operational part and the rest contravention, penalties, adjudication, appeals, enforcement directorate, etc. What was a full section under FERA seems to have been reduced to a sub-clause under FEMA in some cases.

For example,

- Section 13 of FERA provided for restrictions on import of foreign currency & foreign securities. Now this restriction is provided through a sub-clause 6(3)(g).
- Section 25 of FERA provided for restrictions on Indian residents holding immovable properties outside India. Now the restriction is under sub-clause 6(4).

Reduction in the number of sections means nothing. Real quality of liberalization will be known when all notifications & circulars are finalized & published.

1.5 Need for FEMA

The demand for new legislation was basically on two main counts.

The FERA was introduced in 1974when India's foreign exchange reserves position was not satisfactory. It required stringent controls to conserve foreign exchange and to utilize in the best interest of the country. Very strict restrictions have outlived their utility in the current changed scenario. Secondly there was a need to remove the draconian provisions of FERA and have a forward-looking legislation covering foreign exchange matters.

Repeal of draconian provisions under FERA

The draconian regulations under FERA related to unbridled powers of Enforcement Directorate. These powers enabled Enforcement Directorate to arrest any person, search any premises, seize documents and start proceedings against any person for contravention of FERA or for preparations of contravention of FERA. The contravention under FERA was treated as criminal offence and the burden of proof was on the guilty.

Similarities

The similarities between FERA and FEMA are as follows:

- The Reserve Bank of India and central government would continue to be the regulatory bodies.
- Presumption of extra territorial jurisdiction as envisaged in section (1) of FERA has been retained.

			days" to make a person resident has been brought under FEMA. Therefore a person who qualifies to be a non-resident under the income Tax Act, 1961 will also be considered a non-resident for the purposes of application of FEMA, but a person who is considered to be non-resident under FEMA may not necessarily be a non-resident under the Income Tax Act, for instance a business man going abroad and staying therefore a period of 182 days or more in a financial year will become a non-resident under FEMA.
6	PUNISHMENT	Any offence under FERA, was a criminal offence , punishable with imprisonment as per code of criminal procedure, 1973	Here, the offence is considered to be a civil offence only punishable with some amount of money as a penalty. Imprisonment is prescribed only when one fails to pay the penalty.
7	QUANTUM OF PENALTY.	The monetary penalty payable under FERA, was nearly the five times the amount involved.	Under FEMA the quantum of penalty has been considerably decreased to three times the amount involved.
8	APPEAL	An appeal against the order of "Adjudicating office", before " Foreign Exchange Regulation	The appellate authority under FEMA is the special Director (Appeals) Appeal against the order of Adjudicating

is also fast becoming a regional hub for multimedia companies like ABACUS, broadcasting companies like ESPN and business information providers like Reuters.

3. EXTERNAL COMMERCIAL BORROWINGS (ECB)

Indian companies are allowed to access funds from abroad in the following methods:

(i) External Commercial Borrowings (ECB) : ECBs refer to commercial loans in the form of bank loans, securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially convertible preference shares), suppliers' credit availed of from non-resident lenders with a minimum average maturity of 3 years.

(ii) Foreign Currency Convertible Bonds (FCCBs): FCCBs mean a bond issued by an Indian company expressed in foreign currency, and the principal and interest in respect of which are payable in foreign currency. The bonds are required to be issued in accordance with the scheme viz., "Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme,1993", and subscribed by a non-resident in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part, on the basis of any equity related warrants attached to debt instruments. The ECB policy is applicable to FCCBs.

(iii) Preference shares: Preferences Shares (i.e. non-convertible, optionally convertible or partially convertible) for issue of which, funds have been received on or after May 1, 2007 would be considered as debt and should conform to the ECB policy. Accordingly, all the norms applicable for ECB, viz. eligible borrowers, recognized lenders, amount and maturity, end use

b. Corporates in the services sector viz. hotels, hospitals and software sector and miscellaneous services sector are allowed to avail of ECB up to USD 200 million or its equivalent in a financial year for meeting foreign currency and/ or Rupee capital expenditure for permissible end-uses. The proceeds of the ECBs should not be used for acquisition of land.

c. NGOs engaged in micro finance activities and Micro Finance Institutions (MFIs) can raise ECB up to USD 10 million or its equivalent during a financial year.

d. NBFC-IFCs can avail of ECB up to 75 per cent of their owned funds (ECB including all outstanding ECBs) and must hedge 75 per cent of their currency risk exposure.

e. NBFC-AFCs can avail of ECBs up to 75 per cent of their owned funds (ECB including all outstanding ECBs) subject to a maximum of USD 200 million or its equivalent per financial year with a minimum maturity of 5 years and must hedge the currency risk exposure in full.

f. SIDBI can avail of ECB to the extent of 50 per cent of their owned funds including the outstanding ECB, subject to a ceiling of USD 500 million per financial year.

g. NGOs engaged in micro finance activities can avail of ECBs designated in INR, from overseas organizations and individuals as per the extant guidelines.

h. All eligible borrowers can avail of ECBs designated in INR from 'foreign equity holders' as per ECB guidelines.

iv) All-in-cost ceilings

All-in-cost includes rate of interest, other fees and expenses in foreign currency except commitment fee, pre-payment fee, and fees payable in Indian Rupees. The payment of withholding tax in Indian Rupees is excluded for calculating the all-in-cost. The existing all-in-cost ceilings for ECB are as under:

Average Maturity Period	All-in-cost Ceilings over 6 month LIBOR*
Three years and up to five Years	350 basis points
More than five years	500 basis points

* for the respective currency of borrowing or applicable benchmark

In the case of fixed rate loans, the swap cost plus margin should be the equivalent of the floating rate plus the applicable margin.The rate of penal interest should not be more than 2 per cent of the all-in-cost of ECB.

v) End-use

4. GUIDELINES ON IMPORTS AND EXPORTS OF GOODS AND SERVICES

1. Realization and Repartition of Export Proceeds It is obligatory on the part of the exporter to realize and repatriate full value of goods or software to India within a stipulated period as under:-

Category of exporter Time frame Units in Special Economic Zones (ZESs) No specific time frame fixed Status Holder Exporter Within 12 months from date of export Cent percent EOUs set up under Electronic Hardware Technology Parks (EHTPs) and Biotechnology Parks (BTPs) Schemes Within 12 months from date of export Goods exported to Warehouse established outside India As soon as it is realized and in any case within 15 months from the date of shipment of goods All other cases of export 12 months from the date of export

02. Foreign Currency Account

• Participants in international exhibition/trade fail have been permitted to open temporary foreign currency account abroad for credit of foreign exchange obtained by sale of goods at the fair and operate the account during their stay outside India. The balance in the account is required to be repatriated to India within one month from the date of closure of the exhibition/trade fair. • An Indian entity can also open, hold and maintain a foreign currency account with a bank outside India for the normal business operations of its overseas office/ branch. • A unit located in a Special Economic Zone (SEZ) may open, hold and maintain a Foreign Currency Account with bank (AD) in India subject to certain conditions. • A person resident in India being a project / service exporter may open, hold and maintain foreign currency account with a bank outside or in India, subject to the standard terms and conditions.

03. Diamond Dollar Account

• Firms/companies engaged in purchase and sale of rough or cut and polished diamonds/precious metal jewellery, etc. and having an average annual turnover of Rs. 3 crore or above during the preceding three licensing years (April to March) are permitted to open/transact their business through Diamond Dollar Account. The number of such accounts is restricted to not more than 5 accounts to a single entity.

04. Exchange Earners Foreign Currency (EEFC) Account

• An Indian resident is permitted to open with bank (AD) Exchange Earners Foreign Currency (EEFC) Account for credit of his foreign exchange earnings to the extent of 100%. EEFC is allowed in the form of non-interest bearing current account. No credit facilities (fund or non-fund) are permitted against the security held in the account.

• Eligible credit in EEFC account include inward remittance through normal banking channel other than received pursuant to any undertaking given to RBI or which represent foreign currency loan raised or investment received from outside India or those received for meeting specific obligations

• Banks are permitted to approve GR forms of export items for display or display cum sale in trade fairs/exhibitions outside India subject to certain conditions including production of relative Bill of Entry for import of the unsold items or repatriation of the sale proceeds to India in accordance with the FEMA guidelines, etc.

08. GR approval for Export of Goods for re-imports

• Banks can grant GR approval for goods being exported for re-import after repairs / maintenance / testing / calibration, etc., subject to the condition that the exporter shall produce relative Bill of Entry within one month of re-import of the exported item from India.

• Where the goods being exported for testing are destroyed during testing, banks may obtain a certificate issued by the testing agency that the goods have been destroyed during testing, in lieu of Bill of Entry for import.

09. Consignment Exports

• While forwarding shipping documents to overseas branch/correspondent in respect of export of goods on consignment basis, they may be directed to deliver

the documents against trust receipt/undertaking to deliver the sale proceeds by a specified date within the period prescribed for realization of the sale proceeds of the export.

• The agents/consignees may deduct from sale proceeds of the goods expenses normally incurred towards receipt, storage and sale of the goods, such as landing charges, warehouse rent, handling charges, etc. and remit the net proceeds to the exporter.

10. Opening / Hiring of Ware houses abroad

• Banks may grant permission to exporters for opening / hiring warehouses abroad subject to the compliance of certain conditions including the applicant's export outstanding does not exceed 5% of exports made during the previous year, minimum export turnover of USD 0.10 Mn., etc. The permission may be granted initially for a period of one year and the same may be extended subject to compliance of the conditions set there against.

11. Direct dispatch of documents by the exporter

• Banks may dispatch shipping documents direct to the consignees or their agents resident in the country of final destination of goods in cases where advance payment or an irrevocable letter of credit has been received for full value of the export and the exporter being a regular customer having satisfactory business dealing with the bank, etc.

• Banks may also permit `Status Holder Exporters' and units in SEZ to dispatch the export documents to the consignees outside India subject to the condition that the export proceeds are repatriated through the AD banks named in the GR Form and the duplicate copy of the GR form is submitted to the banks for monitoring purposes by the exporters within 21 days from the date of shipment of export.

• Banks may regularize cases of dispatch of shipping documents by the exporter direct to the consignee or his agent resident in the country of the final destination of goods, up to USD 1 Mn. or its equivalent, per export shipment provided the export proceeds have been realized in full, the exporter is a regular customer of the bank for a period of at least six months, the account is a fully compliant with KYC/AML guidelines, etc.

• In case of doubt, bank may consider filing Suspicious Transaction Report (STR) with FIU_IND (Financial Intelligence Unit in India).

12. Short shipment and shut out shipments

• Short-shipment in respect of shipment covered in GR form already filed with Customs, the exporter is required to give notice to Customs about the same and

in case of any delay in obtaining the certified short-shipment from the Customs, an undertaking is required to be furnished to the bank. • In case the shipment is entirely shut out and there is delay in re-ship, the exporter is required to give notice in duplicate to Customs and forward the duplicate copy to RBI together with unused duplicate copy of the GR form.

13. Counter-Trade Arrangement

• Counter trade involves adjustment of value of goods imported into India against value of goods exported from India in terms of an arrangement voluntarily entered into between the Indian party and the overseas party through an Escrow Account opened in India in USD provided:-

a) All imports and exports under the arrangement should be at international prices in conformity with the FTP and FEMA and the Rules and Regulations made there under.

b) No interest will be payable on balances standing to the credit of the Escrow Account but the funds temporarily rendered surplus may be held in a short term deposit up to a total period of three months in a year (i.e., in a block of 12 months) and the banks may pay interest at the applicable rate. c) No fund based/or non-fund based facilities would be permitted against the balances in the Escrow Account.

d) Application for permission for opening an Escrow Account may be made by the overseas exporter / organization through his / their bank to the Regional Office concerned of the Reserve Bank.

14. Export of Goods on Lease, Hire, etc

After Effects of Crisis:-

After the Asian crisis, international investors were reluctant to lend to developing countries, leading to economic slowdowns in developing countries in many parts of the world. The powerful negative shock also sharply reduced the price of oil, which reached a low of about $11 per barrel towards the end of 1998, causing a financial pinch in OPEC nations and other oil exporters. In response to a severe fall in oil prices, the super majors that emerged in the late-1990s, undertook some major mergers and acquisitions between 1998 and 2002 - often in an effort to improve economies of scale, hedge against oil price volatility, and reduce large cash reserves through reinvestment.

The reduction in oil revenue also contributed to the 1998 Russian financial crisis, which in turn caused Long-Term Capital Management in the United States to collapse after losing $4.6 billion in 4 months.

The crisis in general was part of a global backlash against the Washington Consensus and institutions such as the IMF and World Bank, which simultaneously became unpopular in developed countries following the rise of the anti-globalization movement in 1999.

Many nations learned from this, and quickly built up foreign exchange reserves as a hedge against attacks, including Japan, China, and South Korea.

Nations such as Brazil, Russia, and India as well as most of East Asia began copying the Japanese model of weakening their currencies, restructuring their economies so as to create a current account surplus to build large foreign currency reserves

India's Survival:-

The importance of gold in India need not be elaborated to an economist or to a layman. Traditionally gold has been deeply entrenched in the Indian social psyche. The economic importance is also high.

Gold price is a function of the variables like expected inflation, the expected interest rate, the exchange rate between the UD dollar and the Indian Rupee.

The exchange rate of Rupee's per us dollar is significantly positively correlated; therefore a rise in the value of the Rupee in dollars is associated with a move in the same direction as the value of gold in US Dollars.

Historical Indian Rupee Rate (INR USD)

Year	INR/USD	Year	INR/USD	Year	INR/USD	Year	INR/USD
1973	7.66	1984	11.36	1995	32.43	2006	45.17
1974	8.03	1985	12.34	1996	35.52	2007	41.20
1975	8.41	1986	12.60	1997	36.36	2008	43.41
1976	8.97	1987	12.95	1998	41.33	2009	48.32
1977	8.77	1988	13.91	1999	43.12	2010	45.65
1978	8.20	1989	16.21	2000	45.00	2011	46.61
1979	8.16	1990	17.50	2001	47.23	2012	53.34
1980	7.89	1991	22.72	2002	48.62		
1981	8.68	1992	28.14	2003	46.60		
1982	9.48	1993	31.26	2004	45.28		
1983	10.11	1994	31.39	2005	44.01		

Average annual currency exchange rate for the Indian Rupee (Rupees per U.S. Dollar) is shown in this table: 1973 to present.

The Rupee-Dollar parity of 1947

When India achieved independence in 1947, there were no external borrowings on India's balance sheet! The exchange rate as on 15 August 1947 was 1 US$ = 1 INR. With the introduction of five year plans, Indian government needed foreign borrowing and this required the devaluation of the Rupee. The trend was exacerbated by the Indo-China war of 1962 and the Indo-Pakistan war of 1965 which forced the government to further devalue the Rupee as the country was in dire need of USD for importing weapons.

Devaluation during the high inflation period of 1970s

In the year 1966, under the prime minister-ship of Mrs. Indira Gandhi, inflation was increasing at an unprecedented rate. This was also a time when India was under immense pressure from the US to devalue the Rupee to safe-guard the aid received by India from the US. This led to the Rupee being devalued to 1 USD=7 INR. The then members of parliament, Mr. Krishnamachari & Mr.Kamraj opposed the weak Rupee policy but Mrs. Gandhi did not relent, being mindful of the country's dependence on aid from the US.

The strong dollar period of 1980s

After 1970, USD grew stronger against the Rupee under the incompetence of Indian politics coupled with robust economic growth in the US. The exchange rate in 1970 was 1 USD= 7.47 INR, which rose to 1 USD=8.4 INR in 1975, after the political uncertainty following the assassination of Mrs. Gandhi in 1984. The next round of weakness in the Rupee came in the wake of the Bofors scam which toppled Rajiv Gandhi's government plunging the Rupee to new lows of 1 USD= 12.36 INR in the year 1985. In the year 1990 this rose to 1 USD =17.5 INR.

(2008)

The Reserve Bank of India (RBI) had asked the Anil DhirubhaiAmbani Group firm, Reliance Infrastructure (earlier, Reliance Energy), to pay just under Rs 125 crore as compounding fees for parking its foreign loan proceeds worth $300 million with its mutual fund in India for 315 days, and then repatriating the money abroad to a joint venture company. These actions, according to an RBI order, violated various provisions of the Foreign Exchange Management Act (FEMA)

In its order, RBI said Reliance Energy raised a $360-million ECB on July 25, 2006, for investment in infrastructure projects in India. The ECB proceeds were drawn down on November 15, 2006, and temporarily parked overseas in liquid assets. On April 26, 2007, Reliance Energy repatriated the ECB proceeds worth $300 million to India while the balance remained abroad in liquid assets.

It then invested these funds in Reliance Mutual Fund Growth Option and Reliance Floating Rate Fund Growth Option on April 26, 2007. On the following day, i.e., on April 27 2007, the entire money was withdrawn and invested in Reliance Fixed Horizon Fund III Annual Plan series V. On March 5, 2008, Reliance Energy repatriated $500 million (which included the ECB proceeds repatriated on April 26, 2007, and invested in capital market instruments) for investment in capital of an overseas joint venture called Gourock Ventures based in British Virgin Islands.

RBI said, under FEMA guidelines issued in 2000, a borrower is required to keep ECB funds parked abroad till the actual requirement in India. Further, the central bank said a borrower cannot utilise the funds for any other purpose.

“The conduct of the applicant was in contravention of the ECB guidelines and the same are sought to be compounded,” the RBI order signed by its chief general manager Salim Gangadharan said.

During the personal hearing on June 16, 2008, Reliance Energy, represented by group managing director GautamDoshi and Price waterhouseCoopers executive director Sanjay Kapadia, admitted the contravention and sough compounding. The company said due to unforeseen circumstances, its Dadri power project was delayed. Therefore, the ECB proceeds of $300 million were bought to India and was parked in liquid debt mutual fund schemes, it added.

Rejecting Reliance Energy’s contention, RBI said it took the company 315 days to realise that the ECB proceeds are not required for its intended purpose and to repatriate the same for alternate use of investment in an overseas joint venture on March 5, 2008.

Reliance also contended that they invested the ECB proceeds in debt mutual fund schemes to ensure immediate availability of funds for utilisation in India.

“I do not find any merit in this contention also as the applicant has not approached RBI either for utilizing the proceeds not provided for in the ECB guidelines, or its repatriation abroad for investment in the capital of the JV,” the RBI official said in the order.