



The Impact of Indian Regulatory Environment on FDI and Portfolio Flow

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Abstract:

India's rapid economic growth has greatly transformed its regulatory framework, impacting investor perception and the inflow of capital. This research paper offers a thorough examination of the General Anti-Avoidance Rule (GAAR), the Transfer Pricing Regulations, and the Goods and Services Tax (GST) as significant tax regulatory statutes. The legislation governing capital controls encompass several aspects such as external commercial borrowings (ECBs), sectoral limits, the Foreign Exchange Management Act (FEMA), and foreign portfolio investment (FPI) laws. The examination also considers the ramifications of these laws for portfolio investors and foreign direct investors. These policies have a substantial impact on the investment environment for foreign investors. This paper analyses the changes in the regulatory environment and their impact on the volume and structure of capital inflows. It achieves this through the use of case studies and recent reforms. The findings suggest that there are still concerns, specifically regarding the transparency and consistency of policies, notwithstanding the improved investment climate in India's regulatory framework. The research suggests implementing measures that would increase India's attractiveness to foreign investors as a favourable destination for establishing businesses.

Keywords: Regulatory framework, Capital controls, Sectoral limits, Foreign Direct Investment

Introduction:

An overview of the economic landscape of India and the importance of FDI and portfolio flows:

India's economic development has been significantly influenced by foreign direct investment (FDI), which has facilitated the transfer of technology, the formation of jobs, and overall growth. (Divakar, 2024; Shalini, 2020). Our country has become an attractive destination for foreign investors due to its market potential, skilled workforce, and liberalized policies (Ali, 2023). Since the economic reforms in 1991 a positive growth rate is seen in FDI inflows, with considerable investments in sectors like telecommunications, manufacturing, and services (Divakar,

2024; Ali, 2023). Portfolio flows into India compared to other emerging markets, are relatively less volatile and robust. External factors (e.g., LIBOR, emerging market stock returns) and internal factors (e.g., lagged stock returns, credit ratings) both influence portfolio flows (Gordon & Gupta, 2003). But the challenges such as regulatory complexity and infrastructure bottlenecks are needed to be met with to improve the investment environment (Divakar, 2024; Shalini, 2020).

Historical Context of FDI and Portfolio Flows in India:

I) Pre-Liberalization Era (Before 1991): India's foreign trade and investment policies seen significant changes from the pre-liberalization era to post-1991 reforms.

Before independence, India's trade was mainly oriented towards supplying raw materials to Britain and importing finished goods (Kinga, 2020). The stringent regulations and limited foreign investment were the main highlights of pre-liberalization period with foreign equity permitted only in hand-picked export-oriented, high-technology industries. The economic reforms of 1991 shifted this towards a globalized market-based approach, which leads to progressive liberalization of foreign investment policies and required to fully comprehend India's potential in attracting foreign capital (Palit, 2012). This resulted in the withdrawal of external capital controls, simplification of procedures, and increased openness to foreign investors. Thus, India has become an attractive investment destination, with FDI contributing significantly to economic development and employment creation (Dhar, 2012).

II) Post-Liberalization (1991 Onwards): India's attitude to Foreign Direct Investment (FDI) changed a lot when it opened up its economy in 1991. The government made rules to encourage foreign direct investment (FDI) because they knew that it was a key factor in economic growth by sharing technology, creating jobs, and giving the country access to global markets. (S. Azhar & Marimuthu. K.N, 2012). Liberalization led to increasing FDI inflows and changes in sectoral composition, sources, and entry modes (Kumar, 2005). India's market potential and liberalized policy regime made it an attractive destination for foreign investors. The services sector promoted growth in the manufacturing sector due to cross-sector spillovers (Ali, 2023). The post-liberalization period not only increased the FDI but also changed sectoral composition significantly (Kumar & Dhingra, 2011). India has managed to attract FDI even during global economic crises in spite of many challenges, which can be attributed to

its financial stability and competitiveness in the global economy (S. Azhar & Marimuthu. K.N, 2012).

Objective of Study:

1. To study the Regulatory Environment in India i.e. its Regulatory Bodies, Regulatory Frameworks and Recent Reforms impacting FDI and portfolio flow.
2. To understand how regulatory changes in India impact FDI and portfolio investments.

Research Methodology:

This is descriptive research and it is based on secondary data. The data is collected from various sources of literature published on FDI and FPI such as research papers published by National and International authors, bulletins published by several government web sites and through the websites of various private financial organizations, etc.

Regulatory Environment in India:

Key Regulatory Bodies:

I) Reserve Bank of India (RBI): The Reserve Bank of India Act, 1934, was enacted on April 1, 1935, to establish the institution. Despite initially being privately held; the Reserve Bank of India has been wholly owned by the Government of India since its nationalisation in 1949. The Reserve Bank maintains price stability while considering the objective of growth, administers the country's currency and credit system to its advantage, and has a contemporary monetary policy framework to address the challenges of an increasingly complex economy. It is responsible for the regulation of the issuance of bank notes and the maintenance of reserves in order to ensure monetary stability in India.

II) Securities and Exchange Board of India (SEBI): The non-statutory Securities and Exchange Board of India was

established by the Indian government in a resolution passed on April 12, 1988. The Securities and Exchange Board of India Act, 1992 (15 of 1992) provisions were implemented on January 30, 1992, thereby establishing the Securities and Exchange Board of India as a statutory entity.

III) Ministry of Finance: Ministry of finance covers various departments with different functions assigned to each department. It mainly comprises of department of Economic Affairs, department of Expenditure and revenue, department of Financial Services, department of Investment and Public Asset Management and department of Public Enterprises. Details.

IV) Department for Promotion of Industry and Internal Trade (DPIIT): In January 2019, the Department of Industrial Policy & Promotion was renamed DPIIT. Department will be responsible for the welfare of traders and their employees, Startups, and Internal Trade, in addition to the e-commerce matters that were originally assigned to it in 2018. Furthermore, DPIIT was assigned the responsibility of integrating the logistics sector's development in November 2021. One of the primary responsibilities of the DPIIT is to promote investment in state-of-the-art technology, expedite the process of attracting foreign direct investment, and guarantee that the industrial and trade sectors of the country expand in a balanced manner.

Major Regulatory Frameworks:

I) Foreign Exchange Management Act (FEMA): The Federal Emergency Management Agency Act (FEMA) replaced the Foreign Exchange Regulation Act (FERA) on January 1, 1974. The objective of enacting FERA was to establish regulations for the trading of foreign currency and securities. FERA was superseded by FEMA by the government due to its failure to comply with its post-

liberalization principles. It permits the government of India to legislate with foreign exchange in accordance with India's foreign trade policy and grants the Reserve Bank of India the authority to legislate.

II) Consolidated FDI Policy: The Department for Promotion of Industry and Internal Trade (DPIIT) issued the Consolidated FDI Policy Circular on October 15, 2020, which is currently in effect. The FDI Policy aims to entice and encourage FDI as a supplement to local capital, technology, and expertise in order to accelerate economic growth. Foreign direct investment must comply with all federal, state, and local laws, rules, regulations, security requirements, and ordinances. Foreign direct investment (FDI) can be obtained through either the government route or the automatic route.

III) SEBI Regulations on Foreign Portfolio Investors (FPIs): The government is endeavoring to reduce restrictions on foreign portfolio investors by means of the Securities and Exchange Board of India (SEBI) in order to promote increased international investment in India. Under the 2014 Foreign Portfolio Investors ('FPI') Regulations ('FPI Regulations'), the Securities and Exchange Board of India (SEBI) supervises and issues licenses to investment entities in India. The SEBI has issued a variety of circulars, recommendations, and frequently asked questions (FAQs) to assist foreign investors in comprehending the FPI Regulations, which were implemented on June 1, 2014.

Recent Reforms:

I) Liberalization of FDI caps in various sectors (e.g., defense, insurance): The defence industry sector was opened to private sector participation in May 2001. In 2020, the Foreign Direct Investment (FDI) ceiling was raised to 74% for enterprises that were pursuing new defence industrial licenses under the Automatic Route. The

Government Route, on the other hand, raised it to 100% for locations where it is anticipated that the FDI will provide access to current technology. Rs. 5,077 crore of foreign direct investment (FDI) has been documented in the defence industry thus far). The government also promotes niche defence technology co-development and co-production with foreign original equipment manufacturers (OEMs) in order to further stimulate foreign direct investment (FDI) in the defence sector.

II) Introduction of Goods and Services

Tax: The Goods and Services Tax (GST) consolidated a number of indirect taxes imposed by the federal and state administrations into a single system. The federal and state governments are jointly responsible for the taxation of commodities and services under the commodities and Services Tax (GST). This has resulted in a greater degree of economic integration among states as a result of a standardised tax system. It has improved India's economic efficiency and competitiveness by simplifying the tax system, promoting greater coordination, and reducing tax barriers. In order to successfully implement GST, it is imperative that the federal and state administrations collaborate and reach a consensus. Consequently, the Indian tax system has become more efficient and coordinated, and it has revolutionized financial relationships.

III) Insolvency and Bankruptcy Code

(IBC): The Insolvency and Bankruptcy Code, 2016 (IBC) of India is designed to simplify the current system by establishing a unified code for both insolvency and bankruptcy. The Insolvency and Bankruptcy Code, 2015, was introduced to the Lok Sabha on December 15, 2015. The new bankruptcy law is advantageous for both domestic and foreign creditors and investors, particularly private equity firms that are interested in expanding their operations in India.

IV) Digital initiatives like "Make in India" and "Digital India": As part of India's revived emphasis on manufacturing, the "Make in India" initiative was implemented in September 2014 which aims to establish India as the premier global manufacturing destination. The objective is to enable Indian companies to thrive in a globalised work environment. India has implemented a comprehensive economic liberalisation strategy, which has resulted in the rapid opening of various industries to FDI. India is currently one of the most open economies in the globe. Digital India has aligned with government initiatives such as Make in India, Startup India, and Atmanirbhar Bharat, thereby enhancing the economy and establishing India as a global centre for technology innovation and manufacturing. The unified payments interface (UPI) and other robust digital public infrastructure (DPI) models have enhanced the ease of conducting business, simplifying the process for entrepreneurs to establish and expand their startups.

Impact on FDI:

1. Sectoral Analysis: Examination of FDI inflows in key sectors (e.g., technology, manufacturing, retail): Since 2000, India has seen significant FDI inflows across various sectors (Singh, 2021). Studies have examined FDI trends, forecasting future inflows and analyzing its impact on the Indian economy considering potential drawbacks (Kumari, 2013). The retail sector, in particular, has attracted attention, with FDI potentially expanding markets, reducing transaction costs, and benefiting consumers and suppliers (Patibandla, 2012). Researchers have conducted sectoral analyses of FDI inflows, focusing on areas such as technology, manufacturing, and retail (Kumar, 2020; Singh, 2021). These studies have also explored the FDI policy framework and country-wise inflows (Kumar, 2020). Overall, India has emerged

as a top foreign investment destination, with FDI playing an integral role in its economic development strategies (Kumar, 2020; Singh, 2021).

2. Incentives and Barriers:

I) Positive impacts of streamlined procedures, tax incentives: The implementation of streamlined procedures and tax incentives has shown positive impacts on Foreign Direct Investment (FDI) in India. The Goods and Services Tax (GST) has increased ease of doing business and eliminated cascading tax effects, making India more attractive for foreign investors (Singh, 2017). Improvements in institutional and regulatory quality, particularly in easing business start-ups and reducing economic policy uncertainty, have significantly and positively impacted FDI inflows (Kaushal, 2021). Tax incentives, such as tax holidays and investment allowances, have been used by the Indian government to attract FDI, although their overall effectiveness remains debatable (Kandpal & Kavidayal, 2014). While some reforms, like easing trade across borders and resolving insolvency, have shown positive but insignificant impacts on FDI (Kaushal, 2021), the overall investment climate and other factors also play crucial roles in attracting foreign investment (Kandpal & Kavidayal, 2014).

II) Challenges such as bureaucratic red tape, policy inconsistencies: India has struggled to attract sufficient FDI inflows compared to countries like China (B. Kumar, 2014). Several factors hinder FDI in India, including bureaucratic red tape, policy inconsistencies, and administrative uncertainties (G. C. Savagaon, 2016). Economic policy uncertainty negatively impacts FDI, with long-term effects being more pronounced than short-term ones (Aishanee Sinha & T. Ghosh, 2021). To improve FDI inflows, India needs to address issues such as poor infrastructure, labor factors, and high input costs (B. Kumar, 2014). The government's efforts to simplify

regulations, modernize laws, and introduce professional regulatory systems are steps in the right direction (G. C. Savagaon, 2016). Overall, predictable policies and reduced bureaucratic hurdles are essential for attracting more FDI to India.

Impact on Portfolio Flows

1. Effects of liberalizing capital markets on portfolio investments: The liberalization of capital markets in India has had mixed effects on portfolio investments. While foreign portfolio investment (FPI) has contributed to the development of India's capital market and economy, it has also increased market volatility (Nair, 2009; Jacob & Nair, 2013). Foreign Institutional Investments (FIIs) have become key drivers of the Indian equity market, raising concerns about volatility and potential capital flight (Sumanjeet & Paliwal, 2010). The liberalization of Foreign Direct Investment (FDI) limits in the banking sector led to significant value gains for both private and government-owned banks, with smaller, less efficient banks experiencing higher price increases (Ghosh & Bv, 2004). These findings highlight the need for effective management tools to address the challenges associated with foreign investments in India's liberalized capital markets (Sumanjeet & Paliwal, 2010).

2. Stock Market Reforms:

I) Implementation of modern trading systems: The implementation of modern trading systems in India has significantly impacted portfolio flows and financial markets. Electronic trading has improved the informational efficiency of the Indian stock market (Madhavan et al., 2019). Portfolio flows into India are influenced by both external factors, such as LIBOR and emerging market stock returns, and domestic factors, including lagged stock returns and credit rating changes (Gordon & Gupta, 2003). These flows have been found to cause changes in equity prices and exchange rates

in the short term, with positive shocks generally resulting in increased equity prices, currency appreciation, and lower interest rates (Ghosh & Herwadkar, 2008). While foreign direct investment has no significant impact on real exchange rates, portfolio flows and external commercial borrowings have been shown to significantly affect exchange rates in India (Gaiha et al., 2014). Overall, the modernization of trading systems has contributed to the flexibility and efficiency of Indian financial markets.

II) Regulations enhancing transparency and investor protection:

Research indicates that regulations enhancing transparency and investor protection have positively impacted portfolio flows in India. The implementation of global best practices in investor protection has promoted trust and stability in Indian financial markets (S. Singh, 2022). Liberalization policies expanding FII categories, increasing investment caps, and simplifying procedures have significantly increased net FII inflows (S. Bose & D. Coondoo, 2005). The enforcement of mandatory disclosure requirements and improved corporate governance mechanisms by SEBI has led to a reduction in the cost of equity capital for listed companies (A. Bhattacharyya et al., 2005). Additionally, technological advancements and regulatory policies have shown a positive effect on capital flows to India, with increasing FDI and a positive momentum in the NSE Index Price (Nisha Goel & Gurinder Singh, 2018).

3. Volatility and Risk Factors:

I) Analysis of how political stability, regulatory changes impact market volatility: The impact of political stability and regulatory changes on market volatility and portfolio flows in India has been extensively studied. Research shows that both domestic and foreign institutional flows influence stock market volatility (Aggarwal et al., 2021; Chhimwal & Bapat, 2020). While foreign portfolio investments (FPIs)

have become a significant driver of Indian equity markets, their impact on volatility can be mitigated by domestic institutional investors (DIIs) (Aggarwal et al., 2021; Chhimwal & Bapat, 2020). External factors like LIBOR and emerging market returns, as well as domestic factors such as lagged stock returns and credit rating changes, affect portfolio flows (Gordon & Gupta, 2003). Regulatory changes, like mutual fund investment mandate restructuring, can increase market volatility (Aggarwal et al., 2021). While FII inflows have grown significantly since liberalization, concerns remain about their volatility and potential for capital flight (Sumanjeet & Paliwal, 2010). Effective management of FIIs and stable, forward-looking economic policies are crucial for maintaining foreign investor interest in Indian markets (Aggarwal et al., 2021; Sumanjeet & Paliwal, 2010).

II) Role of global economic conditions:

Global economic conditions play a significant role in portfolio flows to India. External factors such as LIBOR and emerging market stock returns influence these flows (Gordon & Gupta, 2003). Portfolio investments are particularly sensitive to global risk sentiment and spillovers, with potential outflows reaching up to 3.2% of GDP in adverse scenarios (Muduli et al., 2022). These flows impact various segments of Indian financial markets, causing changes in equity prices and exchange rates (Ghosh & Herwadkar, 2008). While foreign direct investment has no significant impact on real exchange rates, portfolio flows and external commercial borrowings significantly affect exchange rate changes (Gaiha et al., 2014). However, India's portfolio flows are relatively less volatile and robust compared to other emerging markets (Gordon & Gupta, 2003). The Indian financial markets demonstrate resilience and movement towards long-run equilibrium in response to these flows (Ghosh & Herwadkar, 2008), highlighting

the complex interplay between global economic conditions and India's financial landscape.

Comparative Analysis:

1. Comparison with Other Emerging Markets: The regulatory environment plays a crucial role in attracting foreign direct investment (FDI) to emerging economies like India, China, and Brazil. While China has been more successful in attracting FDI due to its facilitating institutional environment (Haitian Lu et al., 2009), India's legal infrastructure is better suited for foreign portfolio investments, particularly venture capital (Haitian Lu et al., 2009). Economic and financial factors account for a significant portion of FDI inflows, with social variables also playing a role (Harvey R. Wickes, 2011). Government effectiveness and regulatory quality positively impact FDI inflows in BRICS economies, while political stability, voice and accountability, and control of corruption have negative effects (Pravin Jadhav & V. Katti, 2012). India's underperformance in attracting FDI compared to China is attributed to factors such as high tariffs, poor infrastructure, unfriendly business regulations, and inflexible labor laws (J. Henley, 2004). Economic devolution to the state level may help India improve its FDI attractiveness (J. Henley, 2004).

2. Factors making India an attractive destination versus areas needing improvement: India has emerged as an attractive destination for foreign direct investment (FDI) due to its large domestic market, political stability, organized financial system, and acceptable policies (Fernández et al., 2022). However, several factors hinder FDI inflows, including a restrictive FDI regime, high import tariffs, stringent labor laws, poor infrastructure, and limited export processing zones (Bajpai & Sachs, 2000). To improve its attractiveness, India needs to focus on enhancing labor,

trade, and financial freedom (Kaushal, 2023). Recent liberalization efforts have positively impacted FDI inflows, with India attracting investments from over 90 countries (Suman, 2020). The retail sector has particularly benefited from FDI liberalization. To sustain economic growth, India should continue to encourage investment in other sectors by further liberalizing restrictive policies (Suman, 2020). Addressing these challenges and capitalizing on its strengths could help India become a more competitive FDI destination globally.

Conclusion:

1. Summary of Findings: The implementation of streamlined regulatory environment and tax incentives has significantly influences FDI and portfolio flows in India. It has increased ease of doing business and eliminated various flaws, making India more attractive for foreign investors. There are still concerns, specifically regarding the transparency and consistency of policies. Improvements in institutional and regulatory quality, particularly in easing business start-ups and reducing economic policy uncertainty, have significantly and positively impacted FDI inflows.

2. Insights for Indian regulators to foster a more conducive investment climate: several factors hinder FDI inflows, including a restrictive FDI regime, high import tariffs, stringent labor laws, poor infrastructure, and limited export processing zones. To improve its attractiveness, India needs to focus on enhancing labor, financial freedom, trade and Economic devolution to the state level. Effective management of FIIs and stable,

forward-looking economic policies are to be paid the utmost attention.

3. Directions for Future Researchers:

Areas such as the long-term impacts of digitalization on investment flows can be

considered for further study. Moreover, external factors making changes in contemporary internal policies in India impacting FDI and portfolio inflows can be explored.

Data Analysis:

Statistical analysis of FDI and portfolio flows from 2001-2023:

TABLE 1 : FOREIGN INVESTMENT INFLOWS						
Year	Gross inflows/ Gross Investments		Direct Investment to India		Net Portfolio Investment	
	₹ Crore	US \$ Million	₹ Crore	US \$ Million	₹ Crore	US \$ Million
1	2	3	6	7	12	13
2001-02	29269	6130	29245	6125	9290	1952
2002-03	24681	5095	24397	5036	4504	944
2003-04	19830	4322	19830	4322	51898	11356
2004-05	27234	6052	26947	5987	41312	9287
2005-06	39730	8962	39457	8901	55357	12494
2006-07	103037	22826	102652	22739	31881	7060
2007-08	139884	34844	139421	34729	110619	27433
2008-09	191419	41903	190645	41738	-65045	-14030
2009-10	179642	37746	157819	33109	153967	32396
2010-11	164255	36047	132358	29029	139381	30293
2011-12	220000	46552	154961	32952	85571	17170
2012-13	186869	34298	146954	26953	146467	26891
2013-14	218595	36047	186830	30763	29680	4822
2014-15	276400	45147	215893	35283	257853	42205
2015-16	364146	55559	294258	44907	-27203	-4130
2016-17	404057	60220	283292	42215	50482	7612
2017-18	392944	60974	253977	39431	142632	22115
2018-19	433069	62001	301932	43302	-1857	-618
2019-20	527347	74390	396955	56006	7395	1403
2020-21	607771	81973	406765	54927	266474	36137
2021-22	632047	84835	418763	56231	-126539	-16777
2022-23	571322	71355	335015	42006	-36593	-5152
Notes : 1. Data for 2022-23 are provisional.						
Source : Reserve Bank of India.						

Source: Reserve Bank of India.

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