share capital.[58]

(f) The Coca-Cola Company originally invested $87.5 thousand in India while it remitted $20 million in profits during the period of 16 years of its operation.[59]

From the above facts, it is also clear that foreign companies do not contribute to the economic and industrial development of India but they go there to exploit cheap labour and available raw materials and earning exorbitant profits by exploiting local consumers.

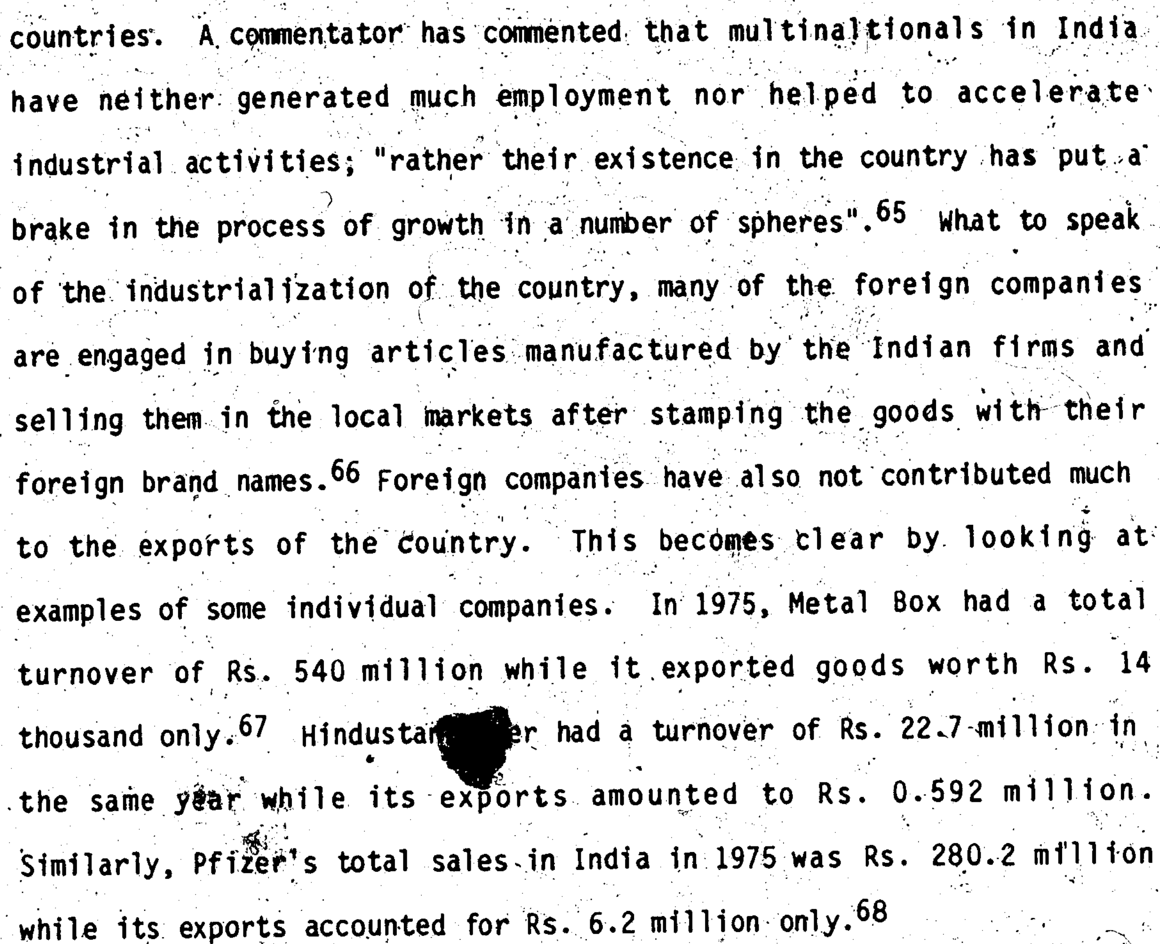
It may be argued that there is a danger inherent in a majority foreign equ[illegible] that the employees of such companies may become loyal only to the foreign controlled companies in which they are employed and not to the country of their residence. In this regard, it would be worth quoting the statement of Mr. W. J. Kenyon Jones, Chairman of the British branch of the well known multinational - Ronson:

> The manager of a company controlled by the United States should set aside nationalist attitudes and understand that in the final analysis his loyalty should be to the share holders of the mother-company and that he must protect their interests, even if in doing so he seems apparently to come into conflict with the national interests of the country in which he is operating.[60]

The Honourable Herb Gray, while examining the issue of foreign direct investment in Canada, has clearly pointed out that direct investment by foreign-controlled companies often tends to reflect laws, economic and industrial objectives of foreign governments and economies.[61] High magnitude of foreign investment and control by foreign companies can also bring foreign cultural values into the country which may or may not be desirable.[62] Thus, foreign companies' control (majority foreign equity participation), opens the doors for the entry of foreign laws into the host country, and influences the national economic structure and industrial priorities.[63]

Moreover, it should be borne in mind that generally, the advantages received from the domestically controlled enterprises are far greater than foreign controlled enterprises. In this regard, it was observed by Herb Gray " that foreign-owned companies did not provide their host countries with benefits equal to those provided by indigenous companies."[64]

Majority foreign equity has a number of advantages too. If the control of the industrial venture remains in foreign investor's hands without much interference by the host government or local investors, more and more foreign investors are willing to make investment and transfer technology into the host-country which gears up the process of industrialization of the country, elevates the level of technological development and research in the country, generates employment for local people and increases exports. But as far as India is concerned, none of these advantages accrued to the country. On the contrary, foreign companies played an important role in exploitation of the country and making it technologically handicapped and dependent on foreign



countries. A commentator has commented that multinationals in India have neither generated much employment nor helped to accelerate industrial activities; "rather their existence in the country has put a brake in the process of growth in a number of spheres".[65] What to speak of the industrialization of the country, many of the foreign companies are engaged in buying articles manufactured by the Indian firms and selling them in the local markets after stamping the goods with their foreign brand names.[66] Foreign companies have also not contributed much to the exports of the country. This becomes clear by looking at examples of some individual companies. In 1975, Metal Box had a total turnover of Rs. 540 million while it exported goods worth Rs. 14 thousand only.[67] Hindusta[illegible]er had a turnover of Rs. 22.7 million in the same year while its exports amounted to Rs. 0.592 million. Similarly, Pfizer's total sales in India in 1975 was Rs. 280.2 million while its exports accounted for Rs. 6.2 million only.[68]

From the above, one would be inclined to conclude that India should not adopt a favourable attitude towards majority foreign equity participation. An important question arises as to whether India would be able to import sophisticated and advanced technology not available in the country without allowing foreign investors to hold majority equity in Indian enterprises. One may argue that majority foreign equity participation is not necessary for importing technology. The days of monopoly of a particular company on scientific technology in a particular field have gone. Now-a-days there is tough competition even in high technology oriented industries[69] and hence the bargaining power of the host countries is not as weak as it used to be. Moreover, the existing markets of large companies, especially multinationals, are

mature.[70] Their potential market lies in developing countries of the third world.[71] These companies are also in need of raw materials.[72] So, if they have to expand their business, there is no choice for them except to go for joint ventures with local equity participaton. Local laws of many third world countries limit foreign partners in the joint venture to minority equity participation.[73] For instance, Nigeria does not allow foreigners in the joint venture unless the equity participation of Nigerian citizens or associations is not less than 60 percent in case of the industries specified in schedule 2 (57 items) of the Nigerian Enterprises Promotion Decree No. 3 of 1977, and not less than 50 percent in case of the industries specified in schedule 3 (39 items) of the decree.[74] When many small countries of the third world can insist on majority local equity participation in the joint ventures, there is no reason why India, which is comparatively developed and rich in natural resources, cannot bargain for majority local equity participation. In this regard, the National Committee (India) on Science and Technology in its report, has said:

> Foreign equity participation is not essential for procurement of technology. Equity participation brings dependence and has the possibility of influencing management policy directly or indirectly. Foreign equity participation should not be permitted unless some exceptional circumstances arise when it is seen that no other source exists for the technology or comparable technology and that the only mode left for acquiring such technology is through foreign collaboration.[75]

3. Preferred Industries for Foreign Investment

India looks upon foreign investment as a vehicle for the transfer of technology.[76] Foreign investment is allowed where it would lead to a transfer of technology needed by the country and in export oriented ventures.[77] Foreign technology is required in a variety of industrial

machinery, sophisticated electronic equipments and components, certain automobile ancillaries, a variety of chemicals, fertilizers based on natural gas, certain drugs and pharmaceuticals, man-made fibre, glass and glass products, engineering plastics and resins, pesticides, petro-chemicals etc.

Export oriented units also get a preferential treatment in approval of technical collaboration as well as in the matter of foreign equity limits. Export-oriented unit means those enterprises which export a minimum of 60% of their total production. In the case of 100% export-oriented units, import of capital goods, raw materials, etc. will be exempt from the import duty and the finished products will also be exempt from excise and other central levies.[78] Under a new scheme introduced by the Government of India, recently, 100% export-oriented units can be set up anywhere in India.[79]

4. Industries in Free Trade Zones[80]

The Government of India has established two free trade zones in India - The Kandla Free Trade Zone (KAFTZ) in Gujrat and the Santa Cruz Electronics Export Processing Zone (SEEPZ) in Bombay. Both these zones are meant for wholly export oriented units. While Bombay Free Trade Zone (SEEPZ) is reserved exclusively for export oriented electronics units, Kandla Free Trade Zone (KAFTZ) is meant for multi-product industries i.e., any type of industrial units can be established there. Industries established in these free trade zones get a number of tax and other benefits. They are allowed complete tax exemption in respect of profits and gains derived from their operation in the zones for a period of 5 years in lieu of certain concessions like investment allowance, partial tax holiday, etc.[81] These units can sell 25% of their production in the domestic market as an additional incentive to increase

production and income.[82] The Government of India has recently approved the establishment of four more free trade zones at Madras, Falta, Cochin and Noida. These free trade zones would also provide the same facilities and incentives that are available presently in the existing free trade zones.

5. Investment from Oil Exporting Developing (OED) Countries

Foreign investment not accompanied by foreign technology is not allowed in India but the government has relaxed the policy for investors from Oil Exporting Developing (OED) countries as these countries do not possess any technology that is not available in India.

In the eighties, the Government of India realized that entrepreneurs from OED countries are in a position to make financial investment but they are not in a position to offer any advanced technology. Therefore, in order to encourage investments from these countries, the government decided to allow foreign investment from the enterpreneurs of these countries, even if it is not accompanied with technology. Accordingly, on October 28, 1980, the Government of India issued a Press Note[83] entitled 'Promotion of Investment from OED Countries'. The Note states:

(a) Investment from oil exporting developing countries may be permitted in new companies even if it is in the nature of portfolio investment.

(b) Such investment should not exceed 40% in the equity.

(c) The new companies should be export oriented or should undertake manufacturing activities covered under Appendix I of the Industrial Licensing Policy of 1973.

(d) Investment on the aforesaid pattern may be allowed in hotels.

(e) Investment may also be allowed in new hospital project and such hospitals should have adequate provision for outdoor and emergency medical service to the general public and also for a minimum percentage of occupancy by the Indian public.

(f) Loans should also be allowed to be raised abroad for such joint-ventures provided the terms are reasonable.[84]

6. Investment by Non-residents of Indian Origin

A non-resident of Indian origin means an Indian citizen who has made his permanent home outside India or has proceeded abroad for employment, profession or business. The term also includes Indian citizens living abroad permanently and acquired foreign citizenship, descendents of an Indian who has earlier migrated from undivided India and foreign born wife of such a person.

Investment by non-residents of Indian origin can be divided into 4 classes:

(a) Investment in Indian Banks[85]

(b) Investment in Government Securities, Units, etc.[86]

(c) Investment in Industry[87]

(d) Investment in Immovable Property[88]

(a) Investment in Indian Banks

Non-residents of Indian origin are permitted to open accounts in Indian banks duly authorized for foreign exchange business. There are two types of accounts for non-residents:

(i) Ordinary Non-resident Account

(ii) Non-resident External Account

(i) Ordinary Non-resident Account

This account is maintained in Indian Rupees. Funds are remitted from abroad through banking channels. Account holder is free to withdraw money for local disbursement, investment, payment of Indian taxes, paying insurance premiums etc. All other withdrawals require the Reserve Bank of India's approval. In this account neither the funds accumulated are repatriable nor the interest earned is exempt from income tax.

(ii) Non-resident External Account

External account can be opened in any Indian bank dealing in

foreign exchange. This account can be maintained in Indian Rupees, or in pounds sterling or in U.S. dollars but the money should be remitted from the country of residence of non-resident or any country except U.S.S.R., Poland, East Germany, Czechoslovakia and Romania. Funds held in the account (including interest) are freely repatriable. Withdrawals from the account are also freely allowed for local disbursement, purchase of Government Securities, National Plans, National Saving Certificates and Units issued by the Unit Trust of India. The income arising from above investments can be credited to the Non-resident External Account.

Companies, partnership firms, trusts, societies and other corporate bodies owned by non-residents of Indian origin to the extent of at least 60% are also allowed to open a Non-resident External Account.

(b) Investment in Government Securities, Units, etc.

Non-residents of Indian origin can invest in Government Securities National Plans, National Savings Certificates and Units of the Unit Trust of India. Interest/dividend on these investments and maturity/sale proceeds can be freely repatriated or transferred to Non-resident External Accounts.

(c) Investment in Industry

This is an important category of investment by non-residents of Indian origin and the Government of India has provided a number of facilities and concessions to such investors. Investment in industry can be divided into two categories: -

(i) Without Right of Repatriation.

(ii) With right of Repatriation.

(i) Without Right of Repatriation

Investment in Shares: - Non-residents of Indian origin as well as the companies, partnership firms, trusts, societies and other

corporate bodies owned by non-resident Indians to the extent of 60% or more can invest in:

New issues of public or private companies engaged in any business activity (except real estate business) up to 100% of the issued capital without any obligation to associate resident Indian participation in equity capital at any time;

Shares of existing companies through stock exchange, subject to specified conditions;

Deposit with firms and companies;

Both convertible and non-convertible debentures through stock exchange in India or out of new issues of Indian companies.[89]

Investment in Electronic Industry:- The Government of India has introduced a new scheme for promoting electronic industries in India. Under this scheme non-residents of Indian origin who want to return to India for permanent settlement and are keen to set up specified electronic industries in the country or participate in the expansion, diversification or modernization of existing industrial units, are provided the following facilitites, subject to the condition that they have at least 20% share in the equity capital of the company:

(1) They can import machinery without any value limit under the open general license.

(2) They can import raw-materials, components etc. for meeting the first years requirement of the unit under open general license, except a few items for which the prior clearance of the department of electronics would be necessary.[90]

This scheme is applicable to the following industries:

Electronic components (other than LSI, VLSI); instruments; tape recorders; two-in-one; Hi-Fi equipment; electronic teaching aids; industrial and process control systems; major sub-system of radar; navigational aids and communication equipment; electro-medical equipment.[91]

(ii) With Right of Repatriation

Investment in Shares of Existing Companies: - Non-residents of Indian origin or other corporate bodies owned by non-residents of Indian origin to the extent of at least 60% can invest in shares quoted on stock exchanges in India with full right of repatriation of investment and dividend, provided that the investment in shares does not exceed 5% of the existing shares in the existing company, shares are purchased through stock exchange and the shares so purchased are retained by them for at least one year from the date of registration.

Investment in Non-convertible Debentures: - Non-residents of Indian origin are permitted to invest in non-convertible debentures through stock exchange with full right to repatriate. They can also invest in issues of non-convertible debentures directly.

Investment in Convertible Debentures: - Non-residents of Indian origin are also allowed to purchase convertible debentures through stock exchange with repatriation right subject to the condition that the total value of debentures does not exceed 1% of the total paid up value of convertible debentures in each series issued by the company.

Investment in Deposits with Public Companies: - Non-residents of Indian origin are allowed to make investments in 3 years maturity term deposits with public limited companies with right to repatriate the investment along with the earning thereon.

Fresh Investment in Companies Under 40% Scheme: -Non-residents of Indian origin as well as foreign companies or other corporate

bodies in which non-residents of Indian origin have a minimum of 60% share, in the total capital, are allowed to invest in the new issues of new or existing companies (other than FERA companies) engaged in industrial or manufacturing activities, hospital project or hotels of 3, 4 or 5 star category, up to 40% of the total capital issued, with full benefits of repatriation of capital invested and income earned thereon. Such investment is allowed only if the money is remitted from abroad or invested from a Non-resident External Account in India. Investment in companies other than through the issue of prospectus, is restricted to Rs. 4 million.

Investment in Priority and Export Oriented Industry under 74% Scheme: - Non-residents of Indian origin, companies and other corporate bodies in which non residents of Indian origin have 60% or more share, can invest up to 74% with full right of repatriation of capital and income arising from such investment, in any of the priority industries mentioned in Appendix II.

Under this scheme, investment can be done in other industries also provided the investor exports 60% of the total output (75% in case of industries reserved for small scale sector). Capital equipment can be imported by the investor provided the cost of capital equipment does not exceed the amount of foreign exchange brought into the country. Non-residents are also permitted to invest in a hospital project or hotel project of 3, 4 or 5 star category under this scheme.

This scheme applies to new investments as well as expansion or diversification of existing industrial undertakings.

Investment in Free Trade Zones: - The Government of India has set up two free trade zones in India - the Kandla Free Trade Zone

(KAFTZ) in Gujrat and the Santa Cruz Electronics Export Processing Zone (SEEPZ) in Bombay. Special treatment is accorded to industries set up in these free trade zones. Kandla Free Trade Zone is a multi-product free trade zone while Bombay Free-Trade Zone is reserved exclusively for export oriented electronic units. Non-residents of Indian origin have golden opportunities for investment in these two free trade zones. The industrial units set up in these two free trade zones are now required to export at least 75% of their production[92] (against 100% earlier). Units with 100% foreign equity can be set up in these zones[93]

The government offers a number of facilities for industrial units set up in these zones like a complete tax holiday for 5 years, excise and sales tax relief, duty free import of items etc. Original investment as well as the profits are repatriable without any limit.

Investment in 100% Export Oriented Units: - 100% export oriented units in a variety of industries can be set up anywhere in the country with the same facilities as are available in the free trade zones except that the 5 years tax holiday and permission to sell in the domestic market are not available to them.[94] Non-resident investors of Indian origin can retain 100% foreign equity ownership in these industrial units.

(d) Investment in Immovable Property

Non-residents of Indian nationality are allowed to purchase immovable property for residential purposes (land or constructed house) in India without any permission of the Reserve Bank of India. Foreign citizens of Indian origin are not allowed to acquire any immovable

property without prior permission of the Reserve Bank of India. Usually they are permitted to purchase only one house for residential purposes. Reserve Bank of India may consider requests for acquiring second residential unit (house or flat) on merits provided that funds for purchasing the property are remitted in advance.

(e) Special Facilities Available to Non-residents of Indian Origin

Th[illegible]overnment of India has offered a number of facilities to non reside[illegible] Indian origin[95] to set up a new industrial undertaking in India [illegible]icipating in expansion or diversification of an existing industrial undertaking in India. These facilities may briefly be summarized as follows:

(i) They are permitted to import new or second hand capital goods without any financial limit. They may also be permitted to import banned type of capital goods provided the machinery in question has either been used by the investor for at least one year prior to his return to India or the cif of such machinery does not exceed 10% of the cif value of the total machinery allowed to import.

(ii) They are permitted to import new or second hand professional equipment provided that import of new equipment is limited to Rs. 100 thousand cif.

(iii) They are allowed to import generating sets of 500 KVA or upwards.

(iv) They are permitted to import office equipment and furniture used by them for using in their industry in India provided that the value does not exceed Rs. 100 thousand.

(v) Import of computer system is allowed provided that the investor has been using the same for at least one year before returning to

India, or the computer is a built-in-part of the equipment allowed to import.

(vi) Prototypes can be imported.

(vii) Import of cement is allowed for construction of factory building.

(viii) They are allowed to import raw materials, components and spare parts up to three years, subject to a maximum of Rs. 500 thousand per year.

(ix) Non-residents of Indian origin returning home for permanent settlement are also allowed to import agricultural machinery.

(f) Tax Concessions to Non-resident Investors of Indian Origin

Following are the important tax concessions available to non-residents of Indian origin[96] in respect to their investment:

(i) Dividend income arising from units purchased out of funds remitted from abroad or from Non-resident External Account is exempt from income-tax.

(ii) Deposits in Non-resident External Account is exempt from wealth-tax.

(iii) Interest income from balance in Non-resident External Account is exempt from income tax.

(iv) Moneys and value of assets brought into India by non-residents of Indian origin at the time of returning for permanent settlement in India are not subjected to wealth-tax for a period of 7 years. Assets subsequently purchased out of money brought from abroad are also exempt from wealth-tax.

(v) No income tax is charged on remittances out of foreign income.

(vi) Investment in new equity issues of companies in the priority sector, certain type of saving certificates is exempt from

wealth-tax. Investment in saving certificates is also exempt from income-tax and gift-tax.

(vii) Gifts to the relatives of non-residents of Indian origin are exempt from gift-tax provided that the gifts have been made out of Non-resident External Account maintained in an Indian bank.

C. STATISTICAL ASPECT OF FOREIGN INVESTMENT IN INDIA

In the past 36 years about 9000 foreign collaborations[97] have been approved in India. The United Kingdom received the largest number of foreign collaboration approvals while the United States occupied second highest position. The number of foreign collaboration approvals and total foreign investment increased significantly between 1970 and 1982. In 1982, 590 foreign collaborations were approved as against 183 foreign collaborations in 1970.[98] The total foreign investment in India amounted to Rs. 24.52 million and Rs. 628.01 million in the years 1970 and 1982 respectively.[99] The number of foreign collaboration approvals and total foreign investment in India in the years 1970 and 1982 have been shown countrywise in the following table:

Table I.

Foreign Collaborations and
Investment in India
Approvals

Country	Collaborations 1970 (nos.)	1982	Investment 1970(Rs.mn)	1982
USA	33	110	4.86	50.33
FRG	36	110	1.33	35.35
U.K.	39	106	0.27	16.54
Japan	15	51	7.44	251.12
Switzerland	13	40	1.13	11.81
Italy	8	37	-	39.89
France	7	28	0.15	25.80
Sweden	3	16	-	15.31
Netherlands	3	14	3.20	-
Belgium	1	4	0.12	0.12
Denmark	1	4	-	0.60
NRI's	-	11	-	111.41
Others	24	59	~~5.9~~	69.73
Total	183	590	24.52	628.01

Source: Indian Investment Centre, New Delhi, Changing India, Table I.

During 1983, 724 applications for foreign collaborations were received by the SIA out of which 158 applications were referred to the Administrative Ministries for decision.[100] During the same year, 601 old and new foreign collaboration applications were disposed of by the SIA out of which 417 applications were approved and 150 applications were

rejected.[101] An analysis of above figures reveals that in 1983, 70% of cases were approved, 25% of cases were rejected and 5% of cases were otherwise disposed of. The main reasons for rejections[102] were availability of indigenous technology, shortage of raw materials, contrary to the country's industrial policy, existence of adequate capacity, high terms by foreign technology supplier, sufficient justifications not furnished. A majority of the cases were rejected on the ground of raw material constraints. The principal areas of foreign collaboration approvals[103] during 1983 were electrical equipment, industrial machinery, chemicals, ceramics, industrial instruments, machine tools and metallurgical industries.

In 1983, Japan obtained foreign collaboration approvals for the maximum amount (Rs. 160.77 million[104]). The other important countries having received the approvals for sufficiently high amounts are the U.S.A. (Rs. 138.921 million[105]), the U.K. (Rs. 98.018 million[106]) and the Federal Republic of Germany (Rs. 48.423 millions[107]). The quantum of foreign investment approvals during 1983 has been shown countrywise in the following table:

Table II.

Quantum of Foreign Investment
Approvals during 1983

	Name of Country	Amount of Investment [RS. in Laks]
1.	Australia	10.00
2.	Belgium	3.25
3.	Canada	35.60
4.	Cayman Island, British West Indies	240.00
5.	Denmark	11.15
6.	France	79.50
7.	Finland	10.00
8.	FGR	484.23
9.	Greece	11.76
10.	Hong Kong	7.20
11.	Italy	115.00
12.	Japan	1,607.70
13.	Malaysia	90.00
14.	Netherlands	268.60
15.	Sweden	80.00
16.	Switzerland	112.85
17.	U.K.	980.18
18.	U.S.A.	1,389.21
19.	Non-Resident Indians	651.07
	TOTAL	6,187.30

1 Lakh = 0.1 million

Source: Department of Industrial Development, Government of India Ministry of Industry, new Delhi, Report 1983-84, at 19.

According to Indian Investment Centre, between 1978-79 and 1981 - 1982, the total remittances to foreign investors towards profits and dividends rose from Rs. 660.08 million to Rs. 766.01 million.[108] During the same period, remittance towards technical knowhow fees went up from Rs. 36.3 million to Rs. 75.1 million. Remittances in connection with

royalties also rose during this period from Rs. 37.5 million to Rs.73.6 million.[109] Remittances for design and drawings/fees/miscellaneous purposes amounted to Rs. 12.4 million in the financial year 1981-82.[110]

Investment by non-residents of Indian origin in Indian banks constitutes another important area of foreign investment in India. Non-residents' outstanding balance in Non-resident External Accounts increased from 13.3 billions in March, 1982 to Rs. 17.8 billions in March, 1983.[111] Outstanding balance in Non-resident External Accounts in Indian rupees, U.S. dollars and pound sterling on March, 1982 and March 1983 has been shown in the following table:

Table III

Non-resident Capital Inflow

	Outstanding balance (Rs.bn.)	
	1982 March	1983 March
Non-resident external account (Rs.)	11.9	15.3
Foreign currency (non-resident) account (US$)	1.0	1.5
Foreign currency (non-resident) account (Stg.)	0.4	1.0
Total	13.3	17.8

Source: Indian Investing Centre, Chaning India, Table K.

Footnotes - Chapter II

1 Publication Division, Ministry of Information and Broadcasting Broadcasting, Government of India. India 1984, at 191.

2 Tidings International Business Directory (1983), at 1.

3 Department of Economics and Statistics, Tata Services Ltd., Statistical Outline of India (1984), at 14.

4 Indian Investment Centre, New Delhi, Investing in India (Dec.1983), 1983), at 75.

5 Id., at 30.

6 K.V. Iyer and L.R. Kumar, Foreign Collaboration in Industry (1984), Vol. I, at EFP 2.

7 Supra, note 4, at 10.

8 Id., at 15, 21.

9 The Companies Act, 1956 (1 of 1956), S. 591.

10 Supra, note 6, at EFP 3.

11 Id., at EFP 4.

12 Id.

13 Id.

14 Id.

15 Id., at EFP 5.

16 Id.

17 Id., at EFP 5-6.

18 Id., at EFP 7.

19 Id.

20 Id.

21 Id., at EFP 9.

22 O.M. No. ID & FC-5 (26)/68-II dated 25.1. 1969 regarding foreign collaboration policies and Procedures-Guidelines.

23 Foreign Exchange Regulation Act, 1947 (1 of 1947),S-18A.

[24] Reserve Bank of India, Foreign Collaboration in Indian Industry: Second Survey Report (1974), at 9.

[25] Id.

[26] Id., at 16.

[27] Id., at 25.

[28] Ministry of Industry, Government of India, Report of the Industrial Licensing Policy Inquiry Committee (1969), at 137.

[29] Government of India, Ministry of Finance, Department of Economic Affairs, Guidelines for Administering Section 29 of Foreign Exchange Regulation Act, 1973, Dt. Dec. 20, 1973.; K.V. Iyer and L.R. Kumar, Foreign Collaboration in Industry (1984), Vol. II, at ECR 21 to ECR 27.

[30] Profulla Roychoudhary, The Transnationals (1981), at 190.

[31] Id.

[32] Government of India, Ministry of Finance, Department of Economic Affairs, Clarification and Amplification of Guidelines issued for Administering Section 29 of FERA, 1973., dated April 16, 1976; Supra, note 29, at ECR 28-ECR-30.

[33] Supra, note 6, at EFP 11.

[34] Press Note No. 9 (10)/78-FC-II, dated December 28, 1978 issued by Government of India, Ministry of Industry, Department of Industrial Development, New Delhi.

[35] Press Note No. 9 (19)/80-FC (I), dated May 25, 1981, issued by Government of India, Ministry of Industry, Department of Industrial Development, New Delhi.

[36] Supra, note 6, at SOT 8-9.; K.V. Iyer, Guide to Industrial Approvals (1983), at 142.

[37] Id, at EFP 12.

[38] Id.

[39] Id., at EFP 12-22.

[40] Id., at EFP 12.

[41] Indian Investment Centre, New Delhi, Foreign Investment in India (May 1985), at 21.

[42] Id., at 13.

[43] Supra, note 29; Supra note 32.

44 Government of India, Ministry of Commerce (Department of Commerce) Resolution No. 8 (15)/LP/78 Dt. 31.12.1980.

45 Supra, note 41, at 9.

46 Id., at 10.

47 Supra, note 30 at 8.

48 Id.

49 Id., at 8-11.

50 Ministry of Petroleum and Chemcials, Government of India, Report of the Committee on Drugs and Pharmaceutical Industry (1975), at 104-106.

51 Supra, note 30, at 6.

52 Id.

53 Id., at 4.

54 Id., at 6.

55 Id., at 4.

56 Id.

57 Id., at 5.

58 Id., at 12.

59 Id., at 169.

60 Id., at 8.

61 Government of Canada, Foreign Direct Investment in Canada, (1972), at 42-43.

62 Id.

63 Id., at 42-43, 252-253.

64DId., at 76.

65 Supra, note 30, at 5.

66 Id., Rajya Sabha Debates, Vol. LXXXV, No. 26, Aug 30, 1973, s. 233.

67 Supra, note 30, at 6.

[68] Id.

[69] A.R. Janger, Organization of International Joint Ventures: A Research Report from the Conference Board (1980), at 2.

[70] Id., atl, 3.

[71] Id., at 3.

[72] Id., at 2.

[73] Id., at 3.

[74] Niki Tobi, "Legal Aspects of Foreign Investment in Nigeria" in (1978) 18 Indian Journal of International Law., 17, at 33.

[75] Supra, note 30, at 7.

[76] Supra, note 4, at 29.

[77] Id., at 30.

[78] Supra, note 41, at 12.

[79] Id.

[80] Supra note 4, at 49-53; Supra note 41, at 12-13.

[81] Supra, note 41, at 13.

[82] Id.

[83] Press Note issued by the Ministry of Finance(Department of Economic Affairs), Government of India on October 28, 1980.

[84] Supra, note 4, at 207.

[85] Indian Investment Centre, New Delhi, Investment by Non-residents of Indian Origin: Facilities and Incentives (July 1984), at 1-3.

[86] Id., at 3.

[87] Id., at 3-13; Supra, note 4, at 40-46.

[88] Id., at 13.

[89] Id., at 3.

[90] Id., at 12.

91 Id.

92 Id.

93 Id.

94 Id., at 13.

95 Id., at 9-11; Supra, note 4, 43-45.

96 Id., at 14-16.

97 Supra., note 41, at 4.

98 Indian Investment Centre, New Delhi, Changing India, Table 1.

99 Id.

100 Department of Industrial Development, Government of India Ministry of Industry, New Delhi, Report 1983-84, at 18.

101 Id.

102 Id.

103 Id.

104 Id., at 19.

105 Id.

106 Id.

107 Id.

108 Supra, note 98, Table I.

109 Id.

110 Id.

111 Id., Table K.

CHAPTER III

LEGAL ASPECTS OF FOREIGN INVESTMENT

All investment, whether Indian or foreign, is governed by several Acts and Resolutions. The principal enactments are, A. The Companies Act 1950,[1] B. The Industries (Development and Regulation) Act, 1951,[2] C. The Industrial Policy Resolution,1956,[3] D. The Foreign Exchange Regulation Act, 1973,[4] E. The Monopolies and Restrictive Trade Practices Act, 1969,[5] F. The Income-tax Act, 1961,[6] G. The Companies (profits) Surtax Act, 1964.[7] These are briefly outlined below:

A. THE COMPANIES ACT, 1956

The Companies Act, 1956, governs the business organizations in India. A foreign corporation, which wants to invest in India, has two options under this Act: (1) it can open a branch (place of business) under Section 591 of the Act, or (2) it can establish an Indian Company in accordance with the relevant provisions of the Act. If it chooses the latter course, it can establish either a fully owned subsidiary (subject to the prior approval of the Government of India) or a joint-venture with Indian partners. Once established, it will be generally treated on par with any other enterprise owned by Indians. The Act does not distinguish between foreign controlled and Indian controlled companies.

1. Branches of Foreign Companies

Sections 591 to 608 of the Companies Act, 1956 govern the companies incorporated outside India. Sections 591 to 602 concern the branches

of foreign companies operating in India. Any foreign company can set up a branch (i.e., place of business, in the words of Companies Act) without any formal permission from the Government of India. The Companies Act comes into picture only after it has established such a branch.

Section 592 of the Companies Act requires that within 30 days of the establishment of a place of business, the concerned foreign company should file with the Registrar the following documents for registration:

(1) a certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting the company;

(2) a full address of the registered or principal office of the company;

(3) a list of the directors and secretary of the company;

(4) the name and address or the names and addresses of some one or more persons resident in India, authorized to accept on behalf of the company service of process and any notices or other documents required to be served on the company; and

(5) the full address of the office of the company in India which is to be deemed its principal place of business in India.

Under Section 594, every foreign company should make out a balance sheet and profit and loss account in accordance with the provisions of the Act and deliver three copies to the Registrar. Section 595 prescribes certain formalities with regards to prospectus inviting subscription in India, disclosure of the name of the country of incorporation and all places of carrying on business in India.

Section 597 of the Act provides that foreign companies have to file

various documents under the Act with the Registrar having jurisdiction over New Delhi as well as with the Registrar of the State (Province) in which their principal office of business is situated. If a foreign company ceases to have a place of business in India, notice must forthwith be given to the Registrar at New Delhi. As from the date such notice is given, the obligation to file any document ceases, provided it has no other place of business in India.

Section 598 of the Act provides that if any foreign company fails to comply with any provisions laid down in part XI of the Act, the company and every officer or agent of the company who is in default, shall be punishable with a fine which may extend to Rs. 1000/- and in the case of a continuing offence, with an additional fine which may extend to Rs. 100/- for every day during which the default continues.

Section 599 of the Act provides that failure to carry out the prescribed procedures for filing documents, etc. laid down in the part XI of the Act will not prevent the foreign company from being sued on a contract, but the foreign company itself will be denied the right to institute any legal proceeding in respect to such contract until those provisions are complied with.

Section 600 of the Act provides that sections 125 to 145 thereof regarding registration of charges, section 118 regarding copies and inspection of debenture trust deeds, and section 209 regarding books of account shall apply, mutatis mutandis, to foreign companies.

Sections 603 to 608 of the Act deal with the procedure for the issue of prospectus by foreign companies.

It may be noted that neither the Company Law Board nor any other authority has any control over branches of the foreign companies.

The provisions of the Companies Act serve only as "visiting cards" of these corporations i.e., they are there only to speak what these companies are, where they have come from and a few details about their transactions.[8] Even if the Registrar discovers something wrong from the documents filed with him, he does not have any power to take action. Probably it is for this reason that branches of foreign companies have proliferated in India. In 1972, 591 branches of foreign companies were operating in India which included some of the leading industrial establishments like I.B.M.[9]

2. Incorporation of Indian Company

(a) Types of Companies

Indian Company Law has classified the companies into two groups; namely, (i) private company and (ii) public company. As per section 3 (1)(iii) of the Companies Act, 1956, a "private company" is a company whose articles of association (a) restricts the right to transfer its shares, (b) limits the number of its members to fifty, and (c) prohibits any invitation to the public to subscribe for any shares or debentures. Section 3(1)(iv) of the Act provides that a company which is not a private company is called a "public company". Both private and public companies may be a limited company or unlimited company. Further, a limited company may be limited by shares or guarantee of individual members of the company.

A company in which the liability of its members is limited to the shares held by them is called "a company limited by shares".[10] "A company limited by guarantee" is a company in which the members of the company undertake to contribute an amount specified in its memorandum, to the company in the event of its being wound up.[11] If there is no

limit to the liability of the individual members of the company, it is termed as "an unlimited company".[12] Thus according to the above classification, all companies formed under the Act may be grouped into the following 6 categories:

(1) Private Companies Limited by Shares,

(2) Public Companies Limited by Shares,

(3) Private Companies Limited by Guarantee,

(4) Public Companies Limited by Guarantee,

(5) Private Unlimited Companies and

(6) Public Unlimited Companies.

(b) Procedure for Incorporation

Any seven or more persons in case of a public company and any two or more persons in case of a private company, may form an incorporated company with or without limited liability by subscribing their names to the memorandum of association and completing necessary formalities for registration.[13] The steps to be taken for the formation of a company may be briefly outlined as:

(i) Preparation of the Memorandum of Association;

(ii) Preparation of the Articles of Association;

(iii) Registration of the Company.

(i) Preparation of Memorandum of Association

Memdorandum of Association is the company's charter which discloses the objects and the power of the company within itself and with regard to the outside world during the course of conducting business. The Memorandum of Association should contain the following things:[14]

(a) The name of the company with "Limited" as the last word in the case of a public limited company and "Private Limited" in the case of a private company;

(b) The main objects together with incidental or ancillary objects necessary for achieving main objects, and other objects of the company which are to be carried out after incorporation;

(c) The name of the State where the registered office of the company is to be situated;

(d) A statement regarding the liability of each of the members by shares or guarantee. In case of a company limited by the guarantee the amount of guarantee by each member is to be stated;

(e) The amount of the share capital with which the company is to be registered.

(ii) Preparation of Articles of Association

Articles of Association[15] signed by the subscribers of the memorandum prescribes internal regulations of the company for carrying on the business. However, Articles of Association is not mendatory in the case of a public company limited by shares. Appointment of directors, their powers and duties, division of the capital into shares, modes of transfer of shares, share certificates, borrowing powers of the Board of Directors, division of the profits and losses, etc. are the matters, which are dealt within the Articles of Association. Articles of Association is usually a much longer document than the Memorandum of Association but the Articles of Association is subordinate to and controlled by, the Memorandum of Association, which is the dominant instrument and contains the general constitution of the company. The Memorandum of Association is fundamental and can be altered only under certain circumstances provided by the Act, but the Articles of Association contain only internal regulations and the members of the company may alter it as

and when they think fit.

(iii) Registration of the Company.

Section 33 of the Act provides for the registration of the companies. The section requires (a) memorandum of association, (b) articles of association, if any, and (c) the agreement, if any, which the company proposes to enter into with any individual, firm or corporation, to be appointed as its managing agent or with any firm or corporation to be appointed as its secretaries and treasurers, to be presented for registration, to the Registrar of the state in whcih the registered office of the company is to be situated. In addition to these, a declaration by an advocate of a High Court or the Supreme Court or a chartered accountant regarding compliance of all the requirements of the Act is to be filed with the Registrar.[16] After all the relevant documents have been filed with the Registrar, he examines the documents and registers them, if he is satisfied that all the requirements of the Act have been complied with.[17] Thereafter, the Registrar issues a Certificate of Incorporation mentioning the date of incorporation and certifying under his hand that the company is incorporated.[18]

B. THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

The Industries (Development and Regulation) Act, 1951 is the basic legislation which regulates industrialization and flow of investment in desired industries according to national planned targets. As mentioned earlier in Chapter II, under the Act, an industrial licence is required for establishing new industrial undertakings and expansion of existing undertakings for manufacturing articles specified in the 1st schedule of the Act (Appendix VI). License is necessary for all enterprises, be they foreign or Indian. In granting a license under the

Act, the following principal criteria are considerd:

(1) The objectives of the Industrial Policy Resolution, 1956 and Industrial Licensing Policy.

(2) Specific priorities under the Five Year Plan.

(3) Techno-economic considerations relevant to a particular industry.

(4) Techno-economic features of the project proposal (aspects such as the foreign exchange component of the project, availability of raw materials, the utilization of by-products, the project location, collaboration with foreign entrepreneurs etc.).

A licence under the Act is not necessary in the following cases:

(a) If the investment in fixed assets (land, building and machinery) does not exceed Rs. 50 million, subject to the conditions mentioned in Appendix VII;

(b) If the industrial unit does not propose to manufacture any of the articles mentioned in the 1st schedule of the Act;

(c) If the undertaking is a small scale unit [A list of industries reserved for small scale sector has been given in Appendix VIII] i.e., if the total investment in plant and machinery does not exceed Rs. 3.5 million (earlier Rs. 2 million) provided it does not manufacture items specified in the IV and V schedules of the Act, i.e., if the industry is not governed by special regulations (Appendix IX);

(d) If the industrial undertaking is an ancillary unit with investment in plant and machinery not exceeding Rs. 4.5 million (earlier Rs. 2.5 million), provided that it is not engaged in the manufacture of items specified in the IV and V schedules of the

Act, i.e., industries governed by special regulation (Appendix IX); and

(e) If the industrial activity is not carried on in a factory as defined in the Act.

In 1983, 2755 applications[19] for industrial license were received by the SIA. During the same year 1948 applications were disposed of out of which 985 applications were accepted, 923 applications were rejected, and 40 applications were otherwise disposed of.[20] An analysis of above figures shows that 51% of applications were approved and 25% of applications were rejected. The principal grounds for rejections were existence of adequate capacity, shortage or non-availability of raw materials, proposed location not in conformity with the government's policy, proposal not in accordance with the government's licensing policy.[21]

C. THE INDUSTRIAL POLICY RESOLUTION, 1956

The fundamentals incorporated in the Industrial Policy Resolution, 1956, have regulated the process of industrialization in India for the last thirty years. The Resolution envisages the mixed nature of the Indian economy. It classifies all industries into three categories. Under the first category, the government has reserved certain industries for public sector. This includes public utilities, arms and ammunition and other defence equipment, atomic energy, coal, mineral, oils, electricity generation [illegible]tribution, iron and steel, aircraft, broadcasting and telecom[illegible]tion, air and rail transportation (See Appendix X). Another category comprises industries which fall under common sector, i.e., where private investment is allowed, but the State

retains the prerogative to make investment. Industries in this sector include aluminium, fertilizer, machine tools, ferrous and non-ferrous metals, certain type of drugs, dye-stuffs, plastics, road and sea transport etc. (Appendix XI). All industries not falling under the above two categories are open to the private sector but the State can also establish any industrial venture in this category.

In July 1980, the Government of India issued an Industrial Policy Statement[22] which reasserted the industrial policy of 1956 and outlined a few new objectives, namely, the need to maximize productivity, to strengthen small-scale industries and to promote export and import substitution. This has been discussed in detail in Chapter II.

D. THE FOREIGN EXCHANGE REGULATION ACT, 1973

Foreign investment in India was made at different times under different conditions and the Government of India wanted to bring it all within a single, uniform framework. Under this law, foreign investment falls into different categories, but with the exception of banks, airlines and shipping companies, which are permitted full foreign ownership on a reciprocal basis for Indian companies operating overseas, most others have to dilute their foreign equity holdings to 40 percent, which has already been discussed in detail in chapter II.

The Companies Act, 1956, under which all c[illegible]es are incorporated and the Industries (Development and Regula[illegible] 1951 do not distinguish between foreign-controlled and In[illegible]ed companies. For this purpose one has to turn to the Foreing Exchange Regulation Act [FERA], 1973. The Foreign Exchange Regulation Act is the only major regulatory Act having a special bearing on the operation of foreign

controlled enterprises. But even this Act, as originally enacted in 1947[23] contained very few provisions by way of regulation of foreign controlled enterprises. The only important provisions thereunder were sections 5 and 18. Under section 5, a foreign collaborator had to get the permission of the Reserve Bank of India, for the remittance of dividends and under section 18, a company controlled directly or indirectly, by non-residents could not borrow money without the prior approval of the Reserve Bank of India. This Act was repealed and a new Act with the same title was enacted in 1973. This new Act, namely, the Foreign Exchange Regulation Act, 1973, contains significant provisions regarding the regulation of foreign controlled business operation in India.

The FERA, 1947, referred to "companies controlled directly or indirectly by non-residents." But the Act itself did not contain any criterion,as to how to determine direct or indirect control. This created a great deal of confusion. In order to avoid this confusion, the FERA, 1973 introduces a mathematical criterion. It treats companies in which the non-resident interest is more than forty percent as foreign controlled.

As pointed out above, the Registrar does not have any power under the Companies Act, 1956 to take action against foreign companies even if he discovers something wrong from the documents filed by the branches of the foreign companies and due to this reason a large number of branches of foreign companies were established in India. The Foreign Exchange Regulation Act (FERA) was enacted in 1973, primarily to control the vast amount of foreign investment already in India.

It was found that many foreign controlled companies buy

indigenously manufactured products and after some packing and bottling, market them with their own trade names. Mr. Babubhai Chinani alleged on the floor of the Upper House (Rajya Sabha) that Singer Sewing Company's products, Binaca's tooth paste, Warner Hindustan's gripe water and CIBA's chewing gum were the examples of indigenously manufactured products being sold under the brand names of foreign companies.[24] Roychoudhary has observed that it was not uncommon to witness that the tooth brushes manufactured by Indian firms were stamped with foreign brand names and sold in the Indian markets as the products of some of the TNC firms.[25]

It was also noted that a large amount of foreign exchange was going out of the country merely for the sake of brand names of certain drugs. The Hathi Committee on Drugs and Pharmaceutical Industries[26] recommended that a National Drug Authority should take over the task of distribution of all essential drugs from the drugs and pharmaceutical industry in India, so as to save the consumer from exploitation. It also recommended the abolition of brand names of selected drugs in order to save foreign exchange going out of the country on account of brand names.

Sections 28 and 29 of the Foreign Exchange Regulation Act, 1973 were enacted with a view to tackle the above problems. According to section 28, no company in which non-resident interest is more than forty percent can accept appointment as agent in India of any person or company without the prior approval of the Reserve Bank of India. The term "agent" includes any person or the company buying goods with a view to selling them before any processing thereof and the term processing is defined as producing, preparing or marketing an article by subjecting any material to manual, mechanical, chemical, electrical or any other

like operation. Any process such as dividing, pressing, packing, labelling, branding or any such treatment as is necessary to render such product marketable to the consumer is specifically excluded from the definition of processing. As a result of these definitions, even principal to principal agreement between a foreign controlled company and an Indian party through which the former buys the latter's goods and sells them under its brand name cannot be entered into without the prior approval of the Reserve Bank of India. Where such agreement has already been entered into, the parties concerned should get the permission of the Reserve Bank of India within six months from the date of the commencement of the Act for continuance thereof.

Under section 28 (1) (e) no foreign company or foreign controlled company can allow its trade mark to be used by any person or company for any direct or indirect consideration. In the case of technical collaborations between foreign companies and Indian companies, the latter many times seek the permission of the former to use their brand names in return for some direct consideration. These practices come directly within the purview of this section. Further, even when foreign companies establish their subsidiaries in India and sell the production thereof under their brand names, the Reserve Bank's permission is required provided there is any direct or indirect consideration, for, in the eye of the law, the subsidiary is an Indian company. Any existing arrangement in this connection at the time of the commencement of the Act requires the approval of the Reserve Bank of India for its continuance.

Under section 29, no foreign company or foreign controlled company can carry on any activity of trading, of a commercial or industrial nature without the permission of the Reserve Bank of India. The existing

arrangements at the time of the commencement of the Act, would be subject to review by the Reserve Bank of India.

E. THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT, 1969

The Monopolies and Restrictive Trade Practices Act, 1969 controls monopolistic and restrictive trade practices. In respect of concentration of economic power the Act has made provisions for avoiding concentration of economic power (sections 20-23). In respect of undertakings, where the total value of assets (to be calculated along with the value of interconnected undertakings, is not less than Rs. 100 crores (Rs. 1000 million) and in case of a dominant undertaking (an undertaking which controls at least 25% of total production of India or possesses at least 25% licensed capacity of total installed capacity in India), where total value of assets is not less than Rs.1 crore (Rs. 10 million), expansion has been prohibited without the sanction of the Central Government (sections 20,21). Similarly, no undertaking whose total assets including the assets of interconnected undertakings is not less than Rs. 100 crores (Rs. 1000 million) or dominant undertaking having assets of not less than Rs. 1 crore (Rs. 10 million) can establish a new undertaking without prior permission of the Central Government (sections 20,22). Section 23 prohibits merger or amalgamation of any undertaking of above category with any other undertaking without approval of the Central Government. It also prohibits amalgamation or merger of two or more undertakings which would result in the formation of an undertaking of the above category. However, under section 22A(1), the Central Government has power to relax all or any of the provisions of sections 21 and 22 regarding expansion or establishment of new

undertakings in respect of an industry or service specified in the notification, undertakings established in a free trade zone and undertakings meant exclusively for producing export items.

Under section 5 of the Act, the Government of India is to set up a Commission known as Monopolies and Restrictive Trade Practices Commission consisting of a Chairman and not less than two and not more than eight members to be appointed by the Central Government. The Central Government in consultation with the Commission, is to appoint a Director General of Investigation and Registration and as many Additional, Joint, Deputy or Assistant Director General of Investigation and Registration, as necessary, for the purpose of making investigations and maintaining a register of agreements required to be registered under this Act (section 8).

The Commission has very wide powers and duties. The Commission is to inquire into any restrictive trade practices or monopolistic trade practices upon a reference made to it or upon its own knowledge or information (section 10). The Commission has for the purpose of an inquiry the same powers as vested in a civil court under the Civil Procedure Code of India (section 12).

If the Commission comes to the conclusion that any particular practice is prejudicial to the public interest, it has the power to direct that the practice shall not be repeated or shall be discontinued or that the agreement relating thereto shall be void in respect of such restrictive trade practice or shall stand modified in such manner as may be specified in the order (section 37).

The Commission has also a special power of recommending division of

any trade of an undertaking by the sale of any part of the assets or interconnected undertakings (section 27).

The Commission has also the power of excluding goods of any class to be exempted from the operation of sections 39 and 40 which are sections preventing agreements controlling resale prices (section 41).

With regard to monopolistic trade practices, the Commission may make reports to the Central Government on its findings and the Central Government may pass orders regulating the production, supply, distribution or control of any goods, prohibiting the undertaking from resorting to any act or practice or from pursuing any such commercial policy, fixing standards for the goods used or produced by the undertaking, declaring unlawful any agreement or part thereof or requiring the party to any such agreement to determine the agreement within such time as may be specified (section 31).

The Act also provides for prohibition of measures for maintaining resale prices (sections 39,40). The Act further provides for powers of the Registrar and the Central Government to obtain information regarding the activities of the Undertaking (sections 42,43). Merger or amalgamation, establishment of a new undertaking or expansion of the existing one, acquisition or transfer of shares in contravention with the Act and violation of the orders of the Commission or the Central Government, furnishing false information are criminal offences under the Act. The maximum punishment is a fine up to Rs. 1 lakh (Rs. 100 thousand) and imprisonment for a term extending to five years depending upon the category of the offence (sections 45-52).

It is important to note that monopoly is not a criminal offence

under the Indian law, only violation of the government's order in respect of monopolistic practices is a criminal offence which is punishable with imprisonment for a minimum term of six months and maximum term of two years in case of subsequent offence.

F. INCOME TAX ACT, 1961

Income tax, in India, is a yearly tax chargeable on the yearly income of every person or corporation liable to tax under the provisions of the Income-tax, Act 1961. The rates of tax are prescribed by the Parliament every year by separate legislation called the Finance Act. The tax year is called the assessment year which corresponds to the government's financial year and runs from April 1, to March, 31. Tax in a particular assessment year is assessed on the taxpayer's total income in the previous year which is normally the period of twelve months preceding the 1st April of the assessment year, or any other accounting year of twelve months of the taxpayer ending within that period of twelve months.

1. Corporate Taxation

In India corporate bodies are known as companies. A company is a distinct taxable entity for income tax purposes. Under the Income-tax Act, a company is treated as an Indian Company if it is formed and registered under the Indian Companies Act, 1956, or a foreign company if it is a corporate body incorporated under the law of any other country. Companies are taxed generally at flat rates which vary according to nature of the income, residential status and the class of company. The rate of tax applicable on a company depends upon whether it is a

domestic company or a foreign company, whether it is a closely-held company or a widely held company; and whether it is an industrial company or a trading company. Widely held domestic companies pay income tax at lower rates than the rates applicable to closely-held domestic companies. Among the closely held domestic companies, industrial companies pay tax at lower rates as compared to the rates applicable on non-industrial or trading companies.

(a) Rates of Income Tax on Companies

As pointed out above, the rates of income-tax varies every year. The Government of India has considerably reduced the taxation rates for the assessment year 1986-87. The tax-rates for the year 1985-86 and 1986-87 are given in Tables IV and V in the following pages. In addition to that companies are required to pay a 5% surcharge on income tax payable. No surcharge is payable on dividend income of a foreign company. Further, the surcharge has been abolished with effect from April 1, 1988.

(b) Deductions

Under sections 30-36 of the Income-tax Act, 1961, several deductions are permissible when computing a company's tax liability. The principal deductions are: rent, taxes, repairs and insurance for buildings used for business; repairs and insurance of machinery, plant and furniture; depreciation allowance for buildings, machinery, plant or furniture; investment allowance for plant and machinery etc; development rebate, rehabilitation allowance; expenditure on scientific research; expenditure on acquisition of patent rights or copy rights, expenditure on knowhow; export market development allowance; rural development

Table IV

CORPORATE TAX RATES

(1985-86)

I. In the Case of a Domestic Company

(1)	where the company is a company in which the public are substantially interested	55 percent of the total income
(2)	where the company is not a company in which the public are substantially interested	
(i)	in the case of an industrial company	60 percent of the total income
(ii)	in any other case	65 percent of the total income

II. In the Case of a Company other than a Domestic Company

(i) on so much of the total income as consists of:

(a) Royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April 1976 or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with theGovernment or the Indianconcern after the 29th day of February, 1964 but before the 1st day of April 1976,

and where such agreement has, in either case, been approved by the Central Government — 50 percent:

(ii) on the balance, if any, of the total income — 70 percent:

Surcharge on Corporate Tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph shall be increased by a surcharge calculated at the rate of five per cent, of such income-tax.

Table V

CORPORATE TAX RATES

(1986-87)

I. In the Case of a Domestic Company

(1)	where the company is a company in which the public are substantially interested	55 percent of the total income
(2)	where the company is not a company in which the public are substantially interested	
(i)	in the case of a trading company or an investment company	60 percent of the total income
(ii)	in any other case	55 percent of the total income

II. In the Case of a Company other than a Domestic Company

(i) on so much of the total income as consists of:

(a) Royalties received from Government or an Indian concern in pursuance of an agreement made by it with the Government or the Indian concern after the 31st day of March, 1961 but before the 1st day of April 1976 or

(b) fees for rendering technical services received from Government or an Indian concern in pursuance of an agreement made by it with theGovernment or the Indianconcern after the 29th day of February, 1964 but before the 1st day of April 1976,

and where such agreement has, in either case, been approved by the Central Government — 50 percent.

(ii) on the balance, if any, of the total income — 65 percent.

Surcharge on Corporate Tax

The amount of income-tax computed in accordance with the preceding provisions of this Paragraph shall be increased by a surcharge calculated at the rate of five per cent, of such income-tax.

allowance; payment made to associations and institutions for carrying out rural development programmes, conservation of natural resources programmes and preliminary expenditure for setting up a new industrial undertaking or expansion of an existing industrial undertaking.

(c) Tax Incentives

Most countries give a number of tax incentives to attract capital.[27] The incentives are given to attract foreign capital or prevent domestic capital from going abroad.[28] In order to encourage fresh investments in industry, technological development, small scale industries, and export-oriented units, the Government of India also offers a variety of tax incentives to industrial units. Some of the major incentives[29] are briefly discussed below:

(i) Tax Holidays

New industrial undertakings set up within a period of 9 years (the period has been extended recently by 5 years) following March, 1981 are exempt from income tax on 20 percent of their gross profits (25% in the case of companies) for a period of 8 years.[30] In case of a co-operative society this benefit will be available for a period of 10 years.[31]

(ii) Tax Concessions in Backward Areas

In order to promote industrial development in the backward areas of the country, new industrial undertakings or hotels set up the specified backward areas are allowed a deduction of 20 percent on their profits and gains while computing their income for a period of 10 years from the establishment of the industrial undertaking or hotel.[32]

(iii) Tax Concession for Small Scale Industrial Undertakings Set Up in Rural Areas

The Government of India has accorded a special treatment to small scale industries set up in rural areas.[33] Accordingly, a tax payer is entitled to a deduction of 20 percent of the profits earned by him from small scale industrial undertakings set up after June 30, 1977 in any rural area. This tax concession is available only for a period of 10 years commencing from the year of starting production.

(iv) Tax Holiday for New Industrial Undertakings in Free Trade Zones

With a view to provide encouragement for establishing export-oriented ventures in the free trade zones, the government has allowed complete tax exemption in respect of profits derived from industrial undertakings established in free trade zones for a period of 5 years.[34] This tax holiday is in lieu of all other tax concessions which are available to all industrial ventures in India.

(v) Investment Allowance

An investment allowance at the rate of 25 percent is admissible for new machinery or plant installed for producing a range of products or for generation and distribution of electricity or any other form of power. If the new machinery or plant is installed after May 31, 1983, for controlling pollution or protecting environment in any industrial unit, investment allowance on such machinery is admissible at the rate of 35 percent. If a plant or machinery installed after June 30, 1977 is based on technical knowhow developed by a laboratory of the government or public sector company or a university or an institution, investment allowance on such plant and machinery is allowed at the rate of 35 percent.

(vi) Deduction for Export Turnover

An Indian company is allowed a deduction from its income at the rate of 1 percent of the total export made during the previous year.[36] An additional deduction at the rate of 5 percent is allowed on increased export during the previous year over the immediately preceding year.[37]

(vii) Exemption for Foreign Technicians

A non-resident foreign technician whose contract is approved by the Government of India is exempt from income-tax on up to Rs. 4000/per month for a period of two years following his arrival in India.[38] The remuneration received by a foreign expert as an employee of a foreign enterprise for services rendered by him during his stay in India is also exempt from income tax provided his stay in India does not exceed [illegible]0 days in any one year.[39]

2. Foreign Investment and Income-Tax

Taxation is an important factor affecting foreign investment in a country. Taxation policy is a crucial source of benefits from foreign investment for the host country. Therefore, the government should design its policy in such a way that it can obtain maximum advantages from the foreign investments.

Because of high population, foreign exchange problem occasioned by increasing imports and technological gap existing in a number of fields, India needs introduction of sophisticated technology and the stepping up of its production through labour oriented and export oriented industries. In addition to this, India's proximity to the Mediterranean and the Far East together with the technological advancements India has made

in recent years, makes it an attractive country for foreign investors as it is very convenient for them to step up their production in India and export to the vast developing markets in all Asian countries.[40] India has an abundance of skilled and semi-skilled labour and its engineering facilities has proved a boon to the foreign companies operating in India.[41] Therefore, taxation of income of these foreign investors is an important problem and requires the serious attention of the government.

(a) Taxation of World-wide Earnings

Corporate, as well as individual income arising within the boundaries of a country, is universally taxable in all the countries but some countries exempt foreign earnings of domestic corporations from taxation. Countries taxing income originating from local sources only are called "territorial" taxing countries while the countries taxing world-wide earnings are termed as "world-wide"taxing countries. Example of "territorial" taxing country is France which taxes the income from local sources only.[42] The United States and the Federal Republic of Germany are examples of "world-wide" taxing countries which tax income from foreign sources also, but the Federal Republic of Germany taxes the world-wide income of the companies only if their seat or place of management is in Germany, while in the U.S.A., place of incorporation is the taxing criterion.[43] India taxes on the "world-wide" income principle. The corporations are seriously affected by different approaches adopted by governments in regard to foreign source earnings.[44] "World-wide and "territorial" tax approaches affect the competitive power of the companies in foreign markets.[45] Under the world-wide taxing principle, subsidiaries and branches of foreign companies with high tax rates in

their home country cannot compete with the branches or subsidiaries of the companies whose home country either exempts earnings from foreign sources from tax or imposes low tax rates, if they are operating in the same host country.[46] For example, if there is a U.S. subsidiary competing with a French subsidiary in a host country with a low corporate tax rate (e.g. Hong Kong-17%[47]), the French subsidiary will be more competitive because the United States taxes its corporations on their "world-wide" income, while France applies the "territorial" principle.[48] The U.S. company has to pay high U.S. as well as low Hong Kong tax compared to the French subsidiary which pays only the low Hong Kong tax. It may be advantageous for India also, to shift from "world-wide" taxation principle to "territorial" principle in respect to Indian companies. In the recent years, Indian entrepreneurs have established a number of (238 by the end of March, 1983[49]) joint ventures in foreign countries. The government should not tax the income of Indian companies from foreign sources or its operations abroad. This will increase the competitiveness of Indian firms in the foreign markets. It would also increase foreign exchange flow to India from Indian companies operating in low tax rate countries as these companies would remit more money in terms of profits and dividends, if their income is exempt from tax in India.

(b) High Tax Rates

Tables IV and V show that the corporate income tax rates are significantly high in India. Income tax rates are usually lower in the developing countries than in the developed countries[50], India is an exception to this. A comparison of corporate tax rates of India and other countries shows that the tax rate for domestic companies is the third

highest in India (50% to 60% for the year 1986-1987[51]), with the only higher rates in Iran (63%) and Pakistan (60%).[52] High personal and corporate tax rates in India are due to a narrow tax base[53] for instance no income tax is levied on agricultural income despite the fact that the agricultural income constitutes a significant portion (Rs. 44,6730 million in 1980-1981[54]) of the total national income (Rs. 113,8820 million in 1980-1981 and Rs. 169,0000 million in 1983-84[55])

It is evident from Tables IV and V that corporation tax rates in India range from 50% to 70% and 50% to 65% for the tax years 1985-86 and 1986-87 respectively. Because of high tax rates, foreign companies as well as domestic companies do not show their correct income and resort to means of tax evasion which adversely affects the government's tax revenue. IBM is an important example for manipulating its account books for the purpose of concealing its actual earnings.[56] According to Safarian's study regarding corporate taxation in North America:

> When Canada had a corporate tax rate of 47%, relative to the American tax rate of 52%, U.S. corporations found it advantageous not to charge the Canadian subsidiary for management, licensing fees and technology, since this would have the effect of reducing the Canadian subsidiaries' tax burden and increasing the American parent's liability in the high tax jurisdiction.[57]

The above analysis is equally applicable to India. If the Indian corporate tax rates are lowered, foreign companies from high tax rate countries would show more profits in their Indian subsidiaries which would increase tax revenue of the Indian Government from foreign investment and also reduce the burden of remittance of foreign exchange for royalties and technical collaboration fees. Besides tax revenue and saving of foreign exchange, an important advantage of lowering tax rates is that the Indian companies will retain more profits on record which

they will be able to invest in developing activities (industrialization) of the country and thus, this money would be more productive than the hidden money (black income of the corporations retained by way of tax evasion) and money transferred to foreign parent companies by way of high royalties and technical collaboraions. In respect of high income tax rates and productivity of the capital, a leading commentator has concluded:

> The Government of India should consider reducing the corporate tax to a reasonable level (perhaps 50%) and reducing the impact of the surtax. This would improve corporate savings, investment and growth. Experience has shown that the corporate sector's marginal savings rate is much higher than that of the government. As such, money left in the hands of companies has greater potential for investment than does money controlled by the government.[58]

If the income tax rates are lowered in India, it would attract foreign capital from the countries taxing the corporate income on "territorial" principle. Investors from these countries would be prepared to invest money and transfer advanced technology even with minority equity participation due to tax advantages.

An important advantage of lowering tax rates, is that investors from the countries taxing on "territorial" principle would establish more export oriented ventures in India because the cost of production in India would come much lower than in their own home countries [illegible] to low cost Indian labour, which would increase their competitiveness in the international market [illegible] this would boost Indian exports.

Some countries have different tax rates for distributed and undistributed profits, for instance, in the Federal Republic of Germany, corporations are taxed at the rate of 51% on that part of the year's profit that is not distributed, while the share holders are taxed on the

distributed part at the rate of 15 percent.[59] France provides partial relief at the shareholder level, thus, the corporation pays tax at the rate of 50 percent, on all its profits, distributed or undistributed, and the individual shareholder is given credit [illegible] his taxable income on the dividends received by him.[60] This situation benefits the French corporations having subsidiaries in Germany, where taxation of only undistributed profits in Germany gives relief to the German subsidiary and the low tax rate applicable on the dividend income, benefits the French parent corporation. India should also use this "split-rate" method for taxation of dist[illegible] and undistributed profits but in a different way and only for foreign controlled companies. In the case of subsidiaries of foreign companies and companies where foreign interest is in the majority, the government should prescribe a higher income tax rate for distributed profit and a lower rate for undistributed profit. This would help in dilution of foreign equity in Indian companies and these foreign-controlled companies would declare less dividends and retain more profits locally, which, on the one hand, would reduce the burden of remittance of foreign exchange and provide more capital for reinvestment in Indian industries with majority local equity participation, on the other hand.

G. THE COMPANIES (PROFITS) SURTAX ACT, 1964

Under the provisions of the Companies Surtax Act, 1964, a domestic company is also liable to a special tax called surtax on chargeable profits in excess of statutory deductions (i.e., 15 percent of the capital of the company or Rs. 200,000, whichever is greater). The chargeable profits means a company's total income reduced by income tax

payable by the company. The rate of surtax levied is 25 percent on the amount of excess up to 5 percent of amount of the company's capital and 40 percent on the balance of such excess. The surtax will stand abolished from April 1, 1988.

The income of non-resident companies include mainly dividends on their equity shares, interest on loans, royalties received from government or any Indian concern or technical service fees for technical collaboration in India. Income arising from all these items is exempt from surtax. Hence, the effect of the Companies Surtax Act, 1964 on non-resident company investors, is negligible.

Footnotes Chapter III

1 The Companies Act, 1956 (1 of 1956).

2 The Industries (Development and Regulation) Act, 1951 (65 of 1951).

3 Industrial Policy Resolution, 1956.

4 The Foreign Exchange Regulation Act, 1973 (46 of 1973).

5 The Monopolies and Restrictive Trade Practices Act., 1969 (54 of 1969).

6 The Income-tax Act, 1961 (43 of 1961).

7 The Companies (Profits) Surtax Act, 1964 (7 of 1964).

8 Proceedings of the seminar on Current problems of Corporate Law: Management and practice, (Bombay, 1964), at 164.

9 Statement made in Lok Sabha in reply to an unstarred question No. 1286 November 20, 1973 by the Deputy Minister of Company Affairs, Mr. Bedabrata; A. Jayagovinda, "Regulation of Foreign Enterprises in India" in Indian Journal of International Law (1977) 325 at 330.

10 Supra, note 1, S.12(2)(a).

11 Supra, note 1, S.12(2)(b).

12 Supra, note 1, S.12(2)(c).

13 Supra, note 1, S.12(1).

14 Supra, note 1,S.13.

15 Supra, note 1, S.26.

16 Supra, note 1, S.33(2).

17 Supra, note 1, S.33(3).

18 Supra, note 1, S.34.

19 Department of Industrial Development, Government of India, Ministry of Industry, New Delhi, Report 1983-84, at 17.

20 Id.

21 Id.

22 K.V. Iyer and L.R. Kumar, Foreign Collaboration in Industry (1984), Vol. 1., at EFP 12.

23 The Foreign Exchange Regulation Act, 1947 (7 of 1947).

[24] Rajya Sabha Debates, Vol. LXXXV, No. 26, August 30, 1973, s. 233.

[25] P. Roychoudhary, The Transnationals (1981), at 5.

[26] Ministry of Petroleum and Chemicals, Government of India Report of the Committee on Drugs and Pharmaceutical Industry (1975), at 84, 104 to 106.

[27] Mrs. S.K. Verma, "Taxation of Multinational Corporations" in Indian Journal of International Law (1976), 93 at 99.

[28] Id.

[29] Indian Investment Centre, New Delhi; Taxes and Incentives (1983), at 51 to 77.

[30] Id., at 69.

[31] Id.

[32] Id., at 70.

[33] Id.

[34] Id., at 75.

[35] Id., at 53-56.

[36] Id., at 72-73.

[37] Id.

[38] Id., at 95-96.

[39] Id., at 97.

[40] V. Gaurishankar, "Taxation of Foreign Companies - An Indian Perspective with reference to Code of Conduct for Transnational Corporations" in Indian Journal of International Law (1977) 21, at 22.

[41] Id.

[42] Supra, note 27 at 94.

[43] Id., at 94-95.

[44] Id.

[45] Id., at 97.

[46] Id.

APPENDIX IX

LIST OF INDUSTRIES GOVERNED BY SPECIAL REGULATIONS

(Schedules IV & V)

Schedule IV

1. Coal falling under '(1), Coal, lignite, coke and their derivatives under the heading "2, Fuels" ;
2. Textile, falling under the heading "23, Textiles (including those dyed, printed or other wise processed) manufactured, produced or processed on powerlooms" ;
3. Milk foods falling under "(2) Milk foods' ; Malted foods falling under '(3) Malted Foods' and Roller flour milling falling under '(4) Flour' under the heading '27, Food Processing Industries" ;
4. (a) Oil seed crushing, falling under '(1) Vegetable oils including ; solvent extracted oils' and (b) Vanaspati falling under '(2) Vanaspati' and under the heading "28, Vegetable Oils and Vanaspati" ;
5. Leather falling under the heading "31, Leather, Leather Goods and Pickers" ;
6. Matches falling under '(3) Matches' under the heading "36, Timber Products" ;
7. Distillation or brewing of alcoholic drinks falling under the heading "26, Fermentation Industries";
8. Hot-rolling of semis, bars, wire rods and structural sections of steel.

Schedule V

1. All qualities of steel manufactured from electrical furnaces based on scrap, falling under (1) 'Iron and steel (Metal)' and '(6) Special steels' under the heading "1. METALLURGICAL INDUSTRIES ; A. Ferrous"
2. Iron and steel pipes and tubes and stainless tubes falling under '(5) Iron and steel pipes' under the heading "1. METATLLURGICAL INDUSTRIES ; A Ferrous" ;
3. Bright bars
4. Tin containers and metal containers
5. Drums and barrels
6. Wires of mild steel, special steel and alloys steel—coated and uncoated
7. Cold and hot rolled strips, sheets and plates of all categories of steel including box strappings

   The above items 3 to 7 fall under '(7) Other products of Iron and Steel' under the heading "1. METALLURGICAL INDUSTRIES ; A. Ferrous"
8. Non-ferrous semis alloys, flat products and extrusions falling under the heading "1. METALLURGICAL INDUSTRIES ; B Non-ferrous"

9. ACC/ACSR Conductors falling under '(6) Elecrrical Cables and Wires' under the heading "5. ELECTRICAL EQUIPMENT".
10. Cold Rolled Formed Section
11. Hamilton Poles
12. Tubular Poles
13. Steel Structurals
14. Sheet Metal Components
15. T.V. Receivers
16. Sheet, Figured and Wired Glass
17. Playwood, Decorative Veneers, Block Boards and Flush Doors
18. Sugar
19. Transmission Line Towers
20. Sewing Machines—hand-operated, Machine operated, Industrial or otherwise
21. Dairy Machinery Industry
22. Food Procesing Machinery and Equipment Industry
23. All types of Rubber based Conveyor Beltings, PVC Conveyor Beltings and Fan and V belts
24. Calcium Carbide
25. Caustic Soda
26. Potassium Chlorate
27. Carbon Black
28. Calcium Carbonate
29. Elemental Phosphorous
30. Sodium Chloride
31. Malathion Technical
32. BHC Technical
33. Endosulfan Technical
34. 2-4, D.
35. Synthetic Pyrethroids
36. Aniline
37. Acetanilide
38. Meta-amino Phenol
39. M-Dinitro-benzene
40. Nitro-benzene
41. Para-nitrochloro-benzene
42. Orthonitrochloro-benzene
43. Paranitro-toluene
44. Orthnitrotoluene
45. Metanitrotoluene
46. Alcohol-based Chemicals
47. Pig iron and Sponge iron
48. Ferro Alloys
49. Electronic Components
50. Computers, Mini Computer/Micro Processor based system and allied items
51. Digital Electronic Watches
52. Two-way Radio Communications and Allied Equipment

53. Chemicals & Pharmaceutical Machinery including mixers and reactors-Kneading Mills, turbo mixers and the like. Filteration equipment- filter press rotary filters and the like. Centrifugal machines. Evaporators Distillation equipment. Crystallisers, Driers.
54. Borax
55. Boric Acid
56. Chemical Lime
57. PVC Power cables with Aluminium conductors
58. Acetic Acid
59. Distribution Transformers
60. Dry Batteries
61. Welding Electrodes
62. Electric Fans
63. Overhead Cranes
64. Railway Wagons
65. Industrial Gases
66. Formaldehyde
67. Vanadium Pentoxide Catalyst
68. Hydrogen Peroxide
69. Nylon Chips/Nylon Moulding Powder
70. Industrial Explosives including Detonators, Detonating Fuse, Safety Fuse, Gun Powder and Nitro-Cellulose (explosive grade)
71. Polyester chips/Polyester Moulding Powder

———

APPENDIX X

LIST OF INDUSTRIES RESERVED FOR PUBLIC SECTOR

1. Arms and ammunition and allied items of defence equipment.
2. Atomic energy.
3. Iron and steel.
4. Heavy castings and forgings of iron and steel.
5. Heavy plant and machinery required for iron and steel production, mining, machine tool manufacture and such other basic industries as may be specified by the Central Government.
6. Heavy electrical equipment including large hydraulic and steam turbines.
7. Coal and lignite.
8. Mineral oils.
9. Mining of iron ore, manganese ore, chrome ore, gypsum, gold and diamonds.
10. Mining and processing of copper, lead, zinc, tin, molybdenum and wolfram.
11. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.
12. Aircraft.
13. Air transport.
14. Railway transport.
15. Shipbuilding.
16. Telephones and telephone cables, telegraph and wireless equipment (excluding radio receiving sets).
17. Electricity generation and distribution.

LIST OF INDUSTRIES OPEN TO PUBLIC AND PRIVATE SECTORS

1. All other minerals except "minor minerals" as defined in Section 3 of the Minerals Concession Rules, 1949.
2. Aluminium and other non-ferrous metals not included in Schedule "A" of the Industry Policy Resolution.
3. Machine Tools.
4. Ferro-alloys.
5. Basic and intermediate products required by chemical industries such as the manufacture of drugs, dye-stuffs and plastics.
6. Antibiotics and other essential drugs.
7. Fertilizers.
8. Synthetic rubber.
9. Coal processing.
10. Chemical pulp.
11. Road transport.
12. Sea transport.

APPENDIX XII

NUMBER OF FOREIGN COLLABORATIONS APPROVED BY THE GOVERNMENT OF INDIA DURING THE PERIOD 1977-1983

Country	1977	1978	1979	1980	1981	1982	1983
U.K.	59	61	63	110	79	106	119
U.S.A.	54	59	48	125	85	110	135
F.R.G.	55	58	55	100	74	110	129
Japan	20	28	12	34	27	51	58
Switzerland	23	18	14	38	26	40	47
France	14	21	17	24	23	28	40
Italy	10	13	16	25	18	37	30
G.D.R.	3	8	6	4	4	2	10
Sweden	4	8	5	10	11	16	15
Netherlands	4	10	6	8	9	14	13
Denmark	3	2	3	6	1	4	3
Czechoslovakia	2	1	2	4	-	5	2
Austria	2	2	2	5	8	8	3
Belgium	2	-	3	2	1	4	8
Canada	1	3	2	-	2	1	6
Hungary	3	1	1	2	3	3	2
Poland	1	1	1	2	4	4	1
Yugoslavia	-	-	-	3	1	2	-
Finland	2	1	3	5	2	4	1
Others	5	12	8	19	11	41	23
Total	267	307	267	526	389	590	645

Source: Investing in India , Statistical outline 1984. p.127.

APPENDIX XIII

Foreign collaborations sanctioned in India from 1957 to 1984

Country	1957-65	1966-75	1976-80	1981	1982	1983	1984	1957-84
UK	663	445	347	79	107	119	126	1886
USA	408	450	355	85	110	135	148	1691
Federal Republic of Germany	348	432	328	74	110	129	135	1556
Japan	198	234	104	27	51	58	78	750
Switzerland	110	141	115	26	41	47	30	510
France	93	119	93	23	28	40	38	424
Italy	66	67	72	18	37	30	38	328
Sweden	31	51	33	11	15	15	14	170
Netherlands	35	29	34	9	14	13	14	148
GDR	55	34	28	4	2	10	11	144
Others	361	228	139	33	76	77	120	1034
Total	**2358**	**2230**	**1648**	**389**	**591**	**673**	**752**	**8641**

Source: Business India, Feb. 24 to March 9, 1986, at 31.