LEGAL CLIMATE FOR FOREIGN PRIVATE INVESTMENT

- AN INDIAN CASE STUDY

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PREFACE

Permanent Sovereignty Over Natural Resources, a new International Economic Order, The Charter of Economic Rights and Duties - expressed through resolutions of the General Assembly of the United Nations represent the aspirations of the vast majority of the new international community emerging from the debris of the colonial era. In country after country, the first flush of jubilation at gaining political independence was followed by the frustrations, the heartbreaks, as well as the excitment of vast multitudes of impoverished people seeking to gain also economic and social emancipation. The models of economic progress and prosperity presented to them by the advanced countries were, however, so highly capital intensive that they were forced to look toward the same industrialised countries for import of capital as well as technology to exploit their immense natural resources. The capital exporting countries were not eager to subscribe to some of the ideas that form the very basis of the General Assembly resolutions already quoted. Howsoever much they liked to undertake profitable investment of capital as well as technology in the developing world they could not get away from their own perceptions of

the international legal norms governing foreign private investment.

This clash of interests can be seen at its best in the insistence of the capital exporting countries on the principle of "prompt, adequate and effective" compensation in the event of expropriation and an equally vehement assertion on the part of the developing world of their permanent sovereignty over their natural wealth and resources. While this 'vanishing consensus' on the rules of international customary law for the protection of foreign investment continues to assume crises proportions every now and then, of which the nationalization in 1956 of the Suez Canal by Egypt was perhaps the worst example, in matters like regulation, supervision and taxation, international legal norms are just about non-existent. In these areas, in the words of Justice Rangarajan, "international business is functioning today in a legal no man's land. There is no comprehensive system of international law for guiding business across national frontiers... A multiplicity of national legal systems widely differing even in essentials from each other constitute the legal environment for international business ..."[1]

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1. S. Rangarajan, "The Structure of and Legal Cont over MNCs in a Mixed Economy", <u>Indian Journal o International Law</u>, Vol. 15 (1975), p. 453.

The present study is a prelude to a study of the national legal systems of the countries in South Asia in so far as they concern private foreign investment. In this self-imposed limited scope this study seeks to ascertain and define the prevailing norms of international law relating to the protection, regulation and taxation of foreign private capital and to present in that setting a comprehensive review of the legal climate in India in respect of these matters. In an enlarged framework the study envisaged later will tread a similar ground for the other countries of the Indian subcontinent, particularly Pakistan, Bangla Desh and Sri Lanka. Such a study will, it is felt, fill a great void, remove many misunderstandings about these countries and help private foreign investors understand better the legislative framework in this region by positing the regional legal setting against the prevailing norms of international law.

I am grateful to the Comptroller and Auditor General of India for his kindness in allowing me to undertake this study along with my official duties.

I am deeply indebted to my guide and mentor, Prof. Rahmatullah Khan, who first interested me in this subject and later served as a constant source of inspiration and encouragement. His very valuable suggestions were of immense help to me in completing

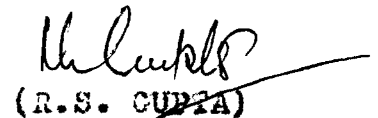
this study.

I am grateful also to Prof. J.N. Saxena, who was ever willing to help.

I owe my gratitude to Smt. Rajinder Grover of the Indian Council of World Affairs Library and Shri V. Pattabhiraman for helping me obtain the diverse source material.

My thanks are also due to S/Shri S.S. Gigoo and Ravi Datta Tyagi, who took great pains in typing the draft as well as the final manuscript of this study.

Last but not the least, I am beholden to my wife and children for sacrificing their claims on my company and for letting me do this work entirely in the time owed them.



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CHAPTER I

INTRODUCTION

After World War II, and under the United Nations System, capital export has mostly taken the form of foreign aid and government loans. International institutions as well as multilateral consortia, like the Development Assistance Committee of the Organization for Economic Cooperation and Development (OECD-DAC), have played a significant role in extending official assistance to the developing countries. Yet the role of private foreign investment continues to be important. Out of the total flow of capital from the developed to the developing countries of $ 13,567 million in 1969, as much as $ 6,280 million, or 46.3%, was by way of private investment.[1] Over a period of seventeen years, from 1956 to 1972, the total flow of capital from the DAC countries to the developing countries was of the order of $ 1,82,573 million of which, again, $ 76,571 million, or 42%, was by way of private capital.[2] As the figures in Table 1 will show the flow of private capital to the developing countries in absolute terms, has been on the increase in recent years.

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1. B.K. Sarkar, Ed., Foreign Investment and Development in Asia, (1976) p. 43

2. Deepak Lal, Appraising Foreign Investment in Developing Countries, (London, 1975) p. 16.

TABLE 1

FLOW OF PRIVATE CAPITAL TO DEVELOPING COUNTRIES
(in million US $)

Year	Total flow of private capital to developing countries.
1973	10,786
1974	11,807
1975	20,152
1976	20,224
1977	27,023

(SOURCE : U.N. Statistical Year Book, 1977, 1978)

The pattern of private foreign investment has undergone a perceptible change in the last few decades. Firstly, the monopoly of metropolitan countries that marked the colonial era has become a thing of the past with the independent developing countries looking farther afield to meet their needs of capital and technology. Thus, on the eve of World War II over 99% of the foreign capital in the Indian sub-continent was of U.K. origin.[3] This percentage came down from 80% in 1948 to 37% in 1972 in the case of India[4] and

3. ECAFE, Economic Survey of Asia and the Far East, 1970, Part One, p. 1-6.

4. Appendix 'A'.

37% in 1959 to 41% in 1967 in the case of Pakistan.[5] Secondly, the preponderance of proprietary capital has given place to more of portfolio type investment. While before World War II, 65% of the total foreign investment of $ 9.4 billion in South and South East Asia was in the shape of proprietary investment,[6] in 1971 the share of portfolio-type investment in the flow of private capital from the DAC countries was as much as 54%.[7] Between 1948 and 1974 the proportion of direct proprietary investment in the total foreign private capital in India declined from 97% to 55%.[8] Thirdly, the nature of portfolio investment itself has undergone a marked change. Very little of private loan capital now comprises loans raised in the international capital market and available for use according to the borrowing countries' own needs; most of it constitutes either borrowed funds provided by foreign companies to their subsidiaries or branches or export credits tied to commodity exports from abroad. In the portfolio investment abroad of $ 35,065 million from the DAC countries during the years 1956 to 1972, the share of export credits was over 50%.[9] Fourthly, foreign investment is no more confined to primary and

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5. State Bank of Pakistan, Foreign Liabilities and Assets and Foreign Investment in Pakistan, Survey, 1959-69

6. ECAFE, op. cit., p. 1-6

7. World Bank, Annual Report, 1975, p. 90

8. See Appendix 'A'

9. Derived from Deepak Lal, op. cit., p. 16

tertiary sectors to the almost total exclusion of basic and heavy industries as it used to be. In 1948 only 27% of the outstanding foreign capital in India was in the manufacturing sector; by 1968 the percentage had doubled to 55. In Pakistan, the manufacturing sector accounted for only 29% of the outstanding foreign investment in 1960; by 1967 the percentage had moved upto 41.[10]

The most important factors contributing to such profound changes in the pattern and flow of private foreign investment have been the withdrawal of world-wide colonialism and the emergence in its wake of a large number of economically backward, socially feudalistic but politically independent nation states. These new countries are rich in manpower and natural resources but grossly lacking in capital and technology. Most of them are also highly conscious of the need to crown their newlya won freedom not only with economic development but also with social justice. Their desire to obtain foreign capital and technology is, therefore, tempered with measures designed to protect nascent indigenous know-how and industry and to ensure a channelled utilization of resources in accordance with national priorities. Tax incentives and reassuring national legislation in matters like expropriation and repatriation are often matched by

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10. "Private Foreign Investment in Pakistan", _The Pakistan Development Review_, (Spring 1970), p. 108.

elaborate licensing and regulatory measures. The resultant plethora of laws and the accompanying procedures can, sometimes, present a frightening prospect to the foreign entrepreneur. When these are not also readily available in a single volume, he may simply shy away from a fear of the unknown or from misfounded apprehensions. That seems to account, at least partly, for the fact that the flow of private capital is the lowest for the countries of the Indian sub-continent among the countries of South and South East Asia. While in the total flow of capital from the DAC countries to the countries in the ECAFE region, during the years 1960 to 1968, the proportion of private capital was over 17%, for India, Pakistan and Sri Lanka the proportion was a mere 4.5%.[11] In the five years, 1970 to 1974, while the total flow of private capital from the DAC countries to South and South East Asia was of the order of $ 6,045 million; the share of Bangla Desh, India, Nepal, Pakistan and Sri Lanka in that figure was only $ 86 million or 1.4%. In fact, in the next three years, 1975 to 1977, in the total flow of $ 8,173 million to South and South East Asia, the said five countries of the Indian sub-continent accounted for a negative flow of $ 95 million.[12]

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11. ECAFE, Economic Survey of Asia and the Far East, 1970, p. 1-18.

12. UNCTAD, Hand Book of International Trade and Development Statistics, 1979, pp. 403-9

At the same time international legal norms on investment are either obscure or unsettled. There is a sharp cleavage of opinion between the developed and the developing countries as to the rule of international law governing the mode and quantum of compensation in the event of expropriation of foreign private property. The former still insist on 'prompt, adequate and effective' compensation and the latter swear by permanent sovereignty over their own natural resources. On matters like regulation, supervision and taxation of investment there are no comprehensive international legal norms; these are left, more or less to the varying national legal systems which, as already stated, are not so easy to come by at least for the countries of the Indian sub-continent.

In the above setting, this study attempts to fill the yawning communication gap in respect of the countries of the Indian sub-continent by presenting a total picture of their investment laws in so far as these concern the foreign investor and by comparing them with the ascertainable norms of international law. The study is proposed to be completed in two phases. In this first phase, meant for the M. Phil dissertation, the investment laws of India are covered in the context of international legal norms. Later, for the doctoral thesis, the scope of the study will be enlarged to cover similarly the laws of other countries of the sub-continent, particularly, Bangla Desh, Pakistan and Sri Lanka.

A short analysis of the flow and accretion of private foreign capital in India since Independence is followed by three main chapters dealing with international legal norms and Indian laws relating to Expropriation and Repatriation, Licensing and Regulation, and Taxation. Concluding remarks are given in a short chapter at the end. The supporting data and schedules which are necessary but too long to be given in the text or the foot-notes are incorporated in Appendices. In the analysis of Indian investment laws, the main emphasis is on explaining, in simple language, the relevant provisions of the various laws. The connected policy and procedures are set out briefly where these are necessary for a proper understanding of the legal framework or for complying with the provisions of the laws. Every attempt has been made not to leave out anything of importance for a full appreciation of the subject, without sacrificing the need for brevity.

The Indian law stated in this study is as amended upto April, 1981 including the changes brought about by the Finance Act, 1981. Maximum reliance has been placed on primary sources like the original laws, rules, notifications and Government documents, press notes and reports. Since India follows the English doctrine of precedent important judicial decisions are referred to where necessary to bring out the true import of the legal

provisions. Secondary sources, wherever used, are acknowledged in foot-notes. A comprehensive bibliography of the primary as well as secondary sources is given at the end of the study, together with a list of statutes, a list of cases and a list of abbreviations.

* * *

CHAPTER II

FOREIGN CAPITAL IN INDIA

Soon after Independence, in June 1948, to be precise, the total amount of foreign investment in the non-official sector in India was estimated by the Reserve Bank of India at Rs. 2,646 million. This was mostly made up of proprietary investment from the United Kingdom in plantations, mining, services and primary industries like food, beverages and textiles. Some of the developments in the growth and pattern of this investment during the subsequent 26 years (upto 1974)[1] are given in Appendix 'A'.

A- Growth of Foreign Capital

In absolute terms the stock of foreign capital in the non-official sector in India went up from Rs. 2,646 million in 1948 to Rs. 18,218 million in 1974, including valuation changes and the effect (Rs. 2,001 million) of the devaluation of the rupee in June 1966. The Chart in Fugure 1 shows the pattern of this growth during these years with an inset diagram showing the yearly accretions.

---

1. The last year for which figures have been published by the Reserve Bank of India (August 1981).

During the 1950's, the annual accretion to the total stock of foreign private capital in India was of the very modest order of Rs. 250 million. It gained a dramatic momentum in the 1960's coinciding with the Third Plan period (1961-66) and reached the peak of Rs. 1,639 million in 1967. The next decade, however, started with a sharp decline during the years 1970 and 1971. The recovery in the subsequent years was modest and the annual accretions,

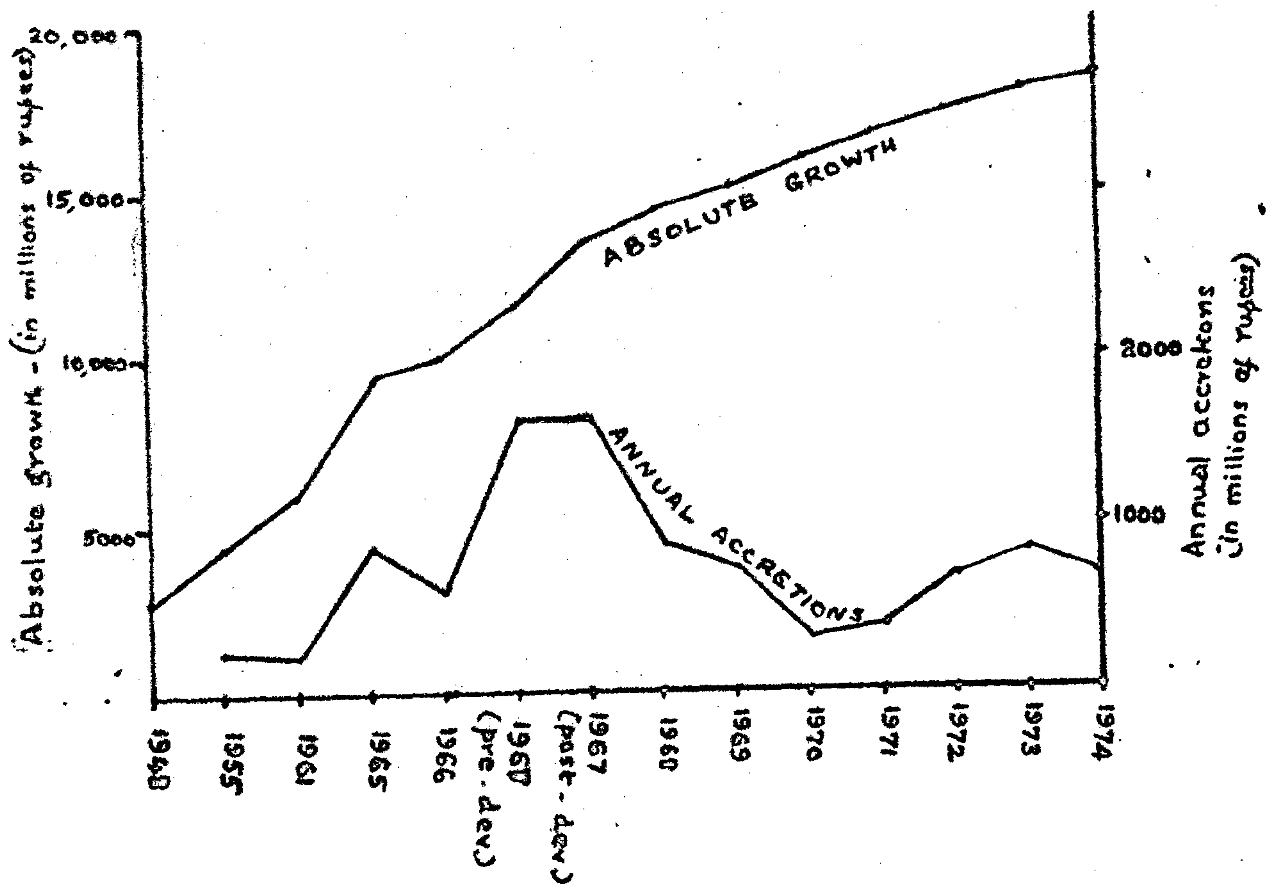

FIGURE 1. Growth of foreign capital in the Non-official Sector in India.

remained at levels much lower than those of the 1960's.

B- Nature of Foreign Capital

1. Direct and Portfolio Investment

Of the total investment of Rs. 2,646 million in 1948, Rs. 1,982 million (or 75%) represented direct investment in Indian branches or subsidiaries or in controlled Indian companies. If the equity investment in non-controlled Indian companies of the order of Rs. 571 million is also added, the total proprietary investment would come to Rs. 2,553 million or over 96% of the total stock of foreign investment in 1948. As against this, in 1974, the direct investment comprised only 50% of the total stock of foreign capital; including equity investment in non-controlled Indian companies, the proportion of total proprietary investment in that year would go up marginally to 56%. The break up of total foreign investment from year to year as between direct and portfolio investment and the portion of the latter comprising equity investment in non-controlled Indian companies are shown in the Chart in Figure 2.

The ratio of direct investment continued to rise till 1961 when it reached 91%. Then, coinciding with the spurt in overall growth from 1961, the portfolio investment picked up much faster so as to reach the level of 53% by the end of the decade; in the subsequent years

the proportion stabilised at around 50 : 50.

Out of the total accretion of Rs. 13,821 million during the period from 1955 to 1974, Rs. 8,552 million (or 62%) was by way of portfolio investment and Rs. 5,269 million (or 38%) was by way of direct investment.

In the portfolio investment again, as would be seen from the Chart in Figure 2

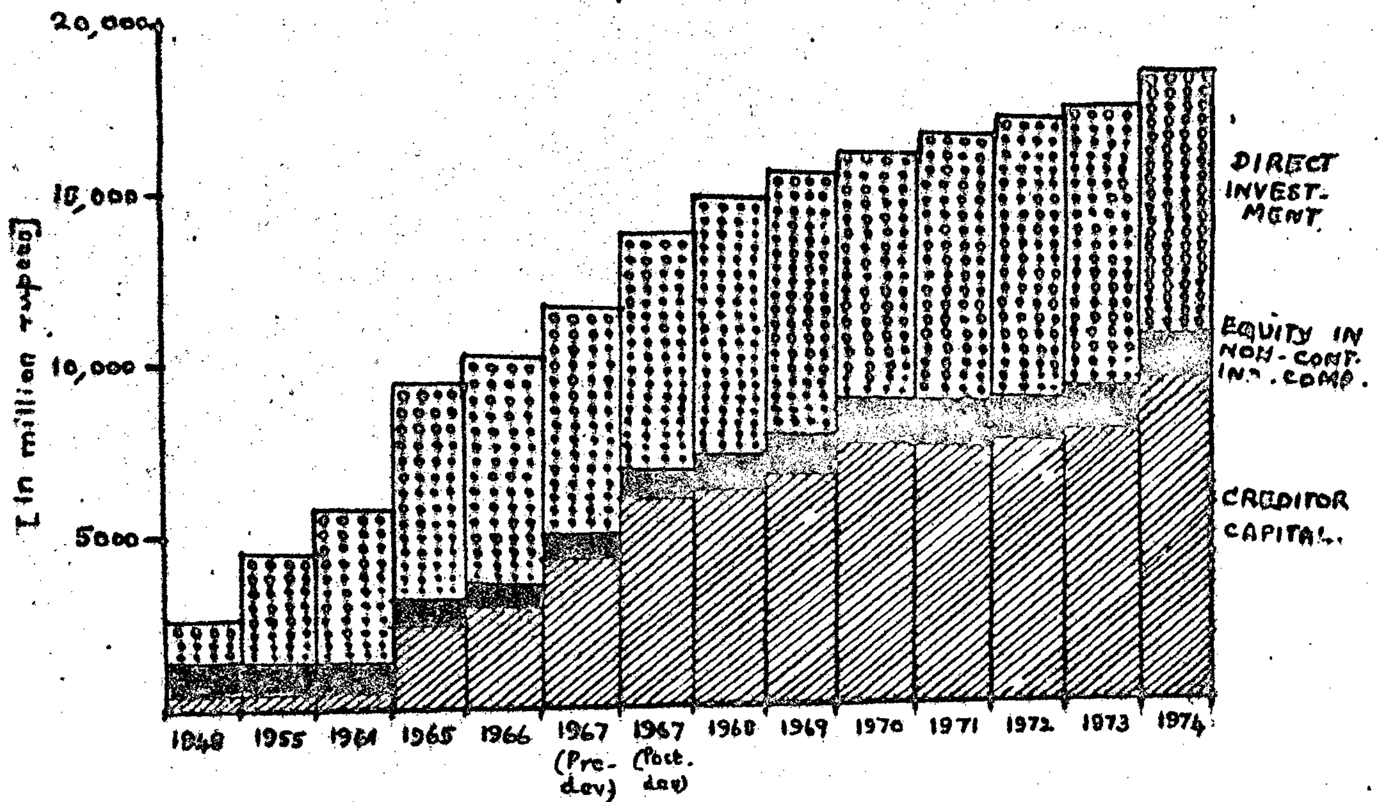

FIGURE 2. Type of Foreign Investment

the proportion of creditor capital as distinct from equi... capital in non- controlled Indian companies built up much faster. In fact, equity capital which comprised 86% of the portfolio investment in 1948 came down to 17% in 1965, i.e., by the end of the Third Plan period; it stabilized at around 10% in later years. The suppliers' credits accounted for about a third of the creditor capital in 1973-1974.

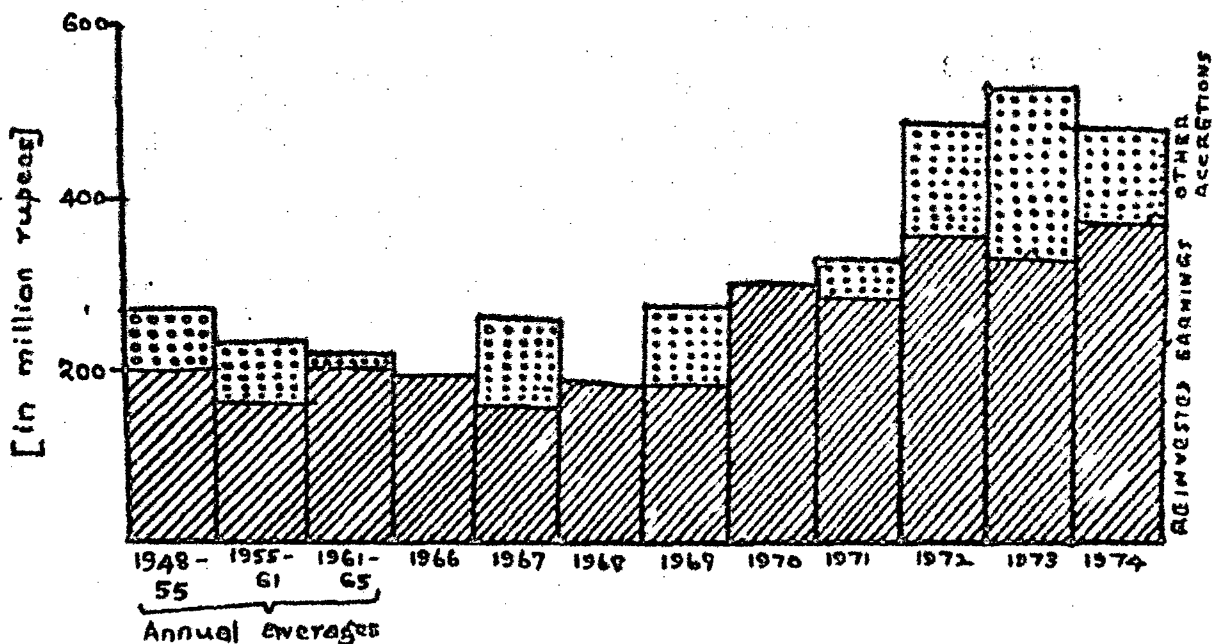

FIGURE 3 - Annual Accretions to Direct Foreign Investment

2. Reinvested Earnings

The declining share of direct investment was itself made up largely of reinvested earnings rather than of any fresh cash inflow. The Chart in Figure 3 above shows the annual accretions to direct investment and the portion of it made up of reinvested earnings.

The proportion of reinvested earnings ranged between 60 and 115% of the annual accretions to direct investment throughout the period from 1948 to 1974. For the decade, 1965 to 1974, reinvested earnings totalling Rs. 2,310 million constituted 77% of the total addition of Rs. 3,015 million in direct investment. This trend seems to have continued in subsequent years also. According to a recent study conducted by the Economic Times Research Bureau, in 1979-80 the level of capitalisation in foreign companies was 57% as against 43% in the case of Indian companies. The highest level of capitalisation in that year was found in Colgate Palmolive, 99% of whose paid-up capital was made up of bonus issues.[2]

C. Country-wise Position

The country-wise position of foreign capital from the year to year is shown in the Chart in Figure 4.

---

2. Vikram Nair, "49.3 per cent Capitalisation", *The Economic Times*, New Delhi, March 4, 1981

The United Kingdom, which had a share of 80% in 1948, was still in the lead in 1974 though its share stood reduced to 38%. The United States which started with 7% share in 1948 went upto 29% by mid-sixties and

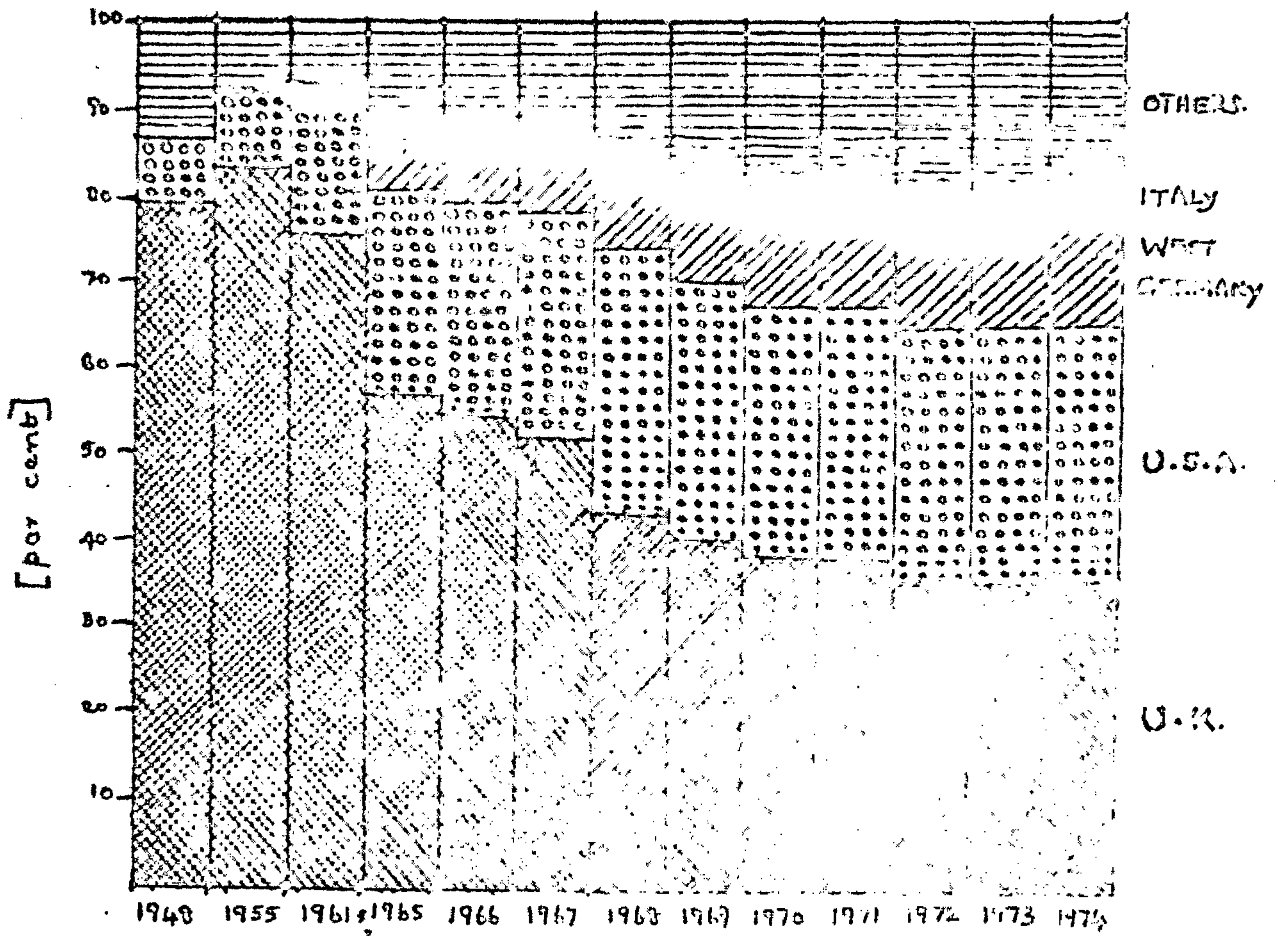

FIGURE 4 - Country-wise Position of Foreign Capital in India.

stayed at that level thereafter. The other countries whose share has gone up perceptibly are West Germany and Italy accounting for 10% and 5% respectively in

1974. The remaining portion was contributed by France, Switzerland, Japan, Sweden, Canada in that order and a large number of other countries.

D. Sector-wise Position

As for the Sector-wise distribution of foreign capital, the bias in favour of foreign collaboration in the manufacturing sector is obvious. In 1948, the share of 'manufacturing' was only 27% and that too was made up mostly of less sophisticated industries, like food, beverages and textiles. The upswing started in the Second Plan period (1956-61) and gathered momentum in the Third Plan period. By the end of the sixties, the share of the manufacturing sector reached 60% and the bulk of it was in basic and heavy industries, like, machinery, transport and constructional utilities; food, beverages and textiles accounting for only 12% of the foreign capital in the manufacturing sector in 1974.

* * *

CHAPTER III

EXPROPRIATION AND REPATRIATION

I. EXPROPRIATION

A. Position in International Law

Safety of capital, freedom of repatriation and transferability of incomes are some of the very basic criteria for investment from the point of view of private foreign investors. It is generally accepted that private foreign property is subject to the municipal law of the host country who may, without unjustifiable discrimination and in public interest, nationalize or expropriate it. There is, however, a cleavage of opinion as to the compensation to be paid in the event of such nationalization or expropriation.

In one view what is required in accordance with the minimum standard of international customary law is that alien private property may be expropriated only on payment of full or adquate, prompt, and effective compensation.[1] The words 'adequate,'

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1. Georg Schwarzenberger, Foreign Investments and International Law, (London, 1969), p.4

'prompt' , and 'effective' are meant to convey that the compensation should be equal to the market value of the expropriated property; it should be paid without undue delay; and it should be paid in a transferable form. Article III of the Abs-Shawcross Draft Convention on Investments Abroad (1959) adopted this principle in the following words :-

> No party shall take any measures against nationals of another Party to deprive them directly or indirectly of their property except under due process of law and provided that such measures are not discriminatory or contrary to undertakings given by that party and are accompanied by the payment of just and effective compensation. Adequate provision shall have been made at or prior to the time of deprivation for the prompt determination and payment of such compensation, which shall represent the genuine value of the property affected, be made in transferable form and paid without undue delay.[2]

This Convention was never adopted; it remained a mere draft. The International Bank for Reconstruction and Development's (IBRD) Convention on the Settlement of Investment Disputes between States and Nationals of other States (1966) confined itself to procedural aspects of dispute settlement and did not touch upon substantive rules on the protection of foreign

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2. Schwarzenberger, op. cit., p. 117

property.[3] The OECD Draft Convention on the Protection of Foreign Property (1967), however, adopted the same principle in Article 3 as under :-

> No party shall take any measures depriving, directly or indirectly, of his property a national of another Party unless the following conditions are complied with:
>
> i) The measures are taken in the public interest and under due process of law;
>
> ii) The measures are not discriminatory; and
>
> iii) The measures are accompanied by provision for the payment of just compensation. Such compensation shall represent the genuine value of the property affected, shall be paid without undue delay, and shall be transferable to the extent necessary to make it effective for the national entitled thereto. 4

In the other view, propounded by the newly emerging states, the question of compensation is a manifestation of the permanent sovereignty of the host state over its natural wealth and resources and is, therefore, to be decided by that state in accordance with its own laws, regulations and circumstances. The concept of permanent sovereignty over natural wealth and resources has been endorsed

---

3. India is not a party to the IBRD Convention. India has, however, ratified the U.N. Convention on Recognition and Enforcement of Arbitral Awards, 1958 and enacted the Foreign Awards (Recognition and Enforcement) Act, 1961 (as amended in 1973) to give effect to that convention overriding the provisions of the Indian Arbitration Act, 1940.

4. Ibid p. 162.

by the United Nations from 1952.[5] According to the 1962 resolution on Permanent Sovereignty Over Natural Resources, considered a bench mark on the subject, "... the owner shall be paid appropriate compensation in accordance with the rules in force in the state taking such measures (nationalization, expropriation or requisitioning) in exercise of its sovereignty and in accordance with international law......"[6]

The resolution, thus, contemplated payment of appropriate compensation. What is "appropriate" is to be determined in accordance with the rules of the host state and in accordance with international law. This juxtaposition of municipal law and international law was apparently a compromise in an attempt to obtain affirmative votes of all states and the resultant formulation, as pointed out by Richard Falk,[7]

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5. See G.A. Res. 523 (VI) dt. Jan. 12, 1952
G.A. Res. 626 (VII) dt. Dec. 21, 1952
G.A. Res. 1515 (XV) dt. Dec 15, 1960.

6. G.A. Res. No. 1803 (XVII) dt. Dec. 14,1962. See Para 4.

7. Richard A. Falk, "On the Quasi-legislative Competence of the General Assembly, "Americal Journal of International Law, Vol.60 (1966) p. 782

could be interpreted differently by different states.[8] In the subsequent resolutions the reference to international law was dropped and the Charter of Economic Rights and Duties of States (yet another landmark) adopted by the General Assembly in December 1974[9] stated in paragraph 2 (c) of Article 2 thereof:-

2. Each State has the right :

...

...

> c) To nationalize, expropriate or transfer ownership of foreign property, in which case appropriate compensation should be paid by the State adopting such measures, taking into account its relevant laws and regulations and all circumstances that the State considers pertinent. In any case where the question of compensation gives rise to a controversy, it shall be settled under the domestic law of the nationalizing State and by its tribunals, unless it is freely and mutually agreed by all States concerned that other peaceful means be sought on the basis of the sovereign equally of States and in accordance with the principle of free choice of means.

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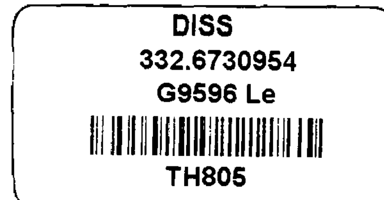
8. E.g., G.A. Res. 2158 (XXI) dt. Nov. 25, 1966
G.A. Res. 2386 (XXIII) dt. Nov. 19, 1968
G.A. Res 2692 (XXV) dt. Dec. 11, 1970

9. G.A. Res. 3281 (XXIX) dt. Dec. 12, 1974.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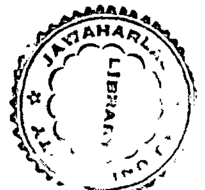
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The Charter of Economic Rights and Duties of States, thus clearly adopts the second view, under which the expropriating state is obliged to pay 'appropriate' compensation as determined in accordance with its own laws and regulations and all other circumstances that it considers pertinent. Sixteen developed countries voted against this portion of the resolution in the General Assembly advancing the argument that the amount of compensation should be determined in accordance with the principles of customary international law which, in their view, continues to warrant prompt, adequate and effective compensation. The developing countries, on the other hand, denied the existence of any such principle in international law and maintained that the expropriating state should be required to pay 'appropriate' compensation only taking into account its relevant laws, regulations and pertinent circumstances.[10] The Charter, as a whole, was adopted by 120 votes to 6 with 10 abstentions. The United States delegate, who voted against the Charter, stated that an economic Charter would be meaningless without the agreement of countries whose number might be small but whose significance in international economic relations and develop-

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10. A/C 2/SR. 1650 p. 5 - See also S.K. Verma, "International Code of Conduct for Transnational Corporations", Indian Journal of International Law Vol. 20 (1980), p. 36.

pment could hardly be ignored.

The resolutions of the General Assembly are, of course only recommendatory though it is widely believed now,[12] considering the universal representation in the United Nations, that these resolutions passed by a preponderent majority of world opinion may well be taken to be indicative of theemerging rules of customary international law.

B. Position in India

1. Constitutional and Legal Provisions

The Constitution of India as originally enacted treated the right to property as a fundamental right of citizens and non-citizens alike. Article 31 of the Constitution read :

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11. U.S. Statement in A/c 2/SR. 1649 pp.21-22
12. Richard A. Falk assigns a quasi-judicial charaeter to such resolutions (op. cit, h 7, supra) In Bowetts' view such resolutions indirectly become a source of international law. (D.W. Bowett, The Law of International Institutions, p.42). According to Bin Cheng they 'serve as midwives for the delivery of nf nascent rules of international customary law' (Bin Cheng, "U.N. Resolutions on Outer Space: Instant International Customary Law", Indian Journal of International Law. V. 5 (1965) p. 39) Rahmatullah Khan calls them the 'normative basis of the new international law'. (Rahmatullah Khan "International Law Old and New", Indian Journal of International Law, Vol. 15 (1975) p. 379).

(1) - No person shall be deprived of his property save by authority of law.

(2) - No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which and the manner in which, the compensation is to be determined and given.

According to this provision, private property of any person, including a non-citizen, could be acquired by the state only for public purposes and by the process of law, and such law must either fix the compensation or specify the principles on which and the manner in which the compensation is to be determined and given.[13] The word 'compensation' in this provision was interpreted by the Indian Supreme Court to mean "just, equivalent or full indemnification".[14] A provision in a land reform law[15] limiting the compensation for acquisition of land to the market value of the land on a certain earlier date (31 December 1946) was struck down as inconsistent with the above interpretation in

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13. H.M. Seervai, Constitutional Law of India, 2nd ed. Vol. I p. 654.

14. West Bengal v. Bela Banerji (1954 SCR 558).

15. West Bengal Land (Development and Planning) Act, 1948.

so far as the principle laid down for determining compensation denied to the owner the incremental value between 31 December 1946 and the date of expropriation. As this appeared to be too rigid a view in the context of the avowed policy of the Government for agrarian reforms, the Fourth Amendment (1955) added the words" and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate" to the said provision of Article 31 (2).

In some of the subsequent cases which came up before the Supreme Court, however, a view was taken that the Fourth Amendment by retaining the word 'compensation' had accepted the interpretation put on that word by the Supreme Court in Bela Banerji's case.[16] This view culminated in the Supreme Court striking down[17] the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969, on the ground that even after the Fourth Amendment the compensation had to be just equivalent. The court stated that "the Constitution guarantees a right to compensation - an equivalent in money of the property compulsorily acquired. That is the basic guarantee". In effect, therefore, the Fourth Amendment failed to bring about

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16. See ~~P. Vajravelu Mudaliar v. Special Deputy Collector, Madras~~ (1965) SCR 614.

17. ~~R.C. Cooper v. Union,~~ Popularly known as the Bank Nationalisation case, (1970) 3 SCR 530.

any real change in the situation. To get over this difficulty, the Twenty-fifth Amendment replaced the word 'compensation' with the word 'amount' in Article 31 (2). The Forty-fourth Amendment ultimately deleted Article 31 altogether so that the right to property thereafter ceased to be a fundamental right in the Indian Constitution. It was made an ordinary legal right. Article 300A, to the following effect was adopted:

> 300 A - No person shall be deprived of his property save by authority of law.

The full import of this change has not yet come up for examination before the Supreme Court. A learned commentator has, however, taken the view that the very fact that expropriation has to be by authority of law would, on a reading of the relevant Entries containing the legislative powers of the Union and the States, indicate that the payment of compensation has necessarily to be read into the new provision.[18]

<u>2. State Practice</u>

In April, 1949, the Prime Minister made a policy statement in the Indian Parliament on foreign capital, which held out an assurance that if foreign enterprises

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18. H.M. Seervai, *Constitutional Law of India*, (2nd ed. Bombay, 1979) Vol. III, p. 1740.

were compulsorily acquired, compensation would be paid on a fair and equitable basis. This, coupled with the further assurance on the freedom of repatriation of capital, amounted to saying that compensation would not only be fair and equitable but also in a transferable form. The assurance was repeated when, in the course of a debate on the Fourth Amendment, the Prime Minister said in the Parliament:

> I am always surprised to hear the proposal being put forward repeatedly; confiscate or expropriate foreign capital. Anything which is more unthinkable, unthought of and unrealistic I cannot imagine; it has no relation to reality ... no country wants to break international relations or its credit in the world by doing this kind of thing, in order to save money... a few crores or a few million.[19]

In 1959, India extended its earlier agreement with the USA under the United States Investment Guarantee Programme, to provide for the payment of "adequate compensation" to US investors in the event of expropriation of their assets in India. In 1964, the Government of India also entered into an agreement with the Federal Republic of Germany providing, inter alia, for the payment of "fair and xxx equitable compensation" to German investors in the event of nationalization of their assets

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19. Lok Sabha Debates, Vol.II, Part II, Col. 4840 (1955).

in India.[20]

In practice, nationalisation of foreign enterprise in India has not been very common and even while nationalising Indian business in certain sectors of the economy, such as nationalisation in 1969 of all major Indian banks, the corresponding foreign enterprises have been left alone. Wherever foreign enterprises have had to be nationalised it has been only on payment of full compensation.

The earliest example was that of the Imperial Bank of India in 1951. The British shareholders were compensated on the average price of the shares during the preceding year which amounted to Rs. 1,703 per share of the face value of Rs. 500; and compensation was paid fully in cash. In the following year, the Kolar Gold Mines, a wholly-owned foreign enterprise, was taken over by the state and life insurance was nationalised. In the former case the compensation was based on the market value of the company's shares. In the case of life insurance, the eight foreign insurers doing business in India

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20. The Colombo Plan : Joint Ventures, 1973, p. 30.

were compensated at 20 times the annual average of the surplus allocated to the shareholders in the two actuarial years preceding January 1955, or 10 times such average plus paid-up capital, whichever were more favourable. If there was no surplus allocated in the base period the compensation was determined by the value of assets less liabilities.[21] During the sixties, the only major nationalization, that of banks, the foreign banks, as already stated, were not nationalized.

In the case of foreign oil companies[22] nationalised during the seventies the amounts of compensation were decided by mutual agreement between the Government of India and the companies concerned and those amounts were paid in pound sterling in the case of Burmah Shell and in U S dollars in respect of Caltex and Esso.[23]

II. REPATRIATION OF CAPITAL AND INVESTMENT INCOMES

The Policy Statement of April 1949 had also given

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21. Mathew J. Kust, Foreign Enterprise in India - Laws and Policies (Chapel Hill, 1964) pp 100-102.

22. Esso, Caltex and Burmah Shell.

23. Sec. 8 and Second Schedule of the Esso (Acquisition of Undertakings in India) Act, 1974.
Sec. 10 and the Schedule of the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Ltd., and of Undertakings in India of Caltex (India) Ltd.) Act, 1977.
Sec. 8 and Second Schedule of the Burmah Shell (Acquisition of Undertakings in India) Act, 1976.

an assurance that there would be no restriction on the remittance of profits or repatriation of capital though remittance facilities would naturally depend on the foreign exchange situation. This assurance was also embodied in the already cited agreements with the U S and West Germany. The assurance had held good all along and no restriction has at any stage been imposed in India either on the repatriation of capital together with capital appreciation or on the remittance of investment incomes like profits, dividends and interest, apart from the ordinary requirement of obtaining permission of the Reserve Bank of India for the remittance of foreign exchange in terms of the Foreign Exchange Regulations Act, 1973.

As a result of this policy there have been substantial remittances abroad from India on account of investment incomes. The total amount remitted yearly has been steadily going up. It went up from Rs.428 million in 1965-66 to Rs. 1485 million in 1977- 78; dividends going up from Rs. 194 to Rs. 680 million, technical fees from Rs. 70 to Rs. 281 million and royalty from Rs. 29 to Rs. 195 million.[24] During the years 1956-57 to 1976-77, a sum of Rs. 14,942

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24. Financial Express, New Delhi, May 25,1981

million was remitted abroad as investment income under the following heads besides reinvested earnings of over Rs. 4,000 million during that period:-

Profit	Rs. 3,314 million
Dividends	5,223
Interest	3,328
Technical fees	2,028
Royalty	1,049
	Rs. 14,942 million[25]

25. Indian Investment Centre, New Delhi, Indian Economy at a Glance, 1980.

* * *

CHAPTER IV

LICENSING AND REGULATION

In the matter of industrial licensing and regulation, the foreign enterprise is subject to the municipal law of the sovereign state. According to Article 2 of the Charter of Economic Rights and Duties of States,[1] every state has the right:

(a) To regulate and exercise authority over foreign investment within its national jurisdiction in accordance with its laws and regulations and in conformity with its national objectives and priorities. No State shall be compelled to grant preferential treatment to foreign investment;

(b) To regulate and supervise the activities of transnational corporations within its national jurisdiction and take measures to ensure that such activities comply with its laws, rules and regulations and conform with its economic and social policies. Transnational corporations shall not intervene in the internal affairs of a host State. Every State should, with full regard for its sovereign rights, co-operate with other States in the exercise of the right set forth in this sub-paragraph; 2

In India foreign enterprises are treated at par with large indigenous industrial houses in the matter of licensing and regulation. The different types of controls in force are discussed in the following paragraphs.

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1. U.N. Resolution 3281 (XXIX) dated Dec.12, 1974.
2 Para 2 Article 2 ibid.

I. INDUSTRIAL LICENSING

A. Industrial Policy

India considers industrialisation as a *sine qua non* of economic progress.[3] The Industrial Policy Resolutions of 1948[4] and 1956,[5] through the Statements of Industrial Policy of 1977 and 1980[6] spell out the main planks of the country's industrial policy. The basic aims are to accelerate the rate of economic growth, to speed up industrialisation and, in particular to develop heavy industries and machine-making industries, so as to provide the economic foundations for increasing opportunities for gainful employment and improving living standards and working conditions for the mass of the people, while at the same time reducing the existing disparities of income and wealth.[7]

1. Classification of Industries

The Industrial Policy Resolution of 1956 divided industries into three categories having regard to the part which the state would play in each of them.[8]

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3. Para 4 of the Statement of Industrial Policy of July 1980.
4. Resolution No. 1 (3) 44 (13)/48 of 6th April 1948.
5. Resolution No. 91/CR/48 of 30th April, 1956.
6. Of 23rd December 1977.
7. Industrial Policy Resolution, 1956, Para 5.
8. *Second Five Year Plan*, 1956 p p 29-30.

The first category includes 17 industries enumerated in Schedule 'A'[9] to the Resolution. These are industries of basic and strategic importance or public utility services or industries which are essential and require investment on a scale which only the state can provide. The future development of these industries is the exclusive responsibility of the state so that all new units therein would be only in the Public Sector. The second category includes 12 industries enumerated in Schedule 'B'[9] to the Resolution. These are industries which would progressively be state-owned and in which the state would generally take the initiative in establishing new undertakings, though private enterprise would also be expected to supplement the effort of the state. The third category comprises all the remaining industries the further development of which, in general, would be left to the initiative and enterprise of the Private Sector.

The Resolution, however, clarified:

(i) Where there exist in the same industry both privately or publicly-owned units, it would continue to be the policy of the State to give fair and non-discriminatory treatment to both of them.

(ii) The division of industries into separate categories does not imply that they are being placed in water-tight compartments. Inevitably there will not only be an area of overlapping but also a great deal of dovetailing between industries in the private and public sectors.

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9. See Appendix 'B'.

2. Core Industries

Within the above broad policy framework, the Government of India have drawn up a list of core[10] industries in which the larger industrial houses[11] and foreign concerns, their subsidiaries and branches of foreign companies, are, in common, eligible to participate provided the item of manufacture is not one that is reserved for production in the Public Sector[12] or in the Small-scale Sector[13]; they are, ordinarily, excluded from other industries.

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10. Appendix (i) of Industrial Licensing Policy of February, 1973. See Appendix 'C'.

11. Undertakings that by themselves or in inter-connection with other undertakings have assets (in India) of not less than Rs. 200 million.

12. Schedule 'A' to the Industrial Policy Resolution, 1956.

13. 'Small-scale Sector' includes 'small-scale units', i.e., undertakings having investments in fixed assets in plant and machinery not exceeding Rs. 2 million and 'ancillaries', meaning undertakings having investments in fixed assets in plant and machinery not exceeding Rs. 2.5 million and engaged in the manufacture of parts, components and sub-assemblies, toolings or intermediates, or in the rendering of services and supplying 50% of their production or 100% of their services, as the case may be, to other units for production of other articles. (S.O. No. 98 (E)/IDRA/29B/73/1 dated 16th February 1973, as amended from time to time till S.O. No. 594 (E) dated 31st July 1980 published in the Gazette of India, extraordinary, Part-II, Section 3 (ii) of July 1980).
    The list of items reserved for the small-scale sector has been amplified from time to time; presently it includes over 800 items (SO No.281 (E) dated 26.4.1978 quoted in L.M. Dutta, _The Industries (Development and Regulation) Act, 1951, Policy and Procedure_, (Allahabad, 1978) p. 53.

B. Licensing

1. When is a Licence Required

The legislative framework for the implementation of the above policy is provided by the Industries (Development and Regulation) Act, 1951 and the Registration and Licencing of Industrial Undertakings Rules, 1952. The Act applies to a wide range of industries grouped under 38 heads in the First Schedule. A licence[14] is necessary for :

1. Establishing a new industrial undertaking;[15]
2. Taking up the manufacture of a new article in an existing industrial undertaking; 16
3. Substantially expanding the capacity[17] of an industrial undertaking in an existing line of manufacture; 18

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14. A licence is a written permission from Government to an industrial undertaking to manufacture specified articles. It includes particulars of the industrial undertaking, its location, the articles to be manufactured, the maximum capacity and the period within which such licensed capacity should be established.
15. Sec. 11 of the Industries (Development and Regulation) Act, 1951.
16. Sec. 11A ibid.
17. An industrial undertaking can, however, increase the production of articles for which it is licensed upto 25% of the licensed capacity without obtaining a substantial expansion licence if -
    a) no additional plant and machinery is installed,
    b) no additional expenditure in foreign exchange is involved,
    c) no additional demand for scarce raw materials is made, and
    d) the item is not reserved for the Small-scale Sector.

(f.n. contd.)

4. Carrying on the business of an existing industrial undertaking to which the licensing provisions of the Act did not originally apply on account of an exemption order issued by Government but became applicable on the cancellation of the exemption order and under certain other circumstances as provided in the Act; 18 and

5. Changing the location of an existing industrial undertaking. 18

2. Exemptions

The Act, however, empowers the Central Government to exempt any industrial undertaking or class of undertakings or any scheduled industry or class of scheduled industries from the operation of all or any of the provisions of the Act.[19]

a. General Exemption : In exercise of the above power the Government have exempted the Small-scale Sector, from the licensing provisions of the Act under certain conditions. The exemption is extended to other undertakings on the following conditions :[20]

a) The undertaking is not a foreign concern or an MRTP undertaking. 21

[Ministry of Industry, Government of India, New Delhi "Guidelines for Industries - Part I", 1979, p. I-6]

18. Sec. 13 ibid.

19. Sect. 29B ibid.

20. A foreign company, its branches or subsidiaries or a company in which more than 40% of the paid up equity is held directly by foreign companies, their branches or subsidiaries or by foreign nationals or non-resident Indians.

21. See p. 58 infra.

b) The proposed investment in fixed assets in land, buildings, plant and machinery for establishing a new undertaking or for effecting substantial expansion or for manufacture of new articles does not exceed Rs. 30 million.

The limit of Rs. 30 million applies to one or more of the activities specified whether singly or taken together, whether in one or more stages.

If the undertaking is an existing undertaking not already covered by registration, licence or permission under the Act, the proposed investment and the existing investment together should not result in the total investment exceeding Rs. 30 million.

c) The proposed investment does not require foreign exchange per year either for the import of raw materials (other than steel and aluminium) or for parts and components (after three years of coming into production), exceeding 15% of the ex-factory value of the annual production or upto a ceiling of rupees four million for raw materials and parts and components, whichever is less.

d) The exemption is not available for —

i) manufacture of articles reserved for the Small-scale Sector or the Public Sector,

ii) Specified industries (coal, textiles, milk foods, malted foods, roller flour milling, oil seed crushing, vanaspati, leather, matches and alcoholic drinks) requiring special regulation, and

...

iii) 12 other specified industries.[22]

f) The undertaking should not be located in an urban area. 23

The exemption is also subject to the condition that the undertaking should, nevertheless, register itself with the Directorate-General of Technical Development or other technical authority concerned,

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22.
1. All qualities of steel manufactured from electric furances based on scrap.
2. Iron and steel pipes and tubes and stainless tubes.
3. Bright bars
4. Tin containers and metal containers.
5. Drums and barrels.
6. Wires of mild steel, special steel and alloy steel-coated and uncoated.
7. Re-rolling of steel.
8. Non-ferrous semis, alloys, flat products and extrusions excluding aluminium semis.
9. Omitted.
10. Omitted.
11. Omitted.
12. ACC/ACSR Conductors.
13. Omitted.
14. Omitted.
15. Omitted.
16. Tubular Poles
17. Steel Structurals
18. Sheet Metal components.

23. According to Press Note of November 20, 1980 this requirement may be relaxed in certain cases to synthesize the twin objectives of optimum utilisation of installed capacity and preservation of the environment and the ecological balance of the country.

like the Textile Commissi ner, the Iron and Steel Controller, the Jute Commissioner or the Coal Controller.[24]

<u>b. Substantial Expansion:</u> The following exemptions are allowed in the case of substantial expansion:[25]

(i) <u>Automatic Growth:</u> Substantial expansion licence is not required for automatic growth to the extent of 5% per annum or limited to 25% in a five-year-period, in one or more stages, of the registered or licensed capacity of the industrial undertaking, subject to the following conditions:-

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24. S.O. 98 (E)/DRA/29B/73/1 of February 16,1973 as amended from time to time till S.O. No. 880 (E)/12/112/79-LP of Nov. 5, 1980 published in the <u>Gazette of India Extraordinary, Part-II</u>, Section 3 (ii) of Nov. 5, 1980. See also P.L. Malik, <u>Industries (Development & Regulation) Act, 1951</u>, pp 136-166.

25. This exemption applies to core industries (Appendix 'C') as well as to the following:

    1. Automobile ancillaries
    2. Castings and closed die foregings
    3. Tractors
    4. Commercial vehicles
    5. Conveying equipment
    6. Diesel engines, pumps
    7. Cranes
    8. Earthmoving, mining and metallurgical equipment
    9. Hydraulic equipment.
    10. Industrial machinery, including chemical plant and machinery.
    11. Machines tools
    12. Textile machines
    13. Power transmission and distribution equipment (other than cables and wires)
    14. Power transformers.
    15. Switchgears

    (S.O. No. 621 (E) dated 14.8.1980 published in the <u>Gazette of India, Extraordinary Part II</u>, Sec. 3 (ii), dated 14.8.1980)

a) the articles of manufacture are not reserved for the Small-scale sector;

b) if the scheme of expansion involves import of capital equipment, it may be subject to such export obligations as may be specified by the Central Government;

c) the proposed expansion is in respect of goods for which the industrial undertaking is not a dominant undertaking within the meaning of the MRTP Act, 1969.

(ii) Installed capacity[26]: The exemption seeks to recognize installed capacities which are in excess

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26. This exemption applies to core industries (Appendix 'C') as well as to the following :

1. Oil Drilling Equipment and accessories
2. Power Transmission accessories including insulators and bushings, preformed transmission line accessories
3. Railway Safety and Signalling equipment
4. Special Alloy castings SG Iron and Malleable castings and stainless steel castings.
5. Pumps and Compressors
6. High tensile steel nuts and bolts
7. Electric generators
8. Engineering production aids such as cutting and forming tools, patterns and dies.
9. Two-wheelers and Three-wheelers
10. Refrigerators upto 167 liters
11. Electric ceiling fans
12. Dry Cell Batteries
13. GLS lamps and Fluorescent tubes
14. Bicycles
15. Drugs and Pharmaceutical

(S.O. No. 703 (E) dated 4.9.80 published in the Gazette of India Extraordinary, Part-II, Section 3 (ii) dated 4.9.1980).

of licenced capacities. It is subject to the following conditions:-

a) The items of manufacture are not reserved for the Small-scale Sector,

b) the industrial undertaking is not an MRTP undertaking or a FERA undertaking.[27]

II. FOREIGN COLLABORATION

A. Policy on Foreign Capital

The Industrial Policy Resolution of 1948 recognized that participation of foreign capital and enterprise, particularly as regards industrial technique and knowledge, would be of value to the rapid industrialization of the country but pointed out that the conditions under which foreign concerns may participate in Indian industry should be carefully regulated in the national interest. The basic approach of the Government toward private foreign capital was enunciated in the Statement of Policy on Foreign Capital made in the Parliament by the late Prime Minister, Jawaharlal Nehru, on 6 April, 1 949. This statement laid down the following principles :

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27. See p. 46 infra.

i) There would be no discrimination as between Indian and foreign enterprises; all would have to conform to the industrial policy requirements of the country and be governed by common regulations.

ii) There would be no restriction on the remittance of profits and repatriation of capital by foreign enterprises subject, of course, to the foreign exchange situation.

iii) If any foreign interests came to be compulsorily acquired, compensation would be paid on a fair and equitable basis with reasonable facilities for remittance of the proceeds thereof.

iv) The major interest in ownership and effective control of an undertaking should, as a rule, be in Indian hands.

v) There would be no objection to the employment of non-Indians in posts requiring technical skill and experience when Indians with requisite qualifications are not available but Indians should be trained and employed in managerial and technical posts as quickly as possible.

The First Five Year Plan (1951-56) elaborated this policy further in the following words:

> In view of the fact that the investment of foreign capital necessitates the utilization of indigenous resources and also that the best use of foreign capital is as a catalytic agent for drawing forth large resources for domestic investments, it is desirable that such investment should be channelled into fields of high priority. The broad principle to be followed is that foreign investment should be permitted in spheres where new lines of production are to be developed, or where special types of experience and technical skills are required, or where the volume of domestic production is small in relation to demand, and there is no reasonable expectation that the indigenous industry can expand at a sufficiently rapid pace. The system of joint enterprises under which a number of foreign concerns have established new industries in the country in collaboration with Indian industrialists

> appears to be suitable for securing the employment of equity capital. Agreements for such joint participation between foreign and Indian concerns should be subject to approval of Government. 28

The policy was reiterated in the Fourth Five Year Plan (1969-74) thus :

> ... care has to be taken to ensure that foreign collaboration is resorted to only for meeting a critical gap and does not inhibit the maximum utilization of domestic know-how and services. Thus, for example, foreign collaboration in the production of consumer goods whether they can be produced within the country or not, will not ordinarily be permitted except in the interest of larger exports ... Import of foreign know-how, particularly in sophisticated industrial fields would continued to be required. 29

The approach of the Government toward foreign capital is, therefore, selective and based on national priorities. Import of capital and technology is permitted in sophisticated and high priority areas, in export oriented or import substitution industries or for enabling indigenous industry to update existing technology to meet efficiently domestic requirements and / or to become competitive in the export market. Foreign shareholding is generally sought to be limited to 40%. Import of technology is sought to be tailored to the changing needs of a developing economy. The Government have drawn up an

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28. First Five Year Plan, p. 438
29. Fourth Five Year Plan p. 312

illustrative list of industries in which no foreign collaboration is considered necessary.[30] The approach is not however, rigid; only recently (1980),[31] the Government of India have invited foreign companies to participate in oil exploration on a production sharing basis in certain on-shore as well as off-shore areas despite the fact that 'Mineral Oils' is an industry reserved for the Public Sector according to the Industrial Policy Resolution of 1956.[32]

B. Dilution of Foreign Equity

1. Foreign Exchange Regulation Act

Under the Foreign Exchange Regulation Act, 1973, the Reserve Bank of India's permission is necessary for :

i) the carrying on in India, or the setting up of a branch or office or any other place of business in India for the purpose of carrying on, any activity of a trading, commercial or industrial nature, or

ii) the acquiring either wholly or partly any business undertaking in India, or

iii) the purchase of shares of Indian companies or securities registered in India,

by persons resident outside India (including Indian

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30. Ministry of Industry (Department of Industrial Development) Government of India, New Delhi, Press Note No. 9 (10)/78-FC II dated 28.12.78. See Appendix 'J'.

31. Ministry of Petroleum, Chemicals and Fertilizers (Department of Petroleum), Government of India, New Delhi, Report 1980-81 p. 6

32. See Appendix 'B'.

citizens) foreign citizens resident in India and companies (other than banking companies) incorporated abroad or having a non-resident interest of more than 40% as well as branches of such companies.[33]

2. FERA Guidelines

a. The Guidelines : In 1973, the Government framed certain guidelines under Section 29 of the Foreign Exchange Regulation Act for the purpose of broadbasing the ownership of existing foreign enterprises in India. The guidelines required the foreign enterprises to fall in line with the following pattern over certain periods of time:

i) All branches of foreign companies (except Airlines and Shipping companies) operating in India should convert themselves into Indian companies and conform to the following principles :[34]

ii) Manufacturing companies engaged in core industries or in industries requiring sophisticated technology or in predominantly export oriented industries (minimum exports being 60% of total production) should increase Indian participation to -

a) not less than 26% if the specified activities account for not less than 75% of total annual turnover, and

b) not less than 49% if the specified activities account for less than 75% but not less than 60% of total annual turnover or the exports account for more than 40% of the total annual turnover.

iii) All other companies should bring down the foreign share-holding to 40%.

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33. Sections 19 and 29 of the Foreign Exchange Regulation Act, 1973.

34. See Appendix 'C'.

iv) Tea plantations would be treated at par with companies engaged in core industries. Airlines and shipping companies would be dealth with on the basis of reciprocity.

v) Companies not willing to abide by the above guidelines may wind up their business activities in India. 35

<u>b. Dilution of Foreign Shareholding:</u> The following policy was laid down for the dilution of foreign shareholding in terms of the above guidelines:

(i) Dilution had to be by diminishing foreign shareholding; fresh capital was allowed only where justified by an approved expansion or diversification project or established capital expenditure programme.

(ii) First preference was for placement of shares on the market for subscription by the public through a prospectus. Second was for issue to existing Indian shareholders on a 'Rights' basis if the company was already widely held and a quo ed company. (In such cases firm allotments to public financial institutions could also be made).

(iii) Apart from these, firm allotments were permitted only in favour of employees and business associates within certain limits.

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35. Guidelines placed on the Table of Parliament on December 20, 1973 as subsequently clarified and amplified by the Ministry of Finance. Indian Investment Centre, <u>Industrial Licensing and Foreign Collaboration,</u> New Delhi, 1976), pp 71-81 and 35 (i) to (iv).

(iv) Private transactions which would result in allotment of controlling interest or bulk shareholding to outsiders were not permitted. 36

The effect of this policy on Indian branches and Indian subsidiaries of foreign companies during the year 1973-74 to 1978-79 is reflected in the following table.

TABLE 2

BRANCHES AND SUBSIDIARIES OF FOREIGN COMPANIES IN INDIA

	1973-74	1974-75	1975-76	1976-77	1977-78	1978-79
I. No. of branches of foreign companies in India	540	510	481	482	473	358
II. No. of Indian subsidiaries with foreign shareholding of 100%	72	65	61	55	51	41
90 to 99%	8	6	7	7	5	3
80 to 89%	9	11	8	5	5	5
70 to 79%	16	15	16	16	12	19
60 to 69%	45	44	37	32	33	19
50 to 59%	38	42	42	46	40	38
	188	183	171	161	146	125

[Source:- D.K. Ghosh, "Multinational Corporations in India, Trends and Performances, 1973-74 to 1978-79", Company News and Notes, Department of Company Affairs, Government of India, New Delhi, June 1980]

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36. Ministry of Finance, Government of India, New Delhi, Report, 1979-80, p. 42.

By March 1981 the process of dilution of foreign shareholding has been more or less completed. Out of 893 applications received, the cases of all but 49 companies have been finally disposed of. In 20 of these 49 cases also the permissible level of foreign equity has been decided; only the scheme of Indianisation remains to be approved. The 29 cases remaining to be decided include 18 drug companies.[37]

Only a few companies (which included I.B.M. and Coca Cola) decided to wind up their operations in India. The guidelines, however, forced some of the foreign companies engaged in trading activities to diversify and enter the field of specified manufacturing or export oriented activities. Thus the Indian Tobacco company has entered the field of hotel industry as well as marine exports; Hindustan Lever has gone into the field of cement production; Brook Bond has taken to export of meat and other animal husbandry products.[38]

It must, however, be noted that dilution of foreign shareholding has not necessarily resulted

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37. Ministry of Finance, Government of India, New Delhi, <u>Report</u>, 1980-81, p. 61

38. S. Rangarajan, Paper read at the Seventeenth Annual Conference of the Indian Society of International Law, March 6, 1981.

in transfer of management control. While diluting equity under the guidelines some of the companies were allowed to enter into perpetual legal agreements with their holding companies abroad vesting management control in foreign hands even with minority shareholding. Lipton (India) Ltd., formerly a branch of Unilever of U.K., and Colgate Palmolive formerly a subsidiary of the U.S. based transnational, may be quoted as examples.[39]

C. Fresh Foreign Collaboration

The policy followed in approving foreign collaboration proposals has been outlined above. With the building up of a substantial reservoir of industrial capability and technological skills in the country the emphasis is shifting to the import of export oriented or high sophistication technology.

1. Technical Collaboration

According to the latest policy announced in 1980, the period of a technical collaboration agreement may extend upto 10 years. The royalty payable should not exceed 5% of the total exfactory value net of excise duties minus landed cost of

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39. S.K. Goyal, "The Impact of Foreign Subsidiaries on India's Balance of Payments," Indian Institute of Public Administration, (New Delhi, 1979) p.7

imported components and it should be subject to Indian taxes. Lump-sum payments, if any, should be payable in three instalments, after the agreement is taken on record, on delivery of technical documentations and on commencement of commercial production. The aggregate of lump-sum and royalty payments should not exceed 8% of total expected sales calculated on the ex-factory value basis as above.[40]

2. Approved Agreements

The number of foreign collaborations approved upto the end of 1980 comes to 6313. The yearwise, industry-wise and country-wise details are given in Appendix 'A'. The number of foreign collaborations approved in 1980 is the highest ever, almost double the annual average of earlier years. The emphasis is, however, more and more on import of technology rather than on capital investment. Within the last ten years or so the proportion of collaborations involving foreign investment has come down from 19% to 13%; out of 569 foreign collaboration agreements approved during the years 1969 to 1971 purely technical collaboration were 456 while out of 1144 agreements approved during the years 1976 to 1980 pure technical collaborations numbered 923.[41]

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40. Ministry of Industry (Department of Industrial Development), Government of India, New Delhi.

41. Indian Investment Centre, Indian Economy at a Glance, 1980 and Ministry of Industry (Department of Industrial Development) Government of India, New Delhi.

III CAPITAL ISSUES CONTROL

1. Legal Framework

Control over Capital Issues is exercised in India under the Capital Issues (Control) Act, 1947, the rules[42] made thereunder and the Capital Issues (Exemption) Order, 1969, which are administered by the Controller of Capital Issues in the Ministry of Finance. The main object is the regulation of investment in accordance with the objectives and priorities of planning. The control aims not only at regulating the financial structure of companies but also at protecting the interests of the investing public.

The approval of the Central Government is required in the following cases :-

i) Where the amount of capital to be raised in the market in a period of one year exceeds Rs. 5 million.

ii) Where the shares are to be issued at a premium or discount.

iii) All bonus issues.

iv) All issues by MRTP companies.[43]

2. Main Criteria

The more important criteria governing capital issues are the following :-

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42. The Capital Issues (Application for Consent) Rules, 1966.

43. *Annual Report* of the Ministry of Finance 1980-81, p. 63.

equity - debt ratio should be 1 : 2

ii) Equity - preference ratio should be 3 : 1

iii) Promoters should subscribe the prescribed minimum, which is 15% for an Issue upto Rs. 10 million, 12. 1/2% for an Issue upto Rs. 20 million and 10% for an Issue exceeding Rs. 20 million.

iv) The rate of dividend on preference shares should not exceed 11% 46

3. Guidelines for Bonus Issues

Issue of bonus shares should be in accordance with the following guidelines :

a) The bonus issue should be made only out of free reserves built out of genuine profits or share premium collected in cash; reserves created by revaluation of fixed assets are not permitted to be capitalised.

b) The residual reserves after the proposed capitalisation should be at least 40% of the increased paid up capital.

c) Thirty per cent of the average profits before tax of the company for the previous three years should yield a 10% rate of dividend on the expanded capital base of the company.

d) The company should not have defaulted in the payment of statutory dues of employees such as contribution of provident fund, gratuity, bonus.

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44. Equity is deemed to include ordinary shares, share premium and preference shares not redeemable in under 12 years.

45. Debt includes all fixed interest bearing securities like debentures, loans except purely short term loans as well as preference shares redeemable in under 12 years.

46. Clause 5 of the Capital Issues (Exemption) Order, 1969.

e) Declaration of bonus issue in lieu of dividend is not allowed.

f) Bonus issues are not allowed unless all partly paid up shares, if any, are made fully paid up. The amount of capitalised at any one time should not exceed the total paid up equity capital.

g) There should be a time-lag of at least 36 months between two successive announcements of bonus issues. 47

4. Working of Capital Issues Control

The working of the Capital Issues Control during the last few years is reflected in the following table :-

TABLE 3

WORKING OF CAPITAL ISSUES CONTROL
(MILLION RUPEES)

Year	Capital Issues approved		Bonus Issues included in Col.2		Issues of capital to non-residents included in Col.2		Capital Issues refused	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
1975	381	2,650	201	779	131	429	40	108
1976	355	3,664	226	1,226	141	1,130	29	46
1977	379	4,032	231	1,202	158	1,314	35	177
1978	369	2,732	233	999	138	654	19	40
1979	456	4,964	263	877	138	1,372	19	13
1980	460	7,814	255	1,316	134	875	15	30

(Compiled from the Annual Reports of the of the Ministry of Finance, Government of India, for the years 1976-77 to 1980-81).

47. Guidelines for Bonus Issues of Shares, A. Ramaiya, Guide to the Companies Act, (Agra, 1977) 8th ed. p. 1586. As revised on August 18, 1981, Economic Times, New Delhi, August 20, 1981.

IV CAPITAL GOODS CONTROL

1. Import Trade Control

Import Trade Control is exercised in India under the Imports and Exports (Control) Act, 1947 and the Imports (Control) Order, 1955. The import control covers practically all articles including capital goods[43] and these are included in Schedule I to the Imports (Control) Order. The import of scheduled items is prohibited except under and in accordance with a licence or a customs clearance permit issued under the said Order or an Open General Licence issued by the Central Government.

2. Import Licence

The import licence for capital goods is issued after the industrial licence has been given and the foreign collaboration, if any, has been approved.[49] Items manufactured indigenously are ordinarily not allowed to be imported but in the case of the following projects/industries of national priority import of capital goods is permitted on the basis of global tenders even if they are manufactured indigenously.

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48. Plant, machinery, equipment or accessories - Import Policy, 1981-82, p. 2

49. Hand Book of Import Export Procedures, 1981-82 p. 22.

1. Fertilizers
2. Newsprint and paper
3. Basic drugs
4. Basic technical material for pesticides and weedicides
5. Power generation, transmission and distribution
6. Mineral exploration, mining and benefication
7. Petroleum exploration and production
8. Petrochemicals upto the stage of polymers
9. Manufacture of professional grade electronic components
10. Waste disposal recycling and effluent treatment projects and ecological engineering.
11. Material handling projects at ports
12. Sugar
13. Cement and cement products (including absestos).[50]

As a rule applications for import licences for substantial value of plant and machinery required for the setting up of new projects or for substantial expansion are considered only against long-term foreign investment or long-term foreign exchange loans from official or other agencies. Imports on short or medium-term suppliers' credit are not encouraged and deferred payment arrangements are considered in exceptional cases when the Government are satisfied that the savings of foreign exchange resulting

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50. Para 14 of the Import Policy, 1981-82

from the output of the plant and machinery proposed to be imported will be more than sufficient to meet the payment liability.[51]

3. Import Policy

The Import Policy and Handbook of Import Export Procedures published every year under the authority of the Government of India give details of the policy and procedures in this regard as applicable for that year.

V. MONOPOLIES AND RESTRICTIVE TRADE PRACTICES

Article 39 of the Constitution of India contains a directive principle of State Policy[52] to the effect that the ownership and control of the material resources of the community are so distributed as best to subserve the common goods and the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The Monopolies and Restrictive Trade Practices Act, 1969, has been enacted in pursuance of this directive

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51. Hand Book of Import Export Procedures, 1981-82 p. 29.

52. Directive Principles of State Policy are principles contained in the Indian Constitution which, though not enforceable by any court, are yet fundamental in the governance of the country with a duty imposed on the State to apply them in making laws.

principle. The Act seeks to ensure that the operation of the economic system does not result in the concentration of economic power to the common deteriment and provides for the control of monopolies and for the prohibition of monopolistic and restrictive trade practices. The restrictions contemplated in the Act fall under the following three heads :-

i) Concentration of Economic Power
ii) Monopolistic Trade Practices
iii) Restrictive Trade Practices

A. Concentration of Economic Power

1. MRTP Undertakings

The provisions relating to the concentration of economic power apply only to the following types of undertakings which are commonly referred to as MRTP undertakings :

a) An undertaking which by itself or together with its inter-connected undertakings owns assets of not less than Rs. 200 million in value.

b) A dominant undertaking[53] or interconnected undertakings constituting a dominant undertaking

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53. A dominant undertaking means an undertaking which by itself or along with inter-connected undertakings produces, supplies, distributes or controls one-third or more of the total supply of goods or services of any description in the country (Sec.2 (d) of the MRTP Act,1969).

which own assets of not less than Rs. 10 million in value.[54]

Every undertaking falling in these two categories has to get itself registered with the Central Government.[55]

2. Setting up a New Undertaking

The Act prohibits the establishment of a new undertaking which when established would become an interconnected undertaking of an undertaking of the first category mentioned above except with the previous permission of the Central Government.[56]

3. Substantial Expansion

An undertaking of either category, is prohibited from substantially expanding its activities by the issue of fresh capital or by the installation of new machinery or other equipment or in any other manner,[57] except with the approval of the Central Government. Where, however, a substantial expansion

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54. Sec. 20 ibid.
55. Sec. 26 ibid.
56. Sec. 22 ibid.
57. It has been held that the words' in any other manner' should be read ejusdem generis with the preceding words so that the expansion in any other manner should be through a method which is akin to or comparable with the issue of fresh capital or the installation of new machinery etc. (In. re. Canara Bank AIR 1973 Mysore 95).

licence is required under Sec. 13 (1) (d) of the Industries (Development and Regulation) Act, 1951[58] this approval under theMRTP Act is not necessary, if the undertaking is not a dominant undertaking and the expansion relates to the production of the same or similar type of goods.[59]

4. Merger and Take-over

Any proposal for merger or amalgamation of an undertaking of the specified types with any other undertaking or the merger or amalgamation of any two or more undertakings which would result in the bringing into existence of an undertaking of the specified types requires the previous approval of the Central Government unless the two undertakings are not dominant undertakings, are already inter-connected and produce the same goods. Similarly, the acquisition by an undertaking of the specified types of the whole or part of another undertaking by purchase, take-over or through inter-corporate investment,[60] requires the previous approval of the Central Government.[61]

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58. See p.36 supra
59. Sec. 21 ibid.
60. Inter-corporate investment also requires separate approval under Sec. 372 of the Companies Act, 1956.
61. Sec. 23 of the MRTP Act, 1969.

5. Public Interest

In all these cases, the Central Government may, before taking a decision, have an inquiry made by the MRTP Commission, a permanent statutory body set up under Section 5 of the Act. The Central Government may accord a proval if it is satisfied that the proposal will not lead to the concentration of economic power to the common detriment, that it will not be prejudicial to the public interest and that it is expedient in the public interest to approve of the porposal.

The Act specifically requires the Central Government to give reasonable opportunity of being heard to the applicant before passing an order on any such proposal.[62]

B. Monopolistic Trade Practices

The provisions regarding monopolistic trade practices apply only to monopolistic undertakings.[63] Unlike the American anti-trust laws, under the

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62. Sec. 29 ibid.

63. A monopolistic undertaking is an undertaking, which, together with one or two other undertakings produces, supplies, distributes or controls not less than one-half of the total goods and services of any description in the country. [Sec. 2 (j) ibid]

Indian law, being a monopolistic undertaking per se is not an offence. It is only when a monopolistic undertaking indulges in a monopolistic trade practice[64] and such monopolistic trade practice is against the public interest that the Central Government is empowered, after inquiry by the MRTP Commission, to pass such order as it thinks fit to remedy or prevent any mischief resulting from such trade practice.[65]

C. Restrivtive Trade Practices

1. Restrictive Trade Practice

The provisions regarding restrictive trade practices are of general application not limited to any particular types of undertakings. A restrictive trade practice means a trade practice which could have the effect of preventing, distorting or restricting competition in any manner and, in particular, which tends to restrict the flow of

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64. A monopolistic trade practice means a trade practice which could have the effect of, maintaining prices at an unreasonable level by limiting, reducing or otherwise controling production, supply or distribution of any goods or services, curbing competition, or limiting technical development or capital investment to the common detriment, or allowing the quality of any goods or services to deteriorate.
[Sec. 2 (i) ibid]

65. Sec. 31 ibid.

capital or resources into the stream of production or which tends to bring about manipulation of prices or conditions of delivery or to affect the flow of supply in the market relating to goods or services in such manner as to impose on the consumers unjustified costs or restrictions.[66] The Supreme Court has ruled : "The decision whether a trade practice is restrictive or not has to be arrived at by applying the rule of reason and not on the doctrine that any restriction as to area or price will _per se_ be a restrictive trade practice. Every trade agreement restrains or binds persons or places or prices. The question is whether the restraint is such as regulates and thereby promotes competition or whether it is such as may suppress or even destroy competition. To determine this question three matters are to be considered. First, what facts are peculiar to the business to which the restraint is applied. Second, what was the condition before and after the restraint is imposed. Third, what is the nature of the restraint and what is its actual or probable effect".[67]

2. Registration of Agreements

Agreements containing certain categories of restrictive trade practices such as exclusive deal-

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66. Sec. 2 (o) ibid.

67. Telco v. Registrar of Restrictive Trade Agreements, AIR 1977 SC 973.

ing agreements, tying arrangements, price fixing, price discrimination, resale price maintenance[68] are required to be registered[69] with the Registrar of Restrictive Trade Agreements appointed under Section 34 of the Act.

3. Cease and Desist Order

Whether or not an agreement is registered, however, the MRTP Commission has got an over-riding authority to investigate and control a restrictive trade practice.[70] The Commission can take cognizance of such a trade practice either suo moto, based on its own knowledge or information, or on an application made to it by the Registrar or on a reference made to it by Government or upon the receipt of a complaint from any trade or consumers' association having a membership of not less than 25 persons or from 25 or more consumers.[71] After investigation if the Commission comes to the finding that there is a restrictive trade practice which, in its opinion, is prejudicial to the public interest,

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68. N.K. Sen Gupta, The Monopolies and Restrictive Trade Practices Act, (2nd ed. Calcutta, 1980) pp. 146-167.
69. See 33 ibid.
70. Sec. 37 ibid.
71. Sec. 10 ibid.

the Commission may make a cease and desist order, i.e., an order directing that the practice shall be discontinued or shall not be repeated and the agreement relating thereto shall be void in respect of such restrictive trade practice or shall stand modified in respect thereof in such manner as may be specified in the order. The Act raises a presumption that a restrictive trade practice shall be deemed to be prejudicial to the public interest unless the Commission is satisfied that it is protected by one or more of the '<u>gate-ways</u>' like protection of public against injury, specific and substantial benefit to the public, mentioned in Section 38 of the Act.

IV. INDUSTRIAL APPROVAL PROCEDURE

The industrial approval procedure has been considerably streamlined by the Government in recent years. An inter-ministerial committee of Secretaries, called the Project Approval Board (PAB) has been placed in overall charge of this work. The earlier Committees dealing with different aspects of industrial approval, such as Licensing Committee, Foreign Investment Board, Capital Goods Committee, Licensing-cum-MRTP Committee, all now function as Committees of the Project Approval Board. The Board is serviced

by a unified agency, called the Secretariat for Industrial Approvals, set up in the Ministry of Industry, Department of Industrial Development. The entrepreneur may submit a composite application for industrial licence and, as may be required, for foreign collaboration approval and capital goods clearance to the Secretariat for Industrial Approvals for being placed before the appropriate Committees. The Government have fixed a time target for clearance of such composite applications within 60 days in the case of non-MRTP companies and within 90 days in the case of MRTP companies.[72] In 1980 the Central Government have also delegated powers to the administrative ministries to sanction foreign collaboration proposals in cases not involving an outflow exceeding Rs. 5 million subject, inter-alia, to the conditions that there is no foreign equity participation in the proposal, the applicant is not a company with existing foreign equity, the proposal does not involve extension of the period of collaboration approved earlier and the total outflow does not exceed 8% of the exfactory value of production.[73] In the case

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72. Ministry of Industry, Government of India, New Delhi, Report 1980- 81, p. 40

73. Annual Report of the Ministry of Finance, New Delhi, 1980-81, p. 61

of capital goods import also where the c.i.f. value does not exceed Rs. 2.5 million, the application can be disposed of by the Chief Controller of Imports and Exports under the Department of Commerce.[74]

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74. Handbook of Import and Export Procedures 1981-82, p. 22

CHAPTER V

TAXATION

Tax-incidence is the next important question from the point of view of a foreign entrepreneur. Income-tax or Corporation tax as the tax on the income of companies is sometimes called, is, of course, the most important. Commodity taxes, transaction taxes, or some of the local taxes are, however, of no less importance to a working enterprise. Taxation of foreign private property is a matter entirely for the municipal law of the sovereign state. Confiscatory or highly discriminatory taxation may, however, create problems analgous to those of expropriation with inadequate compensation.

In the Indian federal system the powers of taxation are divided between the Union and the constituent states in two mutually exclusive lists, the Union list and the State List, embodied in the Seventh Schedule to the Constitution of India. The residuary powers of taxation in respect of any matters not covered in either of those two lists are given to the Union.[1] Taxes of a federal character

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1. Article 248 and Entry 97 in the Union List of the Constitution.

Like income tax, excise duties, import and export duties, which constitute major sources of revenue, all fall in the Union List but the Constitution provides for the sharing by the Union with the States of the proceeds of some of these taxes.[2]

CENTRAL TAXES

I. INCOME TAX

A. General

Income-tax, on corporate as well as non-corporate entities, is levied under the Income-tax Act, 1961,[3] a central Act enacted by virtue of Entries 82 and 85 in the Union List and the rules framed thereunder, called the Income-tax Rules, 1962. The Act is administered by the Central Board of Direct Taxes, a statutory body within the Ministry of Finance of the Government of India, set up under the Central Boards of

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2. Articles 268 to 272 ibid.
3. Taxes on agricultural income, however, fall in the State List so that agricultural income is exempt from tax under the Income tax Act though such income is added to the other income of the tax-payer for determining the rate of tax applicable to the other income where the rates of tax are on a graduated scale. In the case of tea companies deriving composite income from the sale of tea grown as well as manufactured by them, 40% of such income is considered as non-agricultural business income in terms of Rule 8 of the Income Tax Rules.

Revenue Act, 1963. The tax is charged in each assessment year, i.e., a year commencing on the 1 April, at the rates prescribed in the Finance Act for that year in respect of the income of the previous year i.e., the accounting year of the tax-payer preceding the assessment year. The Act gives an inclusive definition of income[4] which, inter alia, includes capital gains.[5] The tax payer is under an obligation[6] to file a return of his total income with the jurisdictional Income-Tax Officer by 30 June of the assessment

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4. Section 2 (24) of the Income-tax Act, 1961

5. A capital gain arises on the transfer of a capital asset and represents the excess of the full value of the consideration for the transfer over the cost of acquisition together with the cost of improvement, if any, and the expenditure incurred in connection with the transfer. 'Capital asset' for this purpose means property of every kind but excludes, (a) stock-in-trade, consumable stores or raw materials held for the purposes of a business or profession; (b) personal effects other than jewellery; (c) agricultural land situated in India other than land in urban areas and (d) certain gold bonds issued by the Government of India. 'Transfer of a capital asset' includes the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compplulsory acquisition thereof under any law. (Sections 2 (14), 2 (47), 45 and 48 ibid).

6. Sec. 139 ibid.

year and the Income-tax Officer has to complete the assessment and determine the tax payable within 2 years from the end of the assessment year.[7] For certain specified incomes, like salaries, interest on securities, and dividends, tax is required to be withheld at source and paid to Government by the persons disbursing such incomes;[8] in most of the other cases tax is payable in advance[9] on an estimated basis in three equal instalments during the year preceding the assessment year. The balance of tax, if any, on the returned income is required to be paid before filing the return of income.[10] On completion of assessment by the Income-tax Officer, if any further tax is payable, it has to be paid within 35 days of the service on the taxpayer of a notice of demand.[11]

B. Company

A company is a taxable 'person'[12] under the Act and pays tax levied on it in discharge of its own liability and not on behalf of its shareholders;

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7. Sec. 153 ibid.
8. Sec. 192 et seq. ibid.
9. Sec. 207 et. seq. ibid.
10. Sec. 140A ibid.
11. Sec. 220 ibid.
12. Sec. 2 (31) ibid.

the shareholders are separately liable to pay tax on their total incomes including the gross amount of dividends from the company.[13] The Companies Act, 1956, which regulates the formation and registration of companies in India divides companies into public companies and private companies; the latter being companies which restrict the right to transfer their shares, limit the number of their members to 50, and prohibit any invitation to the public to subscribe for their shares and debentures.[14]

The definition of 'company' under the Income-tax Act is much wider; apart from companies registered under the Companies Act it includes a statutory corporation, a body incorporated in a foreign country and even an un-incorporated institution, association or body, whether Indian or non-Indian, which is declared by the Central Board of Direct Taxes to be a company for any assessment year.[15] A company formed and registered in India is an 'Indian Company'.[16] A company which is either an Indian company or which has made arrangements for, the maintenance of its share register at its principal place of business in India, the holding

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13. Howrah Trading Co. Ltd. v CIT 36 ITR 215 (SC) and Purshottamdas Thakurdas v. CIT 48 ITR 206(SC)
14. Sec. 3 of the Companies Act, 1956.
15. Sec. 2 (17) of the Income-tax Act, 1961.
16. Sec. 2 (26) ibid.

of its general meeting for passing accounts and declaring dividends within India and paying all its dividends in India only, is a 'domestic company'[17]. A company which is not a domestic company is a 'foreign company'[18].

C. Residence and Tax Liability

The liability to tax is determined by the fact not of domicile or citizenship but of residence of the tax-payer. The tax liability of a resident person extends to his total world income, i.e., including income which accrues, arises, or is received outside India. The tax liability of a non-resident person extends not only to income accruing or arising in India but also to income received in India as well as to income which is statutorily deemed to accrue, arise or be received in India[19].

A company is resident in India if it is an Indian company or if the control and management of its affairs is situated wholly in India[20]. The words 'control and management' signify the controlling and directive power, the head and

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17. Sec. 80 B (2) ibid & Rule 27.
18. Sec. 80 B (4) ibid.
19. Sec. 5 ibid.
20. Sec. 6 (3) ibid.

brain; and 'situated' implies the functioning of such power at a particular place with some degree of permanence.[21] The control and management of a company is ordinarily situated at the place where the directors' meetings are held;[22] factors like, the holding of shareholders' meetings,[23] the residence of directors[24] or even the place where business operations are actually carried[25] on are not decisive.

D. Computation of Business Income

Income from profits and gains of business is computed on ordinary commercial principles[26] and in accordance with the method of accounting regularly employed by the tax-payer.[27] The Act specifically mentions some of the allowable expenses like rents, rates, taxes, repairs, insurance, etc.[28] and then goes on to lay down a general principle that any expenses incurred by the tax-payer during the year wholly

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21. Subbayya Chettiar v. CIT, 19 ITR 1 68 (SC)
22. Narottam and Pereira Ltd. v. CIT 231 ITR 454
23. Stanley v. Gramophone & Typewriters Ltd. 5 T.C. 358 (CA)
24. Calcutta Jute Mills Co., Ltd. v. Nicholson 1 TC 83
25. Erine Estate v. CIT 34 ITR 1 (SC)
26. Badridas Daga v. CIT 34 ITR 10(SC)
27. Sec. 145 ibid.
28. Sec. 30 et seq. ibid.

and exclusively for the purposes of business shall be allowed if these are not in the nature of personal expenses of the tax-payer or in the nature of capital expenditure.[29] The Act does not define 'capital expenditure' but it has generally been held that an expenditure incurred with a view to bringing into existence an asset or advantage for the enduring benefit of a trade is ordinarily of the nature of capital expenditure.[30]

The following expenses are not, however, allowed to the extent indicated below:

1. Entertainment expenditure beyond a certain limit.[31]
2. Expenditure incurred on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party. 32
3. Expenditure incurred on the maintenance of a guest house. 33
4. Expenditure on advertisement or in connection with travelling by an employee or any other person when such expenditure is excessive or unreasonable and beyond certain limits. 34

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29. Sec. 37 ibid. For capital expenditure on scientific research, however, see p.89 infra.
30. Atherton v. British Insulated & Helsby Cables Ltd. 10, TC 155 & CIT v. Finlay Mills 20 ITR 475 (SC)
31. The limit is computed at 1/2% of the first Rs.one million of profits, 1/4% of the next Rs. four million of profits, 1/8% of the next Rs. 12 million of profits and nil in respect of the remaining profits (Sec. 37 (2A) ibid).
32. Sec. 37 (2B) ibid.
33. Sec. 37 (4) ibid.
34. Sec. 37 (3) ibid & Rules 6B and 6 D. The limits are given in the Rules.

5. Interest or salary payblo outside India on which tax has not been paid or withhold or arranged for. 35

6. Any rate or tax on profits such as the income tax itself. 36

7. Expenditure on the provision of any remuneration, benefit or amenity to or the user of any asset of the company by a director or a person who has a substantial interest 37 in the company or a relative of such director or person in so far as such expenditure exceeds Rs. 72,000 per annum per person. 38

8. Similar expenditure on payment of salary or perquisites 39 to an employee, other than a foreign technician, in so far as such expenditure exceeds Rs. 5,000 per month in respect of salary and 1/5th of salary or Rs. 1,000 per month in respect of perquisites 40.

E. Rates of Tax

The rates of tax applicable to a company for the assessment year 1982-83 are given in the following table :

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35. Sec. 40 (a) (i) & (iii) ibid.

36. Sec. 40 (a) (ii) ibid.

37. A person has a substantial interest in a company if he is the beneficial owner of equity capital carrying not less then 20% of the voting power. (Explanation below sec. 40 A (2) ibid).

38. Sec. 40 (c) ibid.

39. 'Perquisite' means provision of accommodation free of rent or at a concessional rent, provision of any benefit or amenity free of cost or at a concessional rate and payment for any obligation of the employee or for any life insurance policy or contract of annuity on his behalf (Explanation 2 (b) under Sec. 40 A (5) ibid.

40. Sec. 40 A (5) ibid.

TABLE 4

RATES OF INCOME TAX ON COMPANIES

Sl. No.	Type of Company	Rate as percentage of total income.
1.	Domestic	
	a) Widely held [41]	
	i) Where total income does not exceed Rs. 1,00,000	45
	ii) Where total income exceeds Rs. 1,00,000	55

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41. A company is 'widely held' if :-
  (i) it is owned by the Government or the Reserve Bank of India or not less than 40% of its shares are held by the Government or the Reserve Bank of India or a corporation owned by that Bank;

  (ii) it is charitable or other company registered under section 25 of the Companies Act, 1956;

  (iii) it is a company having no share capital and declared by an order of the Central Board of Direct Taxes to be a widely held company.

  (iv) it is a company which is not a private company and
  either its shares are listed in a recognized stock exchange in India, or
  (a) its equity shares carrying not less than 50% (40% in the case of an industrial company) of the voting power are held unconditionally throughout the year by Government or a statutory corporation or a widely held company or a subsidiary of such company or by the public,
  (b) the said shares are freely transferable, and
  (c) the affairs of the company or its shares carrying more than 50% (60% in the case of industrial company) of the voting power are not at any time in the year controlled or held by five or less persons. (Sec. 2 (18) ibid).

b) Closely held[42]

(1) Industrial[43]

(i) Where total income does not exceed Rs. 2,00,000	55
(ii) Where total income exceeds Rs. 2,00,000	60
(2) Others	65

2. Foreign

(i) Royalties and technical fees[44] received from Indian concerns in pursurance of agreements made before 1 April 1976 and approved by the Government of India.	50
(ii) Balance of total income	70

(Finance Act, 1981)

Notes:

1. The amount of income tax calculated at the above rates is to be increased by a surcharge at the rate of 2 1/2% of such income-tax.[45]

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42. A company not satisfying the above conditions is a 'closely held' company.

43. 'Industrial company' means a company which is mainly engaged in the business of generation and and distribution of electricity or any other form of power or in the construction of ships, or in the manufacture or processing of goods or in mining (Sec. 2 (7) (c) of the Finance Act, 1981.

44. For special rates applicable to these incomes from the 1 April 1976, see Table 5 infra.

45. Part III of the First Schedule to the Finance Act, 1981.

2. Capital gains are divided into long-term capital gains and short-term capital gains depending upon the fact whether the asset transferred had or had not been held by the taxpayer for more than 3 years preceding its transfer.[46] Short-term capital gains are taxed like any other income. Long-term capital gains are given a concessional treatment as under[47] :-

(a)	Gains relating to buildings or lands- In the case of widely held companies whose income excluding such capital gains does not exceed Rs. 1,00,000	40%
	In other cases -	50%
(b)	Gains relating to other assets	40%

F. Tax Incentives

The standard rates of tax given in the preceding section are not a true index of the actual incidence of income-tax. The Indian law contains so many tax incentives, particularly in favour of new industries, that the effective rates of tax are often low enough for India to be referred to as a tax haven. According to a study prepared by the Economic Times Research Bureau[48] the 101 largest companies in the

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46. Sec. 2 (42A) of the Income tax Act, 1961.
47. Sec. 115 ibid.
48. N.V. Venkataraman, Vikraman Nair and M. Krishnan Kutty, "Private Sector Corporate Giants", *The Economic Times*, New Delhi, May 25 -28 1981.

private corporate sector in India reported a total tax liability of Rs. 2,618 million against pre-tax profits of Rs. 6,217 million for the year 1979-80 giving an average tax incidence of 42%. A further analysis of the working results of these companies by the author revealed the following interesting features :

i) Ninety-three of the said 101 companies reported profits for the year 1979-80. Of these as many as 25 companies with pre-tax profits ranging between Rs. one million and Rs. 160 million reported zero tax liability. These 25 companies included the largest Indian company in the private sector,[49] Tata Engineering and Locomotive Company (capital employed Rs. 4,004 million and net sales, Rs. 4,016 million).

ii) The 25 companies reporting zero tax liability accounted for 26% of the capital employed and 24% of the net sales of all the 101 largest companies.

iii) Of the remaining 68 companies, 30 companies reported a tax liability of less than 50%. These 30 companies included the largest foreign foreign company Hindustan Lever (capital

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49. Over a five year period from 1975-76 to 1979-80, TELCO reported a tax liability of 11% in the year 1975-76 and zero tax liability in all other years on profits ranging upto Rs. 176 million. The company's projections for the next four years, 1980-81 to 1983-84 indicate a tax liability ranging between zero and 34% (Anand P. Gupta, "Management of the Income-tax Function". "Economic and Political Weekly, February 28, 1981 p. [illegible]-15

employed Rs. 1,691 million, net sa...
Rs. 3,199 ~~million~~ million), a company a...
well established in manufacturing and trading in consumer items like soaps, detergents and edible oils. Hindustan Lever reported a tax liability of Rs. 130.1 million in respect of pretax profits of Rs. 306.1 million giving a tax incidence of 42%.[50]

iv) Only 38 of the 101 companies reported a tax liability of 50% or more of pretax profits. These were, of course, super profits islands which with 34% of the capital employed and 40% of the net sales reported 50% of the pre-tax profits.

v) In a profitability ranking of companies in the Indian private sector, however, the first twenty companies included only two companies out of the list of 101 largest companies (National Rayon and Century Spinning) and these two reported tax incidence of zero and 33 per cent respectively.

Some of the important tax benefits are briefly described below:-

1. Depreciation[51]

a. Normal Depreciation: As a departure from the general principle that no deduction can be claimed in respect of diminution or exhaustion of a capital asset,[52]

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50. See Hindustan Lever Ltd., Report and Accounts, 1979
51. Sec. 32 and 34 ibid read with Rule 5.
52. Coltness Iron Co. v Black 1 TC 237 (HL) and Kauri Timber Co. Ltd. v Commissioners of Taxes 1913 A C 771

the Indian Income-tax Act contains extensive provisions allowing depreciation in respect of buildings, machinery, plant and furniture owned by the tax-payer and used by him during any part of the year for the purpose of his business. Different percentages of depreciation allowance varying from 2.5% to 100% in the case of buildings and from 5% to 100 % in the case of plant, machinery and furniture are laid down in Appendix I to the Income tax Rules, 1962. Depreciation at these rates is allowed on the written-down value of the assets mentioned i.e. on their actual cost less depreciation allowed in the earlier years. For ocean going ships, however, depreciation is allowed on the straight line method i.e. on the actual cost. The word 'plant' is defined to include ships, vehicles, books, scientific apparatus and surgical equipment.[53] It has been interpreted in a wide sense to include things like sanitary and pipeline fittings,[54] railway sidings,[55] and safe deposit vaults.[56]

<u>b. Additional Depreciation</u> : In addition to the normal depreciation, additional depreciation is allowed in the following cases :

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53. Section 43 (3) ibid.
54. <u>CIT v. Taj Mahal Hotel</u> 82 ITR 44 (SC)
55. <u>Kalinga Tubes Ltd. v. CIT</u> 96 ITR 20
56. <u>CIT v Union Bank of India Ltd.</u> 102 ITR 270

(i) In respect of new machinery or plant, including reconditioned machinery or plant imported from outside India, installed after 31.3.1980 but before 1 April 1985, except for ships, aircrafts, road transport vehicles and office appliances and machinery or plant installed in any office premises or residential accommodation, additional depreciation allowance is given at 50% of the normal depreciation. 57 This additional allowance is given only in the first year.

(ii) In respect of machinery and plant, whenever installed by an Indian company in an approved hotel, an additional depreciation allowance is given at 50% of the normal allowance. This additional allowance is given year after year.58

The additional depreciation allowance is taken into account in determining the written down value of the assets concerned for subsequent years.

c. Initial Depreciation : Further, the following initial depreciation allowance is given in the first year in the cases indicated :

i) At 40% in the case of a new building used solely for the residence of lowpaid employees or for the welfare of such employees as a hospital, creche, school, canteen, library, recreation centre, shelter, rest-room or lunchroom. 59

ii) At 25% in respect of new building owned by an Indian company and used as an approved hotel. 60

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57. Sec. 32 (1) (iia) of the Income-tax Act, 1961.
58. Appendix I to the Income-tax Rules, 1962.
59. Sec. 32 (1) (iv) of the Income-tax Act, 1961.
60. Sec. 32 (ii) (v) ibid.

The initial depreciation is not taken into account in computing the written down value of the building for subsequent years.

d. Extra-shift Allowance: In the case of a concern that has worked double or tiple shift at any time during the year an extra-shift allowance is given on machinery and plant in addition to the normal depreciation allowance at 50% of the normal allowance for double shift working and 100% of the normal allowance for triple shift working. Where the extra-shift is worked only during a part of the year the extra-shift allowance is given on a pro-rata basis. Certain items of plant and machinery like locomotives, electric fittings, switchgear etc. are however, specifically marked in Appendix I to the Income-tax Rules as not eligible for the extra-shift allowance.

The extra allowance is also taken into account in computing the written down value for subsequent years.

e. Carry Forward : If the profits in any particular year are not sufficient to absorb the depreciation allowance that is admissible the balance amount of depreciation allowance is allowed to be carried forward indefinitely to be set off against the profits of

future years.[61]

f. Balancing Allowance/Charge: The sum total of all these allowances should not ultimately exceed the actual cost to the tax-payer of the particular asset. If the asset is at any stage sold, discarded, demolished or destroyed, the excess of the written down value over the amounts realized together with the scrap value is allowed as a balancing allowance;[62] in the reverse situation, where the amount realized and the scrap value exceed the written down value, the excess is brought to tax as income.[63]

g. Amortisation of Other Assets : The deprecia-tion allowance is given only in respect of the assets specified above. There are, however, separate provisions allowing amortisation of capital expendi-ture in the following cases :-

(i) Cost of patent rights or copyrights is allowed to be amortised over a period of fourteen years.[64]

(ii) Capital expenditure incurred for promoting family planning among employees is allowed to be amortised over a period of five years.[65]

(iii) In the case of Indian companies, preliminary expenses incurred prior to the setting up of the business and expenses incurred before the commencement of commercial production on prospecting for any of the minerals specified in the Seventh Schedule to the Act may be amortised over a period of ten years.[66]

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61. Sec. 32 (2) ibid.
62. Sec. 32 (1) (iii) ibid.
63. Sec. 41 (2) ibid.
64. Sec. 35A ibid.
65. Sec 36 (1) (ix) ibid.
66. Sec. 35D and 35E ibid.

2. Investment Allowance[67]

This is a special allowance to encourage new investment in industry. In respect of a new ship or aircraft (including a used ship or aircraft imported from abroad) acquired after 31 March 1976 and in respect of new machinery or plant (including reconditioned machinery or plant imported from aborad) installed after that date in the a business of generation or distribution of electricity or any other form of power or construction, manufacture or production of articles or things, other than articles or things of low priority specified in the Eleventh Schedule to theAct,[68] or in a small scale undertaking,[69] an investment allowance at the rate of 25% of the actual cost is allowed in the first year.

This allowance is conditional on an amount equal to 75% of the investment allowance (50% in the case of ships) being debited to the profit and loss account of the business and credited to a special reserve account to be utilized within a

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67. Sec. 32A and 155 ibid.
68. See Appendix 'F'.
69. An undertaking with an aggregated value of machinery and plant not exceeding Rs. 1 million.
70. Investment allowance at higher rate of 35% is admissible where the tax-payer uses technology or know-hoe developed or invented by a laboratory owned or financed by Government or a Government company or a University.

period of ten years for acquiring new ship, aircraft, plant or machinery. During this period of ten years the investment allowance reserve must be utilized for the business other than for distribution by way of dividends or profits or for remittance outside India. If the ship, aircraft, machinery or plant in respect of which investment allowance is given is transferred by the taxpayer to any other person (other than Government, a local authority or a Government company or corporation) otherwise than under a scheme of amalgamation before the expiry of eight year or if new ship, aircraft, machinery or plant is not acquired within ten years or the special reserve is utilized for a forbidden purpose during that period the investment allowance is withdrawn.

If the profits of the year are not sufficient to absorb the admissible amount of investment allowance the balance amount can be carried forward and set off against profits of future years upto eight succeeding assessment years.

3. Development Allowance[71]

A tax-payer carrying on the business of growing and manufacturing tea in India is given a development

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71. Sec. 33A ibid.

allowance at the rate of 50% of the cost of planting tea bushes on virgin land or on land previously abandoned. The cost of planting for this purpose is limited to a range of Rs. 30,000 to Rs. 40,000 per hectare. The allowance is conditional on the creation and utilisation of a special reserve and the non-transfer of the planted land over a period of eight years as in the case of investment allowance.

4. Tax Holiday

a. New Investment : An Indian company setting up a new hotel or acquiring a new ship during the period 1 April 1981 to 31 March 1985 and any company, setting up during the same period with new machinery or plant or reconditioned machinery or plant imported from outside India, an industrial undertaking not producing low priority articles listed in the Eleventh Schedule[72] to the Act, is given a partial tax holiday to the extent of 25% of the profits from such new investment for a period of seven years.[73]

b. Backward Areas : A tax-payer setting up a new industrial undertaking or an approved hotel in a backward area[74] in the country is given a partial

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72. See Appendix 'E'.

73. See SO I ibid.

74. A list of backward areas is given in the Eighth Schedule to the Income-tax Act.

tax holiday to the extent of 20% of the profits of such undertaking or hotel for a period of ten years.[75]

c. Free Trade Zones: A tax payer deriving profits and gains from an industrial undertaking set up after 31 March 1981 in the Kandla Free Trade Zone or Santa Cruz Electronics Exports Processing Zone or any other free trade zones that may be set up in India is allowed full tax holiday in respect of such profits and gains for a period of five years. In such cases the normal tax concessions mentioned above are not admissible but the tax-payer may opt for them in lieu of this concession if such an option is more beneficial to him.[76]

5. Expenditure on Scientific Research :

In respect of expenditure on research and development the following special concessions are allowed.

(i) Revenue as well as capital expenditure incurred in the year on scientific research related to the tax-payer's business is allowed in full. Capital expenditure as well as revenue expenditure on payment of salaries to research personnel or on material inputs incurred during a period of 3 years

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75. Sec. 80 HH ibid.

76. Sec. 10A ibid.

preceding the commencement of business is also allowed in full in the year of commencement of business.

(ii) Donations to approved scientific research associations, universities, colleges or other institutions to be used for scientific research are allowed deduction in full.

(iii) In respect of expenditure incurred on sponsored research in approved laboratories a weighted deduction equal to 1 1/3 times of the actual expenditure is allowed.

(iv) In respect of expenditure incurred on an approved research programme in an approved in-house research and development unit a weighted deduction equal to 1 1/4 times of the actual expenditure is allowed.[77]

6. Export Markets Development Allowance

Domestic companies are given a weighted deduction of 1 1/3 times the actual expenditure incurred, whether directly or in association with any other person, on advertisement or publicity outside India or on maintenance of a branch office or agency outside India or on travelling outside India for the promotion of sale outside India of the goods,

77. Sec. 35 ibid.

services or facilities which the tax-pa...

7. Technical Fees

In the case of an Indian company deriving any income by way of royalty, commission, fees or any other payment for the transfer of technical know-how, under an agreement approved by the Central Board of Direct Taxes, 40% of such income where the transferee is a person carrying on business in India and 100% of such income where the transferee is a foreign state or a foreign enterprise, is excluded from the taxable income of the company. In the latter case, however, the amount of such income must be brought into India in convertible foreign exchange.

Where shares of a foreign company are allotted to an Indian company in consideration of the transfer of technical know-how by the Indian company to such foreign company, 100% of the dividend income from such shares is also exempt from tax on similar conditions.[79]

8. Intercorporate Dividends

A domestic company is allowed the following concessions in respect of its income from dividends if any:

i) Dividend income from an Indian company engaged in the manufacture or production of non-ferrous metal, ferro alloys and special steels, steel castings and forgings, electric motors, industrial agricultural and earthmoving machinery, machine tools, fertilizers, soda ash, caustic soda, commercial vehicles, ships, tyres and

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78. Sec. 35B ibid.
79. Sec. 80 MM 80N and 80O ibid.

tubes, paper, pulp and newsprint, cement, pesticides, organic and inorganic heavy chemicals and industrial explosives is fully exempt from tax.

ii) Dividend income from any other domestic company is exempt to the extent of 60 % of such income.[80]

9. Carry Forward of Losses

Business losses of one year are allowed, so long as the particular business is not closed down, to be carried forward and set off against any business profits of the taxpayer in future years upto eight succeeding assessment years.[81] Similarly, short-term and long-term capital losses are separately allowed to be carried forward and set off against future short-term and long-term capital gains respectively upto eight assessment years.[82]

G. International Aspects

The following are some of the provisions of particular interest to foreign investors in India.

1. Deemed Accrual of Income

The tax liability of a non-resident person extends not only to income accruing, arising or received in

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80. Sec. 80 M ibid.
81. Sec. 72 ibid.
82. Sec. 74 ibid.

India but also to income which is deemed to accrue or arise or be received in India. Income is deemed to accrue or arise in India in the following cases:

(i) Income a ccuring or arising directly or indirectly through or from

- any business connection in India, or
- any asset or source of income in India, or
- the transfer of a capital asset situated in India.

(ii) Income from any dividend paid by an Indian company outside India. 83

In the case of a business of which all the operations are not carried out in India, however, it is only the income which is attributable to the operations carried out in India which is deemed to arise in India. Also no income is deemed to accrue or arise in India to a non-resident from operations which are confined to the purchase of goods in India for the purpose of export. 84.

<u>a. Business Connection</u> : The Act gives no definition of the phrase 'business connection'. It has been held to involve a relation between a business carried on by a non-resident which yields profits or gains and some activity in India which contributes directly or indirectly to the earning of these profits or gains.[85] It would include a branch, factory, agency, receivership or management.[86] Thus where a non-resident sells goods in India through an agent and the agent

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83. Sec. 9 ibid.

84. Explanation under Sec. 9 (1) (i) ibid.

85. <u>CIT v. Aggarwal & Co.</u> 56 ITR 20 (SC)

86. Kanga and Palkhivala, <u>Law and Practice of Income Tax</u>, 7th ed., Bombay, 1976) Vol.I, p. 201

pays tax on his commission, a portion of the non-resident principal's profits on those sales is also taxable on the doctrine of business connection.[87] But where a non-resident sells goods from abroad to an Indian importer, no income is deemed to accrue or arise to the non-resident from such sale even if the non-resident is the parent company and the Indian importer its subsidiary as long as the contract of sale is made outside India and the sale is on a principal-to-principal basis.[88]

b. Vicarious Liability of Indian Agent: In respect of such income of the non-resident the Act places a vicarious personal liability[89] on the agent of the non-resident in India.[90] If there is no agent of the non-resident in India any person in India who is employed by or on behalf of the non-resident or who has any business connection with the non-resident or from or through whom the non-resident is in receipt of any income or who is the trustee of the non-resident or who has acquired, by means of a transfer from the non-resident, a capital asset in India, is statutorily treated as an agent of the non-resident in India.[91]

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87. Abdullabhai Abdul Kadar v. CIT 22 ITR 241.
88. Circular No. 23 F. No. 7-A/38/68-IT (A-II) dated 23 July, 1969 issued by the Central Board of Direct Taxes, quoted in V. S. Sundram's Law of Income-tax in India, (11th ed., Allahabad, 1978-79) Vol. I, p. 699.
89. Plankett v. Narayan Dalla 1 ITC 1.
90. Sec. 160 (1) (i) of the Income-tax Act, 1961.
91. Sec. 163 ibid.

Further, where in a business carried on between a resident and a non-resident, owing to the close connection between them, it appears that the course of business is so arranged as to result in sub-normal profits to the resident, the resident may be liable to tax in respect of profits which he has not, in fact, made but which he might reasonably be expected to have made had he done the business on ordinary commercial terms.[92]

c. Interest, Royalty and Technical Fees: With effect from April 1976, however, incomes by way of interest,[93] royalty[94] and fees for technical

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92. Sec. 92 ibid. See also Kanga & Palkhivala, Law and Practice of Income Tax, Vol.I, p. 722

93. 'Interest' includes services fees or commitment charges (Sec. 2 (28A) ibid.).

94. 'Royalty' means consideration (including any lump sum consideration but excluding any consideration which would be the income of the recepient chargeable under the head "Capital gains") for -

    (i) the transfer of all or any rights (including the granting of a licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similarly property;

    (ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;

    (iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;

    (iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

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services are deemed to accrue or arise in India, not on the basis of the doctrine of business connection but on the basis of a source rule. According to this rule these incomes are deemed to accrue or arise in India, if these represent payments;

(f.n. contd.)

(v) the transfer of all or any rights (including the granting of a licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with radio broadcasting but not including consideration for the sale, distribution or exhibition of cinematographic films; or.

(vi) the rendering of any services in connection with the activities referred to in sub-clauses (i) to (v). Explanation 2 under Sec. 9 (1) (vi) ibid.

95. 'Fees for technical services' means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries".

[Explanation under Sec. 9 (1) (vii) ibid]

(i) by Government, or

(ii) by a resident person except in connection with a business or profession or a source of income of such person outside India, or

(iii) by a non-resident person in respect of a business or profession or source of income in India.

2. Special Treatment of Certain Incomes of Non-Residents.

From 1 April 1976 also the incomes of a foreign company from dividends[96] and from royalties and technical fees[97] received from Indian concerns, in pursuance of agreements made after that date and approved of by the Government of India, are given a special treatment. These incomes are taxed on gross basis i.e. without allowing any deduction for any expenditure incurred in connection with their earning, but at the specially reduced rates given in the following table.

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96. Sec. 57 ibid.
97. Sec. 44 D ibid.

TABLE 5

RATES OF TAX ON DIVIDEND ROYALTY AND TECHNICAL FEES

Type of income	Rate of tax as percentage of income.
Dividends	25%
Royalty consisting of lump sum consideration for transfer or imparting of information outside India in respect of any data, documentation, drawing or specification relating to any patent, invention etc.,	20%
Other royalty income	40%
Fees for technical services	40%

[Section 115A of the Income-tax Act, 1961]

3. Foreign Shipping Lines

In the case of non-resident shipping enterprises tax is levied without anyting

more at 7 1/2 per cent of the gross amounts :

- Paid or payable whether in India or abroad on account of the carriage of passangers, livestock, mail or goods shipped at any Indian port, and
- received or deemed to be received in India on account of the carriage of the said things shipped at any port outside India. 98

4. Business of Prospecting for or Extraction of Mineral Oils

A tax-payer who, in association with the Government, carries on a business of prospecting for or extracting or producing mineral oils including petroleum and natural gas may be given a special treatment. In computing the business income of such business, allowances may be made in accordance with the provisions of the agreement between the tax-payer and the Government, in lieu of or in addition to the allowances admissible under the

98. Sec. 44B ibid.

Income-tax Act.[99]

5. Extension of the Act to the Exclusive Economic Zone

The Indian Income-tax Act has been made applicable to the areas within the Exclusive Economic Zone of India extending into the sea upto 200 nautical miles from the base-lines of the Indian coast.[100] The tax liability of a non-resident therefore extends to incomes accruing or arising to or received within the said zone. In the context of the anticipated participation of foreign companies in the field of oil exploration and production in that zone, however, the Government have acquired powers under the Act to make an exemption/reduction in rate or other modification of income-tax in favour of persons with whom the Government may enter into agreements for the association or participation of that Government or its nominee in any business of prospecting for or extraction or production of mineral oils or natural gas.[101]

6. Head Office Expenses

In the case of a foreign company operating in India through a branch, deduction allowed in the

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99. Sec. 42 ibid.
100. Sec. 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones, Act, 1976.
101. Sec. 293A of the Income-tax Act, 1961.

computation of the Indian income on account of proportionate general administrative expenses of the foreign head office is limited in the manner laid down in Section 44C to 5% of the Indian income for the year or the average head office expenses allowed per year during the three years 1974 to 1976 whichever is less.

7. Special Exemptions

i) The income of a non-resident from interest on, or from premium on the redemption of any bonds issued by the Government or by any industrial undertaking or financial corporation in India under a loan agreement made or gauranteed by the Government with the International Bank for Reconstruction and Development or the Development Loan Fund of the United States of America is totally exempt from tax.[102]

ii) So also the income from interest payable by an industrial undertaking in India on foreign loans raised.[103]

(a) from the International Finance Corporation, Washington, the Export Import Bank of Washington,

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102. Sec. 10 (4) ibid.
103. Sec. 10 (15) ibid.

the Export Import Bank of Japan, the Development Loan Fund, Columbia, the Kreditanstalt fur Wiederauifbau (West German Bank for Reconstruction), and the Banque Francaise due Commerce Exterieur, Paris,[104] or

(b) for purchase outside India of raw materials, plant and machinery, or

(c) in any foreign currency under a loan agreement approved by the Government of India. The exemption in respect of (b) and (c) is however limited to the rate of interest approved by the Government.

iii) The remuneration of a foreign technician[105] serving in India in the employment of Government or a local authority or a statutory corporation or an approved scientific research institution or a business carried on in India, under a contract of service approved by the Government of India, is exempt from tax for a period of 24 months to the

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104. Kanga and Palkhivala, Law & Practice of Income-tax, Vol. II p. 831.

105. 'Foreign technician' is a person having specialised knowledge and experience in constructional or manufacturing operations or in mining or in the generation or distribution of electricity or any other form of power or in agriculture, animal husbandry, dairy farming, deep sea fishing, ship building or such other field as the Government of India may specify. (Explanation under Sec.10 (6) (viia) ibid).

extent such remuneration does not exceed Rs. 4,000 per month. In respect of the remuneration in excess of Rs. 4,000 per month or beyond the period of 24 months upto another 24 months, the exemption is available for the tax, if any paid by the employer on the non-exempt remuneration of the foreign technician.[106]

8. Tax Treaties

The Government of India have powers under the Act to enter into agreements with foreign countries for grant of relief in respect of double taxation or for avoidance of double taxation.[107] Under the relief agreement the taxpayer has to show that indentical income has been doubly taxed and that he has paid tax both in India and in the foreign country on the same income.[108] A double taxation avoidance agreement, on the other hand, seeks to make a clear cut demarcation of the zones of taxation between India and the foreign country concerned according to the nature and source of income so as to avoid the tax-payer being taxed twice in respect of the same income.

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106. Sec. 10 (6) (vii a) ibid.
107. Sec. 90 ibid.
108. CIT v. New Citizen Bank of India Ltd., 56 ITR 468.

The Government of India have entered into such agreements with the following countries :

TABLE 6

COUNTRIES WITH WHICH INDIA HAS TAX TREATIES

Comprehensive	Limited to aircraft/ shipping profits
1. Austria	1. Afghanistan
2. Belgium	2. Bulgaria
3. Denmark	3. Czechoslovakia
4. Federal Republic of Germany.	4. Ethiopia
5. Finland	5. German Domocratic Republic
6. France	6. Iran
7. Greece	7. Italy
8. Japan	8. Lebanon
9. Malaysia	9. Romania
10. Norway	10. Switzerland
11. Sri Lanka	11. U.S.A.
12. Sweden	12. U.S.S.R.
13. United Arab Republic.	

(Source : Ministry of Finance, Government of India, New Delhi, Report 1980-81, pp. 172-3).

Notes :

1. In addition Double Taxation Avoidance Agreements at the delegation level have been concluded with the following countries and these are expected to be notified soon.

1. Italy
2. Tanzania
3. Zambia
4. Singapore
5. Sri Lanka
6. U.K.
7. Canada
8. Libya

2. Negotiations are also in progress with various other countries for purposes of concluding either comprehensive or limited agreements for the avoidance of double taxation of income.

Each agreement generally gives a schedule indicating what incomes should be taxed in India and what in the foreign country or, where income from a particular source arises partly in India and partly in the foreign country, percentages thereof to be taxed in each country. Some of the agreements also spell out certain modes of computation of business income over-riding or supplementing the

provisions of the national tax laws. At the time of computing the income-tax assessment in one country if the assessment in the other country has already been completed the former allows abatement from the tax calculated on the whole income of an amount equal to the lower of the tax payable in the two countries on that portion of the income which falls to be charged in the other country. If the assessment in the other country has not yet been made the former holds in abeyance the collection of the demand of tax in respect of the portion of the income chargeable to tax in the other country till the time allowed for the production by the taxpayer of certificate of assessment in the other country.

In respect of countries with which there is no such agreement the Act provides for a unilateral relief in the case of a resident taxpayer in respect of his foreign income which has been taxed both in India and in a foreign country if the taxpayer has, in fact, paid the tax in such foreign country. The unilateral relief is allowed on the doubly taxed income at the Indian rate of tax or the rate of tax of the foreign country whichever is lower.[109]

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109. Sec. 91 of the Income-tax Act, 1961.

H. Reassessment, Penalties and Prosecution

In the event of any income escaping assessment to tax in any year the Income-tax authorities can re-open the assessment of a particular year within periods ranging from four to sixteen years depending upon the amount of income escaping assessment and the fact whether or not such escape is caused by any omission or failure on the part of the taxpayer.[110] A default in complying with the provisions of the Income-tax Act may involve the tax-payer not only in penal consequences but also prosecution.[111]

I. Appellate Procedure

A taxpayer who is aggrieved by an order made by an Income-tax authority may move the same or a higher departmental authority as the case may be in rectification,[112] revision[113] or appeal[114] proceedings. A second appeal may be taken to an extra-departmental Appellate Tribunal.[115] The Tribunal is the final fact-finding authority but on questions of

110. Sec. 147 et seq. ibid.
111. Chapters XXI and XXII ibid.
112. Sec. 154 ibid.
113. Sec. 264 ibid.
114. Sec. 246 et seq. ibid.
115. Sec. 253 et seq. ibid.

law a reference may also be made to the High Court,[116] or in the event of divergence of opinion between various High Courts on a particular point, to the Supreme Court of India.[117] From a judgement of a High Court delivered on such a reference also an appeal can be taken to the Supreme Court of India.[118] Independently of these provisions a taxpayer can also move directly a High Court in writ proceedings under Article 226 of the Constitution, or where he can allege a breach of any of his fundamental rights, even the Supreme Court of India under Article 32 of the Constitution.

II. OTHER DIRECT TAXES

The following are the other direct taxes which are levied in India. These taxes are also administered by the Central Board of Direct Taxes through the same tax authorities.

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116. Sec. 256 ibid. A High Court is the highest Court of Judicature in a State.

117. Sec. 257 ibid.

118. Sec. 261 ibid.

A. Surtax

1. Chargeable Profits

This tax, in the nature of a super profits tax, is levied under the Companies (Profits) Surtax Act 1964 and the Companies (Profits) Surtax Rules, 1964 ~~and the~~ made thereunder. The tax is charged on chargeable profits of a company to the extent they exceed a 'statutory deduction' which is defined as an amount equal to 15% of the capital of the company on the first day of the accounting year or an amount of Rs. 200,000 whichever is more.[119]

The chargeable profits are computed in the manner laid down in the First Schedule to the Act which broadly contemplates exclusion from the total income-tax of certain items like :

i) Capital gains
ii) 50% of the donations made to certain national funds and charitable institutions.[120]
iii) Income from dividends of a domestic company.
iv) Income by way of royalties received from Government or a local authority or an Indian concern.
v) In the case of a foreign company, income by way of any interest or fees for rendering

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119. Sec. 2 and 4 of the Companies (Profits) Surtax Act, 1964.

120. 50% of those donations are excluded from the total income computed for income-tax itself on the conditions laid down in Section 80G of the Income-tax Act, 1961.

technical services received from Government or local authority or any Indian concern.

vi) Income tax payable for the year.

2. Capital

'Capital' for the purpose of working out statutory deduction is computed in the manner laid down in the Second Schedule to the Act. Broadly, this includes paid-up share capital together with share premium and reserves other than fictitious reserves or mere provisions. To distinguish between a reserve and a provision, it has ben held that a 'provision' should be taken to mean monies set aside out of the profits in any year to meet any known liability the amount of which cannot be quantified with substantial accuracy, whereas a 'reserve' would mean amounts set aside out of the profits and other surpluses which are not designed to meet any liability, contingency, commitment or diminution in the value of assets known to exist as on the date of the balance sheet.[121] For the computation of capital on the first day of the accounting year it has been held that any addition to reserves sought to be made by the Board of Directors out of the profits of any

121. Indian Steel and Wire Products Ltd. v CIT 112 ITR 1.

particular year would, immediately on being approved at the Annual General Meeting of the shareholders, become part of the reserves of the company with effect from the first day of the immediately following accounting year.[122]

3. Rates of Tax

The rate of tax is 25% on so much of the chargeable profits as do not exceed 5% of the capital of the company and 40% on the balance. In the case of a widely held domestic company or a wholly owned subsidiary of such a company whose paid-up share capital is not less than 25% of its capital computed for the statutory deduction, the amount of surtax is so limited as to ensure that the sum total of income-tax and surtax does not exceed 70% of the total ~~sk~~ income as computed for income-tax.[123]

B. Interest Tax

Interest tax is levied under the Interest Tax Act, 1974 and the Interest Tax Rules 1974 made thereunder, at seven per cent of the chargeable interest of a banking company. The 'chargeable interest' means interest on loans and advances made in India

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122. CIT v. Mysore Electrical Industries Ltd. 80 ITR 566 (SC).

123. Third Schedule to the Companies (Profits) Surtax Act, 1964.

including commitment charges other than interest on Government securities, interest on debentures or other securities of local authorities, companies or statutory corporations and interest on loans and advances made to other banks.[124]

C. Hotel Receipts Tax

A tax on the gross receipts of certain hotels is levied under the Hotel-Receipt Tax Act, 1980. The hotels subject to this levy are only those in which the room charges for residential accommodation provided to any person at any time are not less that Rs. 75 per day.[125] Once the levy of tax is attracted on that basis the charge of tax is not confined to receipts from the provision of residential accommodation; it extends to the gross receipts of the hotel including receipts from the provision of food, drinks etc. in the hotel premises whether to residents or others.[126] Where food, drink etc. are provided on the hotel premises by a person other than the hotel owner but closly connected with him and the arrangement appears to hm have been made with a view to effecting or reducing tax liability under the Act the receipts

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124. Sec. 2 (7) and 5 of the Interest Tax Act, 1974.
125. Sec. 3 of the Hotel-Receipts Tax Act, 1980.
126. Sec. 5 and 6 ibid.

in the hands of such other person can also be included.

The rate of tax is 15 per cent on chargeable receipts computed after excluding from gross receipts, taxes like sales tax, entertainment tax and the hotel receipts tax itself. Where, however, any part of the chargeable receipts has been collected in foreign exchange, a rebate of 5% on such part is allowed.[127]

D. Wealth Tax

Wealth tax is levied, under the Wealth Tax Act, 1957 and the Wealth Tax Rules, 1957 made thereunder, on the net wealth comprising the excess of the aggregate value of assets over the aggregate value of liabilities of the taxpayer on the last day of the preceding year.

The wealth tax is not levied on companies.

E. Gift Tax

Gift tax is levied, under the Gift Tax Act, 1958 and the Gift Tax Rules, 1958 made thereunder, on the sum total of all gifts made by the taxpayer during the preceding year.[128] The rates of tax are on a

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127. Sec. 5 ibid.

128. Sec. 3 of the Gift-tax Act, 1958.

graduated scale varying from 5% on gifts not exceeding Rs. 20,000 to 75% on gifts exceeding Rs. 2 million.[129] The applicable rate is, however, based on the aggregate value of all gifts made in the preceding 5 years.[130]

A gift is defined to mean the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth.[131] The word 'transfer' is given a wide meaning to include any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property as well as the creation of a trust in property, the grant or creation of any lease, mortgage charge easement, licence, power, partnership or interest in property, the exercise of a power of appointment of property vested in any person and in general, any other transaction entered into with intent to diminish, directly or indirectly, the value of the property of the transferor and increase the value of the property of the transferee.[132]

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129. Schedule to the Act ibid.
130. Sec. 6A ibid.
131. Sec 2 (xii) ibid.
132. Sec 2 (xxiv) ibid.

Public companies and their subsidiaries are exempt from gift tax if shares carrying more than 50% of the total voting power in the company were not at any time during the year, controlled or held by less than 6 persons.[133]

F. Estate Duty

Estate Duty is levied under the Estate Duty Act, 1953 and the Estate Duty Rules, 1953 made thereunder. The duty is levied on the principal value of the estate passing on the death in India of a person, irrespective of the domicile, nationality or residence of such person. Immoveable property located outside India is, however, exempt. In the case of a person who was not domiciled in India at the time of death moveable property located outside India is also exempt.[134]

A foreign company which has been treated as resident for income tax purposes in two out of the three preceding years is liable for the Estate Duty payable on the principal value of the shares or debentures held in the company by a deceased person who was not domiciled in India.[135]

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133. Sec. 45 ibid.
134. Sec. 21 of the Estate Duty Act.
135. Sec. 20A ibid.

III. INDIRECT TAXES

Duties of excise and duties of customs constitute the most important indirect taxes in India. Both these taxes are administered by the Central Board of Excise and Customs set up within the Ministry of Finance under the Central Boards of Revenue Act, 1963.

A. Duties of Excise

1. Central Excise Tariff

Central excise duties which yield over 50% of the total tax revenues of the Government of India are levied under the Central Excises and Salt Act, [136] 1944 and the Central Excise Rules, 1944 made thereunder. The duties are neutral as between Indian and foreign companies. A list of excisable goods is given in the First Schedule to the Act which is commonly referred to as the Central Excise

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136. Levy of excise duty on alcoholic liquors for human consumption and on opium, Indian hemp and other narcotic drugs and narcotics not including medicinal and toilet preparations containing these substances, falls in the State List of subjects in the Constitution of India and excise duties on those goods are levied under different State Acts. Excise duties on medicinal and toilet preparations are levied by the Centre under the Medicinal and Toilet Preparations (Excise Duties) Act 1955 but collected and retained by the States in terms of Article 268 of the Constitution.

Tariff. The tariff is comprehensive in so far as it includes a residuary item[137] entitled, 'All other goods, not elsewhere specified'.

<u>Rates of Basic Duty</u>: The rates of duty given in the Tariff are mostly on *ad valorem* basis; in some cases there are specific rates i.e. rates fixed per unit of weight, volume, length or area. In either case, the rates are often on a sliding scale according to different slabs of production or value. Since, however, the Central Government and, to a certain extent even the Central Board of Excise and Customs, have powers[138] to allow general as well as specific exemptions, partial or total, the effective rates of duty, within the rates specified in the Tariff, are regulated from time to time by executive notifications.

<u>2. Special Excise Duty</u>

Apart from the basic excise duty a special excise duty is levied under the Annual Finance Act as a percentage of the basic duty. The rate of this duty under the Finance Act 1981 is 10%.[139]

<u>3. Additional Excise Duties</u>

In respect of certain commodities like sugar,

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137. Item 68.

138. Rule 8

139. Sec. 49 of Finance Act, 1981.

tobacco, cotton, silk, woollen and man-made fabrics, an additional excise duty is also levied under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Additional duties of excise and cesses are also levied on some other commodities under various other Acts.[140]

4. Assessable value

Where duty is leviable *ad valorem*, the value determined for the purposes of duty is referred to as assessable value. In respect of certain goods like motor vehicles, internal combustion engines, electric wires etc. tariff values are fixed by the Central Government which are revised from time to time. In most cases, however, the assessable value is determined by the Excise authorities on the principle that it should be the normal price at which such goods are ordinarily sold in the

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140. 1. The Khadi and Other Handloom Industries Development (Additional Excise Duty on Cloth) Act, 1953.
2. The Mineral Products (Additional Duties of Excise and Customs), Act 1958.
3. The Additional Excise Duty (Textile and Textile Articles) Act, 1978.
4. The Sugar Export Promotion Act, 1958.
5. The Industries (Development and Regulation) Act, 1951.
6. The Produce Cess Act, 1966.
7. Tea Amendment Act, 1967.
8. The Oil Industry (Development) Act, 1974.
9. The Tobacco Cess Act, 1975.
10. The Beedi Workers Welfare Cess Act, 1976.

course of whole-sale trade for delivery at the time and place of removal where the buyer is not a related person and the price is the sole consideration for the sale.[141] The assessable value includes the cost of packing except such as is of durable nature and is returnable by the buyer but excludes the amount of excise duty itself, sales tax and other taxes if any as well as the normal trade discount.[142] It has been held that excise duty is a tax on the production and manufacture of goods and not on their sale and the assessable value should represent only the manufacturing cost and the manufacturing profit and not post-manufacturing cost and profits arising from post-manufacturing operations i.e. selling profits.[143]

5. Excise Control

Every manufacturer of excisable goods is required to obtain a license before commencement of production.[144] The Central Excise Department exercises control over the manufacture and clearance of goods on payment of excise duty mainly in two ways. Certain goods

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141. Sec. 4 (a) of the Central Excises and Salt Act 1944
142. Sec. 4 (d) ibid.
143. A.K. Roy and another v. Voltas Ltd. AIR 1973 SC 225 and Atic Industries Ltd., v H.H. Dave AIR 1975 SC 960.
144. Rule 74.

like manufactured tobacco and matches are subject to physical control under which the goods are removed from the factory under the physical supervision of a Central Excise Officer on payment of duty assessed by him. Most of the goods are, however, under an alternative system of control called the Self Removal Procedure. Under this system, the manufacturer has to get the rate of duty approved by the Department. Thereafter, he can assess the duty and remove the goods from the factory after payment of duty on his own. The manufacturer keeps an account current in which he makes credits from time to time and debits the duty determined at the time of removal of goods. The Central Excise Department exercise control through returns and documents submitted by the manufacturer supplemented by periodical local checks.

6. Export Goods

The goods meant for export are exempt from excise duty.[145] The manufacturer may either clear the goods on payment of duty and claim refund on exportation or he may remove the goods for export without payment of

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145. Rule 12.

duty but subject to the execution of a bond with security/surety for a sum equivalent to the duty chargeable on such goods.[146] The manufacturer is also entitled to duty draw-back under the Customs and Central Excise Draw-back Rules, 1971 in respect of duties of excise paid on inputs for the manufacture of export goods.

7. Appellate Procedure

An aggrieved tax-payer can file an appeal to a superior departmental officer. A second appeal lies to the Central Board of Excise and Customs. A further revision application can be made to the Central Government.[147]

B. Duties of Customs

1. Custom tariff

Customs duties are levied under the Customs Act, 1962 and the Customs Tariff Act, 1975. India is a member of the General Agreement on Tariffs and Trade.[148] Except for a few provisions relating to certain preferential areas and countries (e.g.

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146. Rule 13.

147. Sec. 35 and 36 of the Central Excise & Salt Act, 1944.

148. Sections 4 & 5 of the Customs Tariff Act, 1975.

U.K., U.A.R., Yugoslavia), the customs duties are also neutral between Indian and foreign companies. A list of goods subject to import duty and the rates of duty are given in the First Schedule to the Customs Tariff Act which is commonly known as the Import Tariff. Similarly, a list of goods subject to export duty and the rates of duty are given in the Second Schedule to that Act known as the Export Tariff. The classification of goods in the Tariff is based on the Brussels Tariff Nomenclature.

Rates of duty : The rates of duty are specific in some cases and *ad valorem* in others. Since the Central Government have powers[149] of exemption in respect of import duties and emergency powers of imposition and enhancement in the case of export duties, the effective rates of duty are regulated from time to time by executive notifications.

2. Additional and Auxiliary Duties

In the case of import goods, in addition to the basic import duties, the following duties are also levied:-

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149. Section 25 of the Customs Act and Section 8 of the Customs Tariff Act.

150. Sec. 47 of the Finance Act, 1981.

(i) An additional duty known as countervailing duty is levied under Section 3 of the Customs Tariff Act. This duty is equivalent to the excise duty for the time being leviable on like goods produced or manufactured in India.

(ii) An auxiliary duty of customs is levied under the Annual Finance Act. The rate in the Finance Act, 1981 is 25% of the value of the goods.[150]

3. Assessable Value

For purposes of ad valorem duties, the Central Government have powers to fix tariff values for any class of import or export goods. Where no tariff values are fixed, the value for levy of duty is the price at which like goods are ordinarily sold at the time and place of importation or exportation in the course of international trade where the seller and the buyer have no interest in the business of each other and the price is the sole consideration for the sale.[151]

Material Date : The material date for determination of the rate of duty and tariff value, if any, is the date of presentation of bill of entry to the

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150. Sec. 47 of the Finance Act, 1981.
151. Sec. 14 of the Customs Act, 1962.

proper Customs Officer or the date of entry inwards of the vessel whichever is later in the case of import goods. For export goods the material date is the date of presentation of shipping bill or bill of export or the date of entry outwards of the vessel whichever is later.[152]

4. Drawback

Drawback of customs duties paid is admissible in the event of re-export of duty paid goods. Where the imported goods are identifiable as such at the time of re-export drawback to the extent of 98% of the duty paid could be allowed.[153] In the case of manufactured goods, however, drawback in respect of duties paid on imported input is allowed at rates laid down under the Customs and Central Excise Duty Drawback Rules 1971. The rates of drawback are fixed either for certain manufactured goods on an All - Industry basis or in the form of specific brand rates for particular manufacturers.

5. Appellate Procedure

An aggrieved tax-payer can file an appeal to

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152. Sections 15 and 16 ibid.
153. Sec. 74 ibid.

a superior departmental authority. He may also approach the Central Board of Excise and Customs or the Central Government in revision.[154]

IV STATE TAXES

A. Sales Tax

1. Central and State Powers

Sales-tax is the most important tax in the State List of taxes. The Constitution of India gives exclusive powers to each state to levy taxes on the sale or purchase of goods (except newspapers) taking place within that state[155] subject however, to such conditions and restrictions as Parliament may imposed in respect of goods declared to be of special importance in inter-state trade or commerce.[156] The power to tax sale or purchase of goods in the course of inter-state trade or commerce is given to the Union[157] though the proceeds

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154. Sec. 128, 130 & 131 ibid.

155. A sale or purchase takes place within a state where -
   (i) In the case of specific or ascertained goods the goods are located in that state at the time when the contract of sale is made; and
   (ii) in the case of unascertained or future goods the goods are located in that state at the time when they are appropriated to the contract by either party with the consent of the other. (Sec. 4 of the Central Sales Tax Act, 1956).

156. Article 236 (3) of the Constitution and Entry 54 of the State List.

157. Entry 92A of the Union List.

thereof are also to be assigned and distributed to the states in which they are levied.[158] A sale or purchase of goods in the course of import or export[159] is exempt from tax.[160]

2. Central Act

Taxes on the sale or purchase of goods in the course of inter-state trade or commerce are levied under the Central Sales Tax Act, 1956. A sale or purchase of goods is said to take place in the course of inter-state trade or commerce if such sale or purchase occasions the movement of goods from one state to another or is effected by a transfer of documents of the title during the movement of

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158. Article 269 of the Constitution.

159. A sale or purchase is said to take place in the course of import or export if the said sale or purchase either occasions such import or export or is effected by transfer of documents of title to the goods while the goods are outside the customs frontier of India. It includes the last sale or purchase preceding the sale or purchase occasioning the export if such last sale or purchase took place after the foreign buyer's contract with a canalising agency or export house and for the purpose of meeting such contract.

[Section 5 of the Central Sales Tax Act, 1956 and Consolidated Coffee Ltd., v. Coffee Board, Bangalore 46 STC 164]

160. Article 286 ibid.

goods from one state to another.[161] The tax is collected and retained by the state in which the movement of goods in inter-state trade or commerce commences.[162]

The Central Sales Tax Act also gives a list of goods declared to be of special importance in inter-state trade or commerce.[163] The Act restricts taxes on the sale or purchase of these goods to a single point levy and requires that any tax paid on a sale or purchase of any of these goods in a state should be refunded if the goods are subsequently sold in the course of inter-state trade or commerce.[164]

3. State Acts

Taxes on sales or purchases of goods within each state are levied under various State Sales Tax Acts. The taxes levied under different Acts vary in their incidence and operation. The rates of tax, generally, range between 1% and 15%. The rates are high where the tax is a single point tax, i.e. where it is levied at only one point between production of goods and their sale to consumers. The rates are relatively low where the tax is multipoint, i.e., where it is levied on every sale between production

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161. Sec. 3 of the Central Sales Tax Act, 1956.
162. Sec. 9 (1) ibid.
163. Sec. 14 ibid.
164. Sec. 15 ibid.

of the goods and their sale to the ultimate consumer. The basic necessities of life such as food, medicines, matches etc. are generally exempt.

4. General

The tax base is the actual turnover made up of the actual sale or purchase prices of goods. 'Goods' for purposes of this tax means tangible and moveable property only. The responsibility for the payment of tax rests on the dealer though the burden may ultimately be shifted to the consumder.

B. Other Taxes

Some of the other taxes levied by the State Governments are :

1. Land revenue or land tax.
2. Taxes on agricultural income.
3. Excise duties on alcoholic liquors, opium, Indian hemp and other narcotic drugs.
4. Taxes on the consumption or sale of electricity.
5. Taxes on vehicles.
6. Taxes on professions, trades, callings and employments.
7. Taxes on entertainments, amusements, betting and gambling.
8. Stamp duties on certain documents.

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CHAPTER VI

OBSERVATIONS AND CONCLUSIONS

The preceding chapters cover both the minimum standards of customary international law relating to foreign private investment and the legal climate for such investment in India. While the contrast between the two is clear in the respective chapters relating to expropiration, regulation and taxation, it is proposed, for the sake of convenience, to recapitulate here the main points and also to make some observations arising directly from this study.

On the protection of foreign investment, which indeed is the paramount question from the point of view of a foreign investor, it is difficult to find norms of customary international law around which a consensus may be said to exist. The capital exporting countries continue to insist on the existence of a principle in customary international law to the effect that expropriation of private foreign property must be accompanied by "prompt, adequate and effective" compensation. In their view it is a rule of international law that the compensation must be equal to the value of the expropriated property, that it should be paid without undue delay and in a transferable form. The

developing countries, on the other hand, do not accept the existence of any such rule in customary international law. In their view the only obligation on the part of the expropriating host State is to pay "appropriate" compensation as determined in accordance with its own laws, regulations and circumstances. The successive resolutions of the U.N. General Assembly culminating in the Charter of Economic Rights and Duties of States adopt the latter view against the vehement opposition of the developed capital exporting countries.

While India has always voted for the latter view, its legislation, as well as state practice in this matter have conformed strictly to the norms advocated by the capital exporting countries. Even after the amendment of the Indian Constition removing the right to property from the Fundamental Rights chapter and relegating it to the position of an ordinary legal right, the legislative as well as judicial ethos of the country requires payment of full compensation in the event of nationalisation of any business activity. In practice, India has demonstrated extreme reluctance in nationalising foreign enterprises. Even while nationalising Indian business in certain sectors, such as the bank nationalisation, the corresponding foreign enterprises have been left alone. In the few

cases where foreign enterprises have been nationalised it has always been on payment of full compensation, i.e., compensation which can be called prompt, adequate as well as effective. Even in the worst of foreign exchange crises such compensation has been paid in the currency of the foreign investor.

As for repatriation of capital and investment incomes, Indian practice has been liberal to a fault. Unlike most other countries in the developing world, India has never placed any restriction on such repatriation, which has been freely allowed even in the midst of a spate of studies pointing out that the quantum of outflow has somtimes turned the net inflow of foreign capital into a negative figure. Further more the total remittance abroad under different heads of incomes has often exceeded the total inward remittances by way of capital inflow, export earnings etc. In.ch

In the field of regulation and supervision, the principle enunciated in the Declaration on the Establishment of a New International Economic Order and the Charter of Economic Rights and Duties to the effect that the foreign investor must act according to the national laws and policies of the host country, is not

in dispute. Yet the multitude of regulatory controls in force in India tend to frighten away the private foreign investor who is getting used more and more to doing business on a global basis and in so doing opt for countries and places where there is more freedom of action. The regulatory controls in India are not confined to the initial entry of the foreign investor on the Indian scene but most of them, like the Import Trade control, Licensing, MRTP control, Capital Issues etc. are always there. Efforts have, no doubt, been made in recent years to liberalize these controls and also to stream-line the procedures with a view to hastening up the disposal of various types of applications. Yet the presence of these controls and the multitude of authorities administering them continue to present a nightmare. The dearth of suitable literature giving concise and uptodate information in an easily readable form makes things worse. The frequently changing policies and guidelines further add to the confusion. The FERA guidelines and the insistence on the foreign share-holding being restricted to 40%, are some of the provisions which already seem to deserve another look. The abundance of official aid is fast becoming a thing of the past. India has now entered the age of open borrowing from the Euro-currency market at the prevailing high rates of interest. Low equity is no guarantee of reduced

outward remittances in a climate of an almost ideological faith in freedom of remittances abroad, even in a situation where such freedom is suspected to be abused by practices like transferpricing. Dilution of equity under the FERA guidelines has also n t been necessarily accompanied by the transfer of management control to Indian hands. In view of all these factors the only purpose served by the upper limit of 40% on the foreign share-holding is perhaps for the frightening away of the foreign investor.

In the field of taxation, again, there is a general agreeement on the principle that the foreign investor has to abide by the national taxation laws of the host state. This was accepted also in the Declaration on International Investment and Multinational Enterprises adopted by the OECD on 21 June 1976. It is, however, implied in this agreement that national taxation laws should not be highly discriminatory or confiscatory so as to serve as a cloak for expropriation. In India, most of the taxes- direct as well as indirect taxes, federal as well as state taxes- are neutral as between Indian business and foreign enterprises. As for income-tax, which of course is the most important, the highest rate of tax is 71.75% in the case of foreign companies, as against 66.125% in the case of domestic companies. The marginal difference is more than off-

set by the fact that in the case of domestic companies the dividends distributed are taxed again in the hands of the shareholders. Moreover, the incomes of non-residents from royalty and fees for technical services are taxed only at rates ranging from 20 to 40%. The Indian tax laws do not, therefore, contain any basic discrimination against the foreign investor. On the other hand, the Indian tax laws contain a host of concessions, many of them specially designed for the foreign investor, so that the effective tax rate generally comes to around 40 %, as against the maximum rates mentioned above. New investment in industry in India can, in fact, go entirely tax-free. The problem with the Indian tax system is not, therefore, one of discrimination or high incidence; it is a problem of highly complex legislation which is changed all too often. A system of tax laws based on clarity, simplicity and stability could surely be more welcome to foreign investors as also to the Indian enterpreneurs themselves.

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APPENDICES

APPENDIX 'A'

FOREIGN INVESTMENT IN THE NON-OFFICIAL SECTOR IN INDIA (IN MILLION RUPEES)

Year (a)	1948	1955	1961	1963	1966	1967 (b)	1967 (b)	1968	1969	1970	1971	1972	1973	1974
Total investment (c)	2,646	4,397	5,805	9,340	9,991	11,630	13,651	14,541	15,315	15,597	15,944	16,656	17,492	18,218
Net Inflow (d)	NA	249	281	1,066	649	1,719	-	1,008	649	262	401	569	138	590
Of which Reinvested Earnings	—	195	158	204	188	149	-	182	178	290	284	339	321	379
Direct Investment (e)														
In Branches of Foreign Companies	1,458	2,431	2,703	2,628	2,447	2,445	2,800	2,672	2,653	2,228	2,188	2,310	2,247	2,416
In Indian Subsidiaries	296	1,194	2,069	2,676	2,882	3,055	3,078	3,247	3,480	3,733	3,884	4,083	4,490	4,704
In Foreign Controlled Indian Companies	288	240	500	815	953	1,029	1,042	1,182	1,244	1,393	1,601	1,771	1,933	2,014
Total :-	1,982	3,865	5,272	6,119	6,282	6,528	6,920	7,101	7,377	7,354	7,673	8,164	8,670	9,134
Portfolio Investment (f)														
Foreign Equity in Indian Companies	571	392	443	547	570	632	632	752	765	941	966	973	1,044	1,077
Creditor Capital in Indian Companies	93	140	90	2,674	3,139	4,469	6,099	6,688	7,173	7,302	7,305	7,519	7,778	8,007
Total :-	644	532	533	3,221	3,709	5,101	6,731	7,440	7,938	8,243	8,271	8,492	8,822	9,084
Country-wise														
United Kingdom	2,100	3,659	4,476	5,398	5,492	5,878	6,497	6,328	6,367	6,179	6,175	6,410	6,650	6,891
United States of America	180	396	796	2,182	2,445	3,068	3,728	4,229	4,339	4,313	4,567	4,848	5,154	5,309
West Germany	4	24	105	321	396	656	846	967	1,040	1,157	1,196	1,367	1,592	1,808
Itlay	-	-	41	169	194	265	361	401	734	902	911	840	733	834
Others	362	318	387	1,270	1,464	1,763	2,219	2,616	2,835	3,046	3,095	3,191	3,453	3,376
Industry-wise														
Plantations	522	872	1,024	1,141	1,122	1,130	1,338	1,278	1,277	1,262	1,252	1,259	1,199	1,136
Mining	115	93	124	114	94	97	108	100	109	135	159	154	181	169
Petroleum	223	1,040	1,486	1,830	1,709	1,607	1,921	1,964	1,957	1,866	1,719	1,787	1,716	1,758
Manufacturing	707	1,271	2,201	4,516	5,133	6,076	6,917	7,937	8,725	9,308	9,317	9,885	10,500	10,597
Services	1,079	1,128	970	1,739	1,933	2,720	3,367	3,262	3,247	3,026	3,297	3,571	3,896	4,558

Notes continued......

NOTES :

(a) As on 31st March of the year mentioned except for 1948 figures which are as on 30th June, 1948.

(b) The two columns for 1967 represent figures excluding and including the effect of devaluation of the rupee in June 1966.

(c) (i) Represent investments in the corporate industrial and commercial enterprises, excluding insurance and banking companies.

(ii) Exclude investments from international institutions.

(d) Excludes valuation changes which together with the exclusion from total investment of investments from international institutions account for those figures being not exactly equal to the year to year changes in total investments.

(e) Direct investment includes investment in branches of foreign companies and only controlling equity investment, i.e. equity investment in Indian subsidiaries and in controlled Indian companies.
A controlled Indian company means a company with 40% or more equity capital held abroad in any one country or a company with 25% or more equtity capital held by a foreign company or its nominee.

(f) Portfolio investment includes non-controlling equity investment in Indian companies and creditor capital.

(COMPILED from :

(i) Reserve Bank of India, Survey of India's foreign liabilities and assets, 1955.

(ii) Reserve Bank of India - India's Foreign Liabilities and Assets, 1961, Survey Report.

(iii) Reserve Bank of India Bulletin, Various Issues: April 1966, August 1969, March 1971, July 1975, May 1976, March 1978).

APPENDIX 'B'

CLASSIFICATION OF INDUSTRIES

SCHEDULE-A

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, for mining, for machine tools manufacture and for such other basic industries as may be specified by the Central Government
6. Heavy electrical plant including large hydraulic and steam turbines
7. Coal and lignite
8. Mineral oils
9. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond.
10. Mining and processing 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 apparatus (excluding radio receiving sets).
17. Generation and distribution of electricity.

contd...

SCHEDULE - B

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
3. Machine tools
4. Ferro-alloys and tool steels
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. Carbonisation of coal
10. Chemical pulp
11. Road transport
12. Sea transport

(Industrial Policy Resolution, 1956)

APPENDIX 'C'

LIST OF CORE INDUSTRIES

1. Metallurgical Industries
   1) Ferro alloys
   2) Steel Castings and forgings
   3) Special steels
   4) Non-ferrous metals and their alloys

2. Boilers and Steam Generating Plants

3. Prime Movers (other than Electrical Generators)
   1) Industrial turbines
   2) Internal combustion engines

4. Electrical Equipment
   1) Equipment for transmission and distribution of electricity.
   2) Electric motors
   3) Electrical furnaces
   4) X-ray equipment
   5) Electronic components and equipment.

5. Transportation
   1) Mechanised sailing vessels upto 1000 DWP
   2) Ship ancillaries
   3) Commercial vehicles

6. Industrial Machinery

7. Machine Tools

8. Agricultural Machinery : Tractors and Power Tillers

9. Earthmoving Machinery

10. Industrial Instruments : indicating, recording and regulating devices for pressure, temperature, rates of flow, weights, levels and the like.

11. Scientific instruments.

12. Nitrogenous and phosphatic fertilisers falling under (1) Inorganic fertilisers under '18, Fertilisers' in the First Schedule to the IDRA Act 1951.

Contd....

13. Chemicals (other than Fertilisers)

1) Inorganic heavy chemicals
2) Organic heavy chemicals
3) Fine chemicals, including photographic chemicals
4) Synthetic resins and plastics
5) Synthetic rubbers
6) Man-made fibres
7) Industrial explosives
8) Insecticides, fungicides, weedicides, and the like
9) Synthetic detergents
10) Miscellaneous chemicals (for industrial use only)

14. Drugs and Pharmaceuticals

15. Paper and pulp including paper products

16. Automobile tyres and tubes

17. Plate glass

18. Ceramics (1) Refractories
(2) Furnance lining bricks - acidic, basic and neutral

19. Cement Products :-

1) Portland cement
2) Asbestos cement

(Appendix (i) to the Industrial Licensing Policy of February 1973).

APPENDIX 'D'

ILLUSTRATIVE LIST OF INDUSTRIES WHERE NO FOREIGN COLLABORATION, FINANCIAL OR TECHNICAL IS CONSIDERED NECESSARY.

1. METALLURGICAL INDUSTRIES :

FERROUS : Ordinary castings, Bright bars, Structurals, Welded CI steel pipes & tubes

NON-FERROUS : Antimony, Sodium metal, Electrical resistance, Heating (nickel free alloy), Aluminium litho plates

2. ELECTRICAL EQUIPMENT :

Electric fans, Common domestic appliances, Common types of winding wires and strips, Iron clad switches, AC motors, Cables and Distribution transormers.

3. ELECTRONIC COMPONENTS AND EQUIPMENTS :

General purpose transistors & Diodes, Paper, Mica and Variable capacitors, T.V. receivers, Tape recorders, Teleprinters, P.A. systems, Record players/changers

4. SCIENTIFIC AND INDUSTRIAL INSTRUMENTS:

Non-specialised types of valves, meters, weighing machinery, and mathematical, surveying and drawing instruments.

5. TRANSPORTATION :

Railway wagons, Bicycles

6. INDUSTRIAL MACHINERY :

Building and Constructional machinery, Oil mill machinery, Conventional rice mill machinery, Sugar machinery, Tea processing machinery, General purpose machinery.

7. MACHINE TOOLS :

Forged hand tools, General purpose machine tools.

Contd...

8. AGRICULTURAL MACHINERY:

Tractor drawn implements, Power tillers, Foodgrain dryers, Agricultural implements.

9. MISCELLANEOUS MECHANICAL ENGINEERING INDUSTRIES:

10. COMMERCIAL, OFFICE & HOUSEHOLD EQUIPMENTS OF COMMON USE.

11. MEDICAL AND SURGICAL APPLIANCES :

12. FERTILIZERS :

Single super phosphate, Granulated fertilizers.

13. CHEMICALS (OTHER THAN FERTILIZERS)

Acetic acid; Acetanilide; Ethyl chloride; Viscose filament Yarn/staple fibre; Melathion technical; Sulphate of alumina; Potassium chlorate; Fatty acid & glycerine; Butyl titanate; Warfarin; Silica gel; Lindane; Endosulfan; Phanthoate; Nitrofen; Ethyl ether; Plastipeel

14. DYESTUFFS :

Benzidine; O-Toludine; Carbozole dioxazine violet pigment; Cadmium sulphide orange

15. DRUGS AND PHARMACEUTICALS :

Caffeine (natural); phenyl butazone; Tol butamide; Para acetamol; Phanacetin; Senna extract; Diasogenin; Clofibrate; 4-hydroxy cumarine; Xenthopotoxin; Calcium gluconate; Choline Chloride; Glyceryl guaiacolate; phenylethyl biguanide hydrochloride; Scopolamine hydro-bromide; Niacinamide; Ortholelyl biguanide; Colchicine; Diazepam; Sorbitol from dextrose monohydrate; Berberine hydrochloride; Balladonne; Acriflavine; Calcium hypophosphite; Chloordiazepoxide.

16. PAPER AND PULP INCLUDING PAPER PRODUCTS:

17. CONSUMER GOODS

18. VEGETABLE OILS & VANASPATI

Contd...

19. RUBBER INDUSTRIES :

Viscose tyre yarn; Metal bonded rubber; Latex foam; Rubberised fabrics; Bicycle Tyres and Tubes

20. LEATHER, LEATHER GOODS AND PICKERS:

Belting-leather; Cotton & hair finished leather; Pickers; Picking bands; Vegetable tanning extracts; Fat liquors other than synthetic.

21. GLASS & CERAMICS

22. CEMENT & GYPSUM PRODUCTS :

NOTE: List is illustrative and not exhaustive. Clarification of details within the broad headings is the responsibility of Administrative Ministries.

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

APPENDIX 'E'

FOREIGN COLLABORATIONS IN INDIA

A- Yearwise Break-up of Agreements Approved

Year (s)	Number of agrrements approved
Upto 1958	265
1959-1969	2,824
1970-1975	1,580
1976	277
1977	267
1978	307
1979	267
1980	526
Total :-	6,313

B- Industry-wise Break-up

Industry	Number
Industrial Machinery	1,318
Electrical Equipment	1,182
Chemicals	940
Machine Tools	623
Transportation	560
Metallurgical Equipment	521
Others	1,169
Total:	6,313

Contd...

C- Country-wise Break-up

Country	Number
United Kingdom	1,473
United States of America	1,219
Federal Republic of Germany	1,103
Japan	537
Switzerland	366
France	298
Italy	208
German Democratic Republic	117
Sweden	115
Netherland	108
Others	764
Total :-	6,313

(Compiled from

i) Directory of Foreign Collaborations in India (de Indiana Overseas Publications Delhi, 1974), Vol.I Sec. I, pp. 10-11

ii) Indian Investment Centre, New Delhi, Indian Economy at a Glance, September 1980

iii) Indian Investment Centre, Supplement to Monthly News-letter 6/80, [illegible]/80, 11/80 and 2/81.

iv) Ministry of Industry, (Department of Industrial Development), Government of India, New Delhi).

APPENDIX 'F'

LIST OF ARTICLES OR THINGS IN THE ELEVENTH SCHEDULE OF THE INCOME TAX ACT, 1961.

1. Bear, wine and other alcoholic spirits
2. Tobacco and tobacco preparations, such as cigars and cheroots, cigarettes, biris, smoking mixtures for pipes and cigarettes, chewing tobacco and snuff
3. Cosmetics and toilet preparations
4. Tooth paste, dental cream, tooth powder and soap
5. Aerated waters in the manufacture of which blended flavouring concentrates in any form are used
6. Confectionery and chocolates
7. Gramophones, including recordplayers, and gramophone records
8. Omitted
9. Cinematograph films and projectors
10. Photographic apparatus and goods

11. to 21 Omitted.

22. Office machines and apparatus such as typewriters, calculating machines, cash registering machines, cheque writing machines, intercom machines and teleprinters

Contd...

EXPLANATION: The expression 'office machines and apparatus' includes all machines and apparatus used in offices, shops, factories, workshops, educational institutions, railway stations, hotels and restaurants for doing office work, for data processing and for transmission and reception of messages

23. Steel furniture, whether made partly or wholly of steel

24. Safes, strong boxes, cash and deed boxes and strong room doors

25. Latex foam sponge and polyurethane foam

26. Omitted

27. Crown corks, or other fittings of cork, rubber, polyethylene or any other material

28. Pilfer-proof caps for packaging or other fittings of cork, rubber, polyethylene or any other material

29. Omitted.

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BIBLIOGRAPHY

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CIT v. Aggarwal & Co. 56 ITR 20 (SC)
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46 STC 164
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G - ABBREVIATIONS

A.C.	...	Appeal Cases (U.K.)
AIR	...	All India Reporter
CA	...	Court of Appeal (U.K.)
DAC	...	Development Assitance Committee
ECAFE	...	Economic Commission for Asia and the Far East
HL	...	House of Lords (U.K.)
ITC	...	Reports of Income Tax Cases
ITR	...	Income Tax Reports
OECD	...	Organization for Economic Corporation and Development
SC	...	Supreme Court of India
SCR	...	Supreme Court Reports
STC	...	Sales Tax Cases
TC	...	Reports of Tax Cases (U.K.)