

# Economic Legislation as A Measure To Regulate Private Sectors



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## Abstract

The term Economic Legislation is a blanket term which includes various legislations which are framed by the government to control the activities of the private sectors. After India's independence there is a race among the business association to rule the market or the economy which gave rise to various interest differences. They adopted monopolistic, unfair corrupt trade practices to sustain or gain control over the economic sector. The Government in order to safeguard the interest of the consumers/customers and to bring and regulate the activities of the private sectors in order to the economic goal, adopted various legislations at various stages as a measure against the private sectors. This paper focuses on those rules and regulations which government has enacted, to regulate these disputes in the name of Economic Legislation for private sectors. The Government had framed various business laws but my research concentrate on four such legislations which regulate the overall working of the business organization whether operating in India or from abroad.

**Keywords:** Economic Legislation, Monopolistic Trade Practices, Unfair And Restrictive Trade Practice, Competition Laws, FERA, FEMA, etc.

## Introduction

Various legislations have been enacted by the Government to cope up with the corrupt trade practices, exploitation of labour, monopolies in trade etc. These are some of the issues which always develop with the growth in the economy of the nation. To hamper these trade disputes and to control and regulate the private sectors, government had taken various measures from time to time. Generally, the private sector fails to fulfill their social and corporate responsibilities which results into the silent wars between the private businesses and the government.

## Objective of the Study

1. The present research has been done to cover up the important regulations under the term 'economic legislation'.
2. To bring into focus the characteristics of various legislations and how they control the business sectors.

## Review of Literature:

1. Desai, Nitish (2013), 'Competition Law in India: Judicial Trends and the Way Forward', Nitish Desai Associates (For Private Circulation Only), Pg. Nos. 12-17: The work has been done by a Nitish Desai and associates. They are copyright holder of this work. The material refers to the downfall of MRTP Act and the evolution of Competition Act in its place. It gives a detail analysis of the provisions of the Competition Act and highlighting the important features as well.
2. FEMA, (1999) Department of Revenue, Ministry of Finance, Government of India. Archived from the original (PDF) available at the [www.indiankanoon.org](http://www.indiankanoon.org) visited on 1<sup>st</sup> May 2019: This is the text copied from the original PDF document of FEMA 1999. It gives in detail the aims and objective of the Act with its applicability.
3. 'Industrial Disputes Act, 1947 - About industrial disputes (strike, lockout, layoff and retrenchment of employees) - Industrial Disputes (Amendment) Bill, 2009', available at [www.whatishumanresource.com](http://www.whatishumanresource.com) A website for HRM student, visited on 10 May 2019: The article is uploaded by Human Resource website provides a detailed study on Industrial Dispute Act and how can this Act successfully control the activities of private sector from exploiting the labour in the name of development and globalization.
4. Kapoor, Shephali (2018) 'What is Foreign Exchange Regulation Act?', Indian real estates, available at [www.99acres.com](http://www.99acres.com) visited on 1<sup>st</sup> May

5. 2019: this article is a work on the salient features of FERA, gives a detailed objective with which the legislation had been enacted. This work provides the working of FERA with foreign exchanges transaction, import and export of foreign currency and a comparative study of both FERA and FEMA.
6. Nitisha, 'Economic Legislation enacted by Government for Private Businesses', available at <http://www.economicdiscussion.net> visited on 7<sup>th</sup> of May 2019: This article discusses the laws which are assumed to be fall under the economic legislation. it highlights the standard set out by the enquiry commission of the particular legislation to deal with the association in order to control unfair, restrictive and monopolistic trade practices.
7. Rekhi, Samia (2018), '7 Main Recommendation of MRTP', available at <http://www.economicdiscussion.net> visited on 5<sup>th</sup> May 2019: this article focuses on the seven main recommendation of the monopolistic trade practices act with its salient features and the main amendments done to the said Act by the committee.
8. Singh, Hemant (2019), 'Features of FERA and FEMA in India', available at <https://www.jagranjosh.com>, General Knowledge for Exams visited on 7<sup>th</sup> May 2019: this Article describes the features of the draconian legislation FERA and its repulsion with the more business friendly legislation called FEMA. This article throws light on the main features of both the acts and also oint out the reason for the downfall of the previous law.
9. Vasani, Bharat, 'laws in Conflict', Indian Business Law Journal (2018) available at [www.ventagasia.com](http://www.ventagasia.com) : the article is about the difference in the applicability of the provision of foreign award. It throws light on the fact through judgments that whether the foreign award can be applied here when we already have FERA and FEMA.

### Hypothesis

1. In the aforesaid discussion the position that emerges is not satisfactory MRTP ACT, FEMA, FERA on the one hand empowered to control the economic sectors but still fails as the monopolistic and unfair trade practices are still being reported.
2. Though the laws so enacted to control private business sector are justifiable but its scope seems to be restricted.

### Research Methodology

The methodology adopted in the present work is mainly doctrinal in nature. It involves in depth study of source material, text reviews and case study. The work is based on primary and secondary materials. Primary material consists of text of laws, declaration, case laws etc. on the issue. Secondary materials include books, research papers, articles, newspapers and magazines.

The following legislations fall under this category. They are:

### Monopolies and Restrictive Trade Practices (MRTP) Act, 1969

The Act came into force on 1<sup>st</sup> June 1970. It was enacted with the main purpose to stop the concentration of economic power, control of monopolies and prohibition of monopolistic and restrictive trade practices and to protect consumer's interest. Currently, it has been renamed as the 'Competition Act, 2002, with few changes to it.

#### Characteristics of the Act Authorities under the Act

The MRTP Commission is the chief administrative body under the Act. The MRTP Act provides the details of conditions of the office, terms of service of members and the appointment of directors through various provisions under the said Act. The Commission is a quasi-judicial body and examines the complaints relating to monopoly and restrictive trade practices.

#### Concentration of Economic Power

To prevent the concentration of economic power, the Act's plan is to make registrations of all those enterprises mandatory with the Government, whose assets are worth more than 100 crores and which have more than a certain part of the market by this company can be restricted from further unnecessary expansions like new ventures or mergers without the permission of the Central Government. This helps in preventing the monopoly of one economically sound company to create its dominance in the market.

#### Restrictive Trade Practices

Other key concepts in the MRTP Act are restrictive business practices, monopolistic business practices and unfair business practices. In order to control these business practices, the principal instrument is the registration of agreements related to restrictive business practices. Section 33 has 12 special types of agreements, which are as per the definition such as Resale Price Maintenance, Price Fixing Agreements etc. Any agreement which has the characteristics of these agreements, it has to be registered with the authorities, the logic behind registration will be that the companies do not want to lose goodwill due to such unethical agreement on public performance and therefore, by joining such agreements will survive.<sup>1</sup> Only if the company can show that some good consequences will be followed by restrictive trade practices, which will lead to loss of practice, then restrictive trade practice will be allowed. These good results are mentioned in details under Section 38.

#### Monopolistic Trade Practices

The MRTP Act provides that where some undertakings are engaged in monopolistic business practices, it can refer to the MRTP Commission for investigation into the matter. The MRTP Commission is asked to take a detailed investigation into the matter and give suggestions to the Government to take steps to stop this practice. The Government can give any order, which will come into effect and end monopolistic trade practice. The amendment of 1984 gives the Government the power to break an enterprise and even get broken shares. The

Amending Act, which attempted to amend the Monopolies and Restrictive Trade Practices Act, 1969, and the Companies Act, 1956, was brought before the house in accordance with the recommendations made by the Sachar Committee, which removed some hurdles in the Act. This had been pointed out by the court.

**'Unfair Trade Practices'-A new concept introduced by the MRTP (Amendment) Act, 1984:**

Under Section 36 A number of activities been listed, such as misleading advertisements etc., in the form of unfair trade practice, into which the MRTP Commission can inquire and pass appropriate order to make its orders effective. The Commission has been empowered to issue 'interim injunctions' also, in order to make its orders effective.<sup>2</sup>

**Applicability of he Act**

This Act extends to the whole of India except Jammu and Kashmir. Unless the central Government directs that this Act shall not apply to:

1. Any undertaking owned or controlled by the Government company,
2. Any company owned or controlled by the Government,
3. Any company owned or controlled by a corporation by which or is not a company established by or under any Central, Provisional or State Act,
4. For any trade union or other association of workmen or employees such as workers or employees, formed for their proper security.
5. Any undertaking engaged in an industry which is managed by any person or persons under the powers of the Central Government,
6. Any undertaking owned by the co-operative society established and registered under any Central, Provincial or State Act,
7. Any financial institution.

**Drawbacks of the Act**

1. Poorly resourced.
2. Due to lack of definitions, due to cumbersome procedures and rare resources results into inadequacy in dealing effectively with anti-competitive practices.
3. Absence of specification of identifiable anti-competition practices like cartels, predatory pricing, rigging etc<sup>3</sup>

In *Re Bombay Tyres International Limited*<sup>4</sup> the defendant company was providing tyres to TELCO in the name of Modistones, which actually was manufactured by Modi Rubber Ltd. at Modipuram but nit by Modistones. It was alleged that there is a violation of Section 36 A (1) (i)<sup>5</sup> which relates to unfair trade practice. The Commission held that there was no unfair trade practice performed and observed that to attract the provision 36 A (1) (i) in this case allegation of UTP can only be done if it was done for promoting sale and not using the standards or the quality of product provided by the original manufacturer.

**The Competiton Act, 2002**

After the economic crisis of 1991, the country was in a need of such a legal framework that can support and promote a healthy competition. The

Government decided to constitute a committee to analyse the areas where MRTP Act has become vogue. Additional responsibility was given to the committee to frame modern competitive law suitable to the prevailing conditions of that time. The responsibility was laid down on the shoulders of Raghavan Committee.<sup>6</sup> The major recommendations and suggestions submitted to the government by the committee were:

1. To prevent the abolition of the MRTP Act and to create a new Competition Act for the regulation of Anti-competitive agreements and to prevent the misuse of dominance and association with mergers.
2. To end the reservation of products in a phased manner for the small scale industries and the handloom Sector.
3. To split and privatise the government shares and assets in state monopolies.
4. To bring all industries in the private as well public sector within the proposed legislation.

**The Objectives and Aims of Competition Act, 2002**

The broad objective of Competition Act as laid down in its Preamble are-

1. It provides for the establishment of the Competition commission.
2. It aims to eradicate practices that adversely affect the competition.
3. Promote and sustain competition in the market.
4. Protect and promote consumer interest.
5. Ensure freedom of trade carried on by other participants in Indian market.<sup>7</sup>

Characteristics of the act are:

1. Anti-Competitive Practices: Section 3 provides that any agreement which causes or is likely to cause an appreciable adverse effect on competition in India is deemed anti-competitive. The Section in proceeding provisions provides two type of agreements.
  - i) Horizontal Agreements: those agreements between enterprises at the same stage of production, services etc.
  - ii) Vertical Agreements: Includes agreements between enterprises at different stages of production, distribution etc.
    - a. Unfair trade practices: this category of trade covers fraudulent, unethical and deceptive trade methods to earn business.
    - b. Restrictive trade practices: any trade practices that block the flow of capital in production and also bring conditions of delivery that effect the flow of supplies.
2. Abuse of Dominance: Section 4 of the Act is the operative provision of the Act dealing with the abuse of dominant position. Dominant position means position of strength enabling an enterprise to operate independently. The enterprise becomes powerful that it can dominate the consumer and others. But Section 4 prevents the use of such position by an enterprise. It further defines what the abuse of dominance is?
3. Mergers and Acquisitions: Section 5<sup>8</sup> and Section 6 deals with the Combination

4. Competition Advocacy: Section 49: (1) The Central Government may, in formulating a policy on competition (including review of laws related to competition) or on any other matter, and a State Government may, in formulating a policy on competition or on any other matter, as the case may be, make a reference to the Commission for its opinion on possible effect of such policy on competition and on the receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, or the State Government, as the case may be, which may thereafter take further action as it deems fit. (2) The opinion given by the Commission under sub-section (1) shall not be binding upon the Central Government [or the State Government, as the case may be,] in formulating such policy. (3) The Commission shall take suitable measures [\*\*\*] for the promotion of competition advocacy, creating awareness and imparting training about competition issues. "(1) In formulating a policy on competition (including review of laws related to competition), the Central Government may make a reference to the Commission for its opinion on possible effect of such policy on competition and on receipt of such a reference, the Commission shall, within sixty days of making such reference, give its opinion to the Central Government, which may thereafter formulate the policy as it deems fit."

In the matter of Film & Television Producers Guild of India v Multiplex Association of India & Ors.<sup>9</sup> The Film and Television Producers Guild of India, in a complaint filed against Multiplex Association of India (MAI) and others. The allegations were that firstly, MAI was compelling the producers and distributors to bargain profits sharing only with MAI and not on individual basis. Secondly, MAI was imposing conditions for the showing films which was detrimental to the producer given the nature of film industry. These practices of MAI were anti-competitive as per Section 3 of the Competition Act and MAI as it was in dominant position was misusing its power as per Section (2) (a) and 4 (2) (c) of the Competition Act. The matter was presented before CCI where two issues were highlighted i.e. whether the opposite parties acted in contravention of Section 3 and Section 4 of the Competition Act. The matter went to Director General for inquiry and inspection thoroughly. Following the findings of Director General the CCI rejected the allegations due to lack of evidence to establish the fact that opposite parties had created an alliance or acted in concert either for the purpose of profit sharing or controlling the distribution and exhibition rights of the films. Both issues were therefore decided in favour of the opposite parties.

#### **Foreign Exchange Regulation Act, 1973 (FERA)**

FERA was implemented in September 1973 and it came in effect from 1<sup>st</sup> of January 1974. It was amended by the Foreign Exchange Regulation (Amendment) Act 1993 and later in 2000, was replaced by Foreign Exchange Management Act, 1999. It was functional in all over Indian above all the

Indian citizens. The idea of the Act was to control foreign payments, regulating the behavior in Foreign Exchange and securities and protection of Foreign exchange for the nation.

#### **Characteristics of FERA**

The main features of FERA are as follows-

1. This Act can be called as the Foreign Exchange Regulation Act, 1973.
2. It extends to all over India.
3. It applies to all citizens and companies and bodies outside India as well as branches and agencies which are registered or incorporated in India.
4. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

Provided that different dates may be appointed for different provisions of this Act and any reference to any provision for the commencement of this Act shall be deemed to be in reference to the implementation of that provision.<sup>10</sup>

#### **Foreign Exchange Management Act, 1999 (FEMA)**

The Foreign Exchange Management Act, 1999 (FEMA) is an Act of the Parliament of India, to integrate and amend the law related to foreign trade with the objective of facilitating external trade and payments and to promote the orderly development and maintenance of foreign exchange market in India. It was passed in 1999 during the winter session of Parliament. It replaced the Foreign Exchange Regulation Act (FERA). The offences done under the Act which is related to foreign exchange is of civil in nature. It extends to the whole of India<sup>11</sup> replacing FERA, which become inconsistent with the pro-liberalization policies of the Government of India. It facilitates the introduction of new foreign exchange management rule which were coherent with the emerging framework of the World Trade Organization (WTO). This led to the beginning of the Prevention of Money Laundering Act, 2002, which came into effect from 1 of July 2005.

#### **Objectives of the Act**

The main objective of FEMA was to help facilitate external trade and payments in India. It was also meant to help in the gradual development and maintenance of foreign exchange market in India. It defines the procedures, formalities, dealings of all foreign exchange transactions in India.

#### **Characteristics of the FEMA:**

1. It is coherent with full current account convertibility and has the provisions of progressive liberalisation of capital account transactions.
2. This is more transparent in its application because it clearly mentions the areas which require specific permissions of the Reserve Bank or the Government of India on acquisition of foreign exchange.
3. The foreign exchange transactions had been categorised into two categories namely, capital account transactions and current account transactions, through this Act.
4. It further empowered the Reserve Bank to indicate in details the classes of capital account

transactions and limits to which exchange is admissible for such transactions only after consultation with the central government,.

5. It gives complete freedom to a person living in India but was formerly living outside India, to hold/own/transfer any foreign security or immovable property situated outside India and which was acquired when that person was a resident.
6. The offences under the Act is civil in nature as this act is a civil law. If there is any infringement of the Act then it provide for arrest of the accused only in exceptional cases.
7. It does not apply to Indian citizen's living outside India.

*In the case of SRM Exploration Pvt Ltd v N&S&N Consultants*<sup>12</sup> The division bench of Delhi High Court stated: "We have perused the provisions of FEMA, 1999; section 3 thereof prohibits dealing in or transferring of any foreign exchange save as otherwise provided therein or under the rules and regulations framed thereunder without general or special permission of RBI. We are unable to find any provision therein voiding the transactions in contravention thereof. We may mention that the predecessor legislation to FEMA namely FERA 1973 vide section 47 prohibited entering into any contract or agreement directly or indirectly evading or avoiding any operation of the said Act or any provision thereof. However, sub-section (3) thereof also provided that such prohibition shall not prevent legal proceedings being brought in India for recovery of a sum which apart from the provision of FERA would be due. However, the legislature while reenacting the law on the subject has chosen to do away with such a provision. We are of the view that the same shows a legislative intent to not void the transaction even if in violation of the said Act. Thus, we are of the opinion that the plea of the appellants company in this regard is without any force."<sup>13</sup>

#### **Industrial Dispute Act, 1947**

Main features of the Act were:

1. It encourages arbitration as dispute redressal between employers and workmen.
2. It provides for the establishment of work committees as a means to resolve disputes between the employers and workmen through mutual understandings.
3. There is a provision under this Act for the establishment of permanent conciliation board at different stages to settle the dispute through arbitration and conciliation. These boards are for limited periods.
4. This Act insists on compulsory compliance with industrial dispute reconciliation and voluntary arbitration.
5. The Act provides for the dissolution of the dispute through Labour Court, or Industrial Tribunal or National Tribunal on the basis of the nature of offences. The appropriate Government can refer the matter to appropriate authorities either on its own or on a request of the parties to the dispute.
  6. The Act provides those provisions which are related to strike or lockout subjected to

reasonable restriction and forbids the imposition of strike or lockout throughout the pendency of conciliation or arbitration proceeding as stated under the Act.

#### **Conclusion & Suggestions**

To conclude this paper it can be said that Government had been very conscious while making the laws and the above legislations provides a transparent and equitable framework for the employer as well as for employees, for foreign investors or internal.

#### **End Notes**

1. Sunipun (2017), 'Development of Competition Law in India', available at <https://blog.iplayers.in/competition-law-india/> visited on 7<sup>th</sup> May 2019.
2. Rekhi, Samia (2019), '7 recommendation of Mrtp act', available at [www.economicdiscussions.net](http://www.economicdiscussions.net), visited on 7<sup>th</sup> May 2019.
3. *ibid*
4. 1984 SCR (1) 347
5. 36A. Definition of unfair trade practice.—*In this Part, unless the context otherwise requires, "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any good or for the provision of any services, 1[adopts any unfair method or unfair or deceptive practice including any of the following practices], namely:—*
  - (1) *the practice of making any statement, whether orally or in writing or by visible representation which,—*
    - a. *falsely represents that the goods are of a particular standard, quality, 2[quantity,] grade, composition, style or mode;*
    - b. *falsely represents that the services are of a particular standard, quality or grade;*
    - c. *falsely represents any re-built, second-hand, renovated, re-conditioned or old goods as new goods;*
    - d. *represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;*
    - e. *represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;*
    - f. *makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;*
    - g. *gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof: Provided that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;*
    - h. *makes to the public a representation in a form that purports to be—*
      - a *warranty or guarantee of a product or of any goods or services; or*
      - a *promise to replace, maintain or repair an article or any part thereof or to repeat or continue a*

service until it has achieved a specified result, if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been, or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.  
Explanation.—For the purposes of clause (1), a statement that is—

expressed on an article offered or displayed for sale, or on its wrapper or container, or expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale, or

contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, shall be deemed to be a statement made to the public by, and only by the person who had caused the statement to be so expressed, made or contained;

(2) permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business and the nature of the advertisement.  
Explanation.—For the purpose of clause (2), “bargain price” means—

a price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or

a price that a person who reads, hears, or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which the product advertised or like products are ordinarily sold;

(3) permits—

the offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole,

the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the rise of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale, or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

6. Supra Note 2

7. Desai, Nitish (2013), ‘Competition Law in India: Judicial Trends and the Way Forward’ Pg. Nos. 12-17.

8. Section 5 Combination.—The acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises, if—

any acquisition where—

the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have,—

either, in India, the assets of the value of more than rupees one thousand crore or turnover more than rupees three thousand crore; or

in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover of more than fifteen hundred million US dollars; or

(ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have,—

either in India, the assets of the value of more than rupees four thousand crore or turnover of more than rupees twelve thousand crore; or

in India or outside India, in aggregate, the assets of the value of more than two billion US dollars or turnover of more than six billion US dollars; or

acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if—

the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have,—

either in India, the assets of the value of more than rupees one thousand crore or turnover of more than rupees three thousand crore; or

in India or outside India, in aggregate, the assets of the value of more than five hundred million US

dollars or turnover more than fifteen hundred million US dollars; or  
the group, to which enterprise whose control has been acquired, or is being acquired would belong after the acquisition, jointly have or would jointly have,—  
either in India, the assets of the value of more than rupees four thousand crore or turnover of more than rupees twelve thousand crore; or  
in India or outside India, in aggregate, the assets of the value of more than six billion US dollars or turnover of more than six billion US dollars; or  
any merger or amalgamation in which—  
the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have,—  
either in India, the assets of the value of more than rupees one thousand crore or turnover of more than rupees three thousand crore; or  
in India or outside India, in aggregate, the assets of the value of more than five hundred million US dollars or turnover of more than fifteen hundred million US dollars; or  
the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have,—  
either in India, the assets of the value of more than rupees four thousand crore or turnover of more than rupees twelve thousand crore; or  
in India or outside India, the assets of the value of more than two billion US dollars or turnover of more than six billion US dollars. Explanation.—  
For the purposes of this section,—  
“control” includes controlling the affairs or management by—  
one or more enterprises, either jointly or singly, over another enterprise or group;

one or more groups, either jointly or singly, over another group or enterprise;  
“group” means two or more enterprises which, directly or indirectly, are in a position to—  
exercise twenty-six per cent. or more of the voting rights in the other enterprise; or  
appoint more than fifty per cent. of the members of the board of directors in the other enterprise; or  
control the management or affairs of the other enterprise;  
the value of assets shall be determined by taking the book value of the assets as shown, in the audited books of account of the enterprise, in the financial year immediately preceding the financial year in which the date of proposed merger falls, as reduced by any depreciation, and the value of assets shall include the brand value, value of goodwill, or value of copyright, patent, permitted use, collective mark, registered proprietor, registered trade mark, registered user, homonymous geographical indication, geographical indications, design or layout-design or similar other commercial rights, if any, referred to in sub-section (5) of section 3.

9. Competitive Commission Case No. 37/2011, Decided on 3<sup>rd</sup> January 2013, available at [www.cci.gov.in](http://www.cci.gov.in) visited on 15<sup>th</sup> may 2019.
10. Hemant singh, “Features of FERA and FEMA in India”, available at [www.jagranjosh.com](http://www.jagranjosh.com) visited on 7<sup>th</sup> May 2019.
11. FEMA 1999, Department of Revenue, Government of India, Archived from the original PDF on 3<sup>rd</sup> March 2019.
12. CO. APP. Nos. 23-24/2011, decided on 21 March 2012
13. Vasani, Bharat, ‘Laws in conflict’, Indian Business Law Journal (2018) available at <https://www.vantageasia.com/> visited on 27<sup>th</sup> May 2019.