F.E.R.A, F.E.M.A., THE COMPANIES ACT, AND THEIR IMPACT ON THE INDIAN BUSINESS ENVIRONMENT

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INTRODUCTION

F.E.R.A., F.E.M.A. and the Companies Act. The three most important legislations determining the nature of the business environment throughout the country of India. What are they? Why are they? What are its advantages? Are they detrimental too, in certain ways? We will try to answer all of these questions through this paper and try to realize the true impacts of these legislations on the Indian business environment and how they had revolutionized the same. At the end of the day, we must remember that every country has its separate business environments and its separate ways of working and social ideologies. That being said, the Company Law of India, Companies Law of Russia, and Companies Act of the United State of America will have a tremendous amount of difference, as their governing philosophies are different. For us, however, the governing philosophy turns out to be 'democratic socialism'. Let us now have a look at these three legislations in detail and attempt to answer the questions which have been raised in our minds. But, the list of questions is merely indicative and not exhaustive. Thus, be prepared for a much larger analysis.

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FOREIGN EXCHANGE REGULATION ACT, 1973

Foreign Exchange: "Foreign Exchange is the system or process of converting one national currency into another and of transforming money from one country to another". The FERA (Foreign Exchange Regulation Act) gives an understanding of Indian rules & regulations related to trade laws used at the time of foreign exchange. It is an Act that contained a set of laws for leading foreign investments in India. At the time of its commencement, it was a short-term adaptation to control the flow of foreign exchange. But in 1957, this Act was constituted for a persistent basis. During the development of industrialization in India, there was an inflation in the investments which were coming from outside India. Hereinafter, there was an appetite to protect it. As a consequence, the FERA has been amended during the year 1973. It incorporated with its 81 cryptic sections. Under FERA, any offences committed by the offender came under criminal procedures or were treated as a crime, which included imprisonment as per the Criminal Procedure Code, 1973.

OBJECTIVES OF FERA

The time when the FERA was amended, was the period of pre-liberalization. That was the period when the Indian economy was just at a developing stage. So it came into force for controlling certain things like payments, preservation of unfamiliar trade assets, converting the currency of the nation, as well as appropriate application in the economic development of the country. There were so many objectives or purposes to constitute the Foreign Exchange Regulation Act. Some of them are as follows:

I. To regulate foreign trade & payments.
II. To regulate the forex market and securities.
III. To control the foreign investments in India.
IV. To regulate those transactions which are affecting foreign exchange indirectly.
V. To ensure the foreign exchange is conserved conventionally.
VI. To regulate the import-export currency.
VII. And for the appropriate application of the FERA act in the development of the country.

IMPACT OF FOREIGN EXCHANGE REGULATION ACT, 1973 ON BUSINESS ENVIRONMENT

Due to FERA's strict rules, there was a huge impact on the business environment. At that time, some companies had been affected by the FERA because they had very strict rules and regulations. Because of FERA's complicated rules, the investors or foreign companies were not showing interest to do investment or carry a business in India. Most of the foreign companies started to leave the country. In that case, we have an example of I.B.M. leaving the country only because of FERA. Not only that but also at that time 'Coca-Cola', which had been our country's driving soda pop organization till 1977, deserted the country following the recent Government rules requested the organization to turn over its mystery recipe and weaken its shake in India's component as needed by the FERA. This all brought a major controversial situation in the world. FERA principals strictly affected foreign companies that produced specified things mentioned in the Industrial Policy, 1973; or any export-import commodities. It also stated that in the case of foreign banking sectors, the extent of foreign shareholdings would be determined based on the order passed by the R.B.I. and banking department. So, these rules & regulations greatly affected the companies, shareholders of which belonged to a foreign country. So, that's why we can tell that FERA was not successful at all. That's why FERA got replaced by FEMA.

Now, let's understand why the previous act related to exchange got replaced by the Foreign Exchange Management Act?

FERA REPLACED BY FEMA

During 1991, our country was in the period of post-liberalization, globalization, and privatization. At that time, the Indian economy had developed quite much. The economy changed from a closed economy to an open economy. Whereby outside companies or investors could come to India for investing or doing their business. Also, the Indian companies could go outside India. At the same time, there were strict rules and regulations of FERA. Just because of that, as we said before also, foreign companies or investors were not showing their interest in investing or doing any business. Because it was a very haphazard process. So, basically, at that time there was a need for some relaxations for controlling the foreign exchange market in India. Some independence for foreign investors was necessary because at that time economy of India was still developing. There had been a tremendous

requirement for a significant change of FERA for the progressing financial advancement and improving unfamiliar trade from the reserve place. In the year 1997, the *Tarapore Committee* recommended changes in the present legislation that regulated the unfamiliar trade-in nation. And afterward, FERA had been supplanted in 1998 during the reign of Atal Bihari Vajpayee party ruling. Furthermore, ultimately, this new Act, Foreign Exchange Management Act, 1999 came into force. FERA had strict rules, for example, a person assumed guilty unless and until proven otherwise would be treated as a criminal. But after FEMA, instituted by the Parliament of our country, all unnecessary restrictions on foreign exchange were removed.

FOREIGN EXCHANGE MANAGEMENT ACT,1999

This act is known as the Foreign Exchange Management Act. This act of 1999 (FEMA) has been defined as an Act as per the legislature of our country "*to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments and for promoting the orderly development and maintenance of foreign exchange market in India*". This has been acquainted during the year 1999 with supplanting a prior Act. FEMA was formed to replenish each and every escape clause and downsides of FERA and thus, a few financial changes (significant changes) were presented under FEMA. FEMA was acquainted with de-regularize as well as for a liberal economy in our country.

APPLICABILITY

FEMA applies to the entire of our country and similarly pertinent to the offices and workplaces situated external our country (which are claimed or overseen by a citizen of our country). The administrative centre of FEMA is placed in New Delhi and is called Enforcement Directorate.

This act applies in:

- Foreign trade.
- Overseas security.
- Export of any ware or potentially administration from our country to a country outside our country.
- Import of any product or potential benefits from outside India.

- Securities as characterized under the Act related to Public Debt in 1994.
- Purchase, deal, and trade of any sort (for example transfer).
- Banking, monetary, and protection administrations.
- Any abroad organization possessed by an N.R.I. (Non-Resident Indian) and the proprietor is 60% or more.
- Any resident of India, dwelling in the country or outside (N.R.I.)

The Current Account exchanges as per FEMA Act have been arranged into three sections which are -

(i) Transactions restricted by FEMA.

(ii) The exchange requiring the Central Government's authorization.

(iii) The exchange requiring R.B.I's. authorization.

THE EXTENT OF OPERATION OF FEMA

(i) The entire of our country.

(ii) Citizens of our country outside our country; and

(iii) Associate Branches or auxiliaries, external our country, of organizations or bodies corporate, enrolled or consolidated in our country.

In conclusion, we would like to discuss the differences between FERA, 1973 & FEMA, 1999.

DIFFERENCES BETWEEN FERA & FEMA

FERA	**FEMA**
The main objective of this Act was to	The main objective of this Act was the

conserve foreign exchange.	management of foreign resources.
The FERA rules regulated foreign payments.	The focus was on increasing the foreign exchange reserves of India, promoting trade and optimum payments of foreign exchange.
FERA had 81 Sections. If there was a violation of FERA rules, then it was considered a criminal offence.	FEMA has only 49 Sections. If there were a violation of FEMA rules, it is considered to be a civil offence.
A person accused of FERA violation was not provided with any legal help.	A person accused of FEMA violation is provided with legal help.
FERA was conceived with the notion that foreign exchange is a scarce resource.	FEMA is conceived with the notion that foreign exchange is an asset.
In the case of transferring of external operations, then prior approvals of R.B.I. were required.	In the case of transferring of external operations, then prior approvals of R.B.I. are not required.

There was no provision for tribunals. The appeals were directly sent to High Courts.	There is a provision for Special Director (Appeals) and Special Tribunal, which is known as The Appellate Tribunal for Foreign Exchange or the FEMA Tribunal.

COMPANIES ACT, 2013

The year was 2013. The Congress Government had replaced the age-old Companies Act of 1956 and had instead, legislated the new Act of 2013. The main aim of the Government was to incorporate the principles of corporate governance and also, regulation practices within the Indian paradigm, to revolutionize the overall functioning of the companies in the country. Let us now have a thorough look into the various important provisions of the Companies Act of 2013. But, before going into the same, we must realize that the Companies Act is the foremost legislation to be consulted or looked at, whenever studying the nature of the business environment of India. As the Companies Act is such major legislation affecting the overall activities of trade and commerce, it becomes pertinent for us to realize the implications, be it good or bad, to develop an overall idea about the dynamics and the metaphysics of the Indian business environment, at a deeper level.

IMPORTANT CONDITIONS

I. National Company Law Tribunals had been introduced.

II. The concept of 'dormant companies' was introduced. Dormant companies meant those companies which had not engaged themselves in any kind of business or commercial activity, for two consecutive years.

- The reigns having regulations were transferred to the companies, i.e., self-regulation was introduced with disclosures or transparencies. This ended the Government approval-based regime.
- Mergers and acquisitions had been made a faster process. The concepts of short mergers and cross-border mergers had been introduced.
- Companies were now mandated to make electronic copies of all the documents.

- Companies having assets with 1 crore or less than that, the liquidators of the same had been provided with adjudicatory powers.
- The concept of 'one-person company' had been introduced.
- Independent directors were now required to be appointed, as a statutory requirement.
- The Section for a compulsory inclusion of a Corporate Social Responsibility (C.S.R.), along with a mandatory formulation of a Corporate Social Responsibility committee within the company was mandated. Also, it was mandatory to disclose the specified class of companies.
- Women directors were prescribed for a specified class of companies.
- A definition of the terms 'Key Managerial Personnel' and 'Promoters' had been given.
- The companies which had been listed were required to have one director representing the small shareholders.
- It also defined the duties of the directors of the companies towards the shareholders, the employees, the community, and the environment.
- Companies Act had limited the number of companies whose directorship a person could hold at a time. It said that a person could be a director in a maximum of 20 companies, of which 10 can be public companies.
- The norms considering the deposits from the public had been made stricter.
- The freezing assets and the disgorgements of illegal gains of a company had been subjected to scrutiny.
- It also introduced the concept of internal audit for bigger companies and made a restriction upon auditors from performing certain non-audit activities, as had been specified.
- National Financial Reporting Authority (N.F.R.A.) had been constituted under the Act.
- Adequate civil and criminal liabilities were introduced for the auditors, who wouldn't comply with the norms.
- In case an investigation was being conducted, the search and seizure of the documents could be done without an order from a magistrate.

DIFFERENCES BETWEEN COMPANIES ACT 2013 & 1956

Sr. No.	Points of Difference.	Companies Act, 2013.	Companies Act, 1956.
1	**Financial Year**.	The companies' economic years end on March 31, every year.	Organizations could choose any date as per their requirement to end the financial year.
2	**Formats of Financial Statement.**	Schedule III.	Schedule VI.
3	**The utmost number of Partners.**	According to the regulation, they can be subjected to a maximum number of 100. Currently, the maximum number is 50.	10 in the banking business and 20 in any other form of business.
4	**Maximum shareholders in a Private Limited Company.**	200 employees, excluding past and present employees.	50 employees, excluding past and present employees.
5	**One-Person Company (O.P.C.).**	Companies that have just a single individual (characteristic individual) as their member.	This concept didn't exist.
		Section 53 disallows the issue	Section 79 allowed the issue

6	**Issue of Share at Rebate.**	of offers at a rebate. Notwithstanding, Section 54 licenses the issue of E.S.O.P.s to its workers at a rebate.	of offers at a markdown.
7	**Additional Paid-in-Capital Reserve.**	The utilization of this Reserve has been given in Section 52(2).	The utilization of this Reserve was provided in Sections 77A and 78.
8	**Article of Incorporation**.	Table F applies where organizations restricted by shares don't receive their Articles of Association.	Table A applied in which organizations didn't embrace their Articles of Association.
9	**Interest in Calls in Arrears.**	Without a provision in the Articles of Association, the greatest premium chargeable on brings falling behind financially is 10% p.a.	In the nonattendance of a statement in the Articles of Incorporation, the most extreme premium chargeable on brings financially past due was 5% p.a.
10	**Interest in Calls in Advance**.	Without a provision in the Articles of Association, the greatest premium payable on brings ahead of time is 12% p.a.	Without a statement in the Articles of Association, the most extreme premium payable on brings ahead of time was 6% p.a.
11	**Minimum Subscription.**	Under Section 39, an organization will not assign Securities except if the sum expressed in the outline as the base membership has been bought in and the whole paid.	Under Section 69, the prerequisite of least membership was to shares as it were.

So, above are in brief, the major differences between the two Companies' Acts. Let us now look at some of the advantages of the new Act, which had been made in 2013.

ADVANTAGES OF THE COMPANIES' ACT, 2013

1. A uniformity, in terms of auditing, had been introduced, while discussing the financial years of companies.
2. Sufficient and separate representation of small shareholders in the company had been introduced through this.
3. The representation and directorship of women in the companies had been introduced through this Act.
4. Concepts of corporate social responsibilities and also, taking care of the environment and the community had also been introduced.
5. People could now form a company alone. That is the sole propriety of a company had been given statutory recognition, through the introduction of the concept of 'one-person companies'.
6. The malpractices of the auditors were controlled through this.
7. Incorporation of a separate Tribunal to address corporate disputes.
8. Incorporation of a separate Financial Reporting Authority.
9. Mergers and acquisitions were made easier and faster.
10. Now, governance of the companies was transferred in the hands of the companies themselves, rather than the State.

These are a few major advantages of the Companies Act of 2013. Let us now have a look at some of the disadvantages.

DISADVANTAGES OF THE COMPANIES' ACT, 2013

1. The first and foremost disadvantage of the Companies Act, 2013 is the unlimited power given to the investigating authorities while conducting searches and seizures, even without a search warrant issued from a Magistrate. This indeed may lead to a misuse of power.
2. Giving the liquidators the adjudicatory powers may also be a bit detrimental towards the companies, as the same may again be misused.

3. Electronic copies of all the documents, although very helpful, may lead to additional costs and make the company prone to hackers, with the help of ransomware.

Thus, we may see that the Companies Act, 2013 has more advantages, than disadvantages, when looked at in detail. Let us now try to understand the impact of this act on the working environment in India.

IMPACT OF ACT ON BUSINESS ENVIRONMENT IN INDIA

1. The first and foremost impact of the Companies Act, 2013 is that it had been instrumental in stabilizing the economy, by the way of promoting mergers and acquisitions. It is really interesting to see how, by simply revolutionizing the realm of mergers and acquisitions, the legislation had succeeded in stabilizing the economy and had also promoted foreign collaboration, as well.

2. The next most significant impact of the Companies Act, 2013 was to digitize the whole documents and records, about the business of the various companies. This indeed turned out to be an instrumental measure in terms of maintaining data transparency and also, privacy.

3. The next most significant impact of the Act was to create a business environment, where transparency and data privacy was given the utmost importance, by the maintenance of digital records. This indeed served as a very useful measure, as now the shareholders were able to access the various records and documents of the companies in which they had invested, only by sitting at the comforts of their homes.

4. The next most significant impact was creating an awareness of 'Corporate Social Responsibility' and mandating the same. Companies are using the funds of the public. Thus, besides providing them with the desired goods and services, it is extremely necessary that they contribute something towards the community, to ensure that the society too benefits from their incorporation.

5. A very important impact that the Act made was to introduce the concept of compulsorily having women directors in certain companies. This indeed promoted the ends of gender justice to some extent in the Indian business environment.

6. The incorporation of the concept of 'one-person companies' was indeed very instrumental in reducing the complexities associated with formulating a company in India. Thus, it must be understood that by allowing this, many start-ups and other small ventures had benefitted.

7. It was also instrumental in introducing the concepts of corporate governance into the Indian business environment, by the virtue of creating the National Company Law Tribunals, National Financial Reporting Authority, etc.

8. Lastly and not least, it was very helpful in introducing the concepts of democratic socialism, though at a mild level, which is the governing philosophy of the Indian system of governance.

CONCLUSION

Thus, we saw how the three Acts had affected the Indian business environment and were instrumental in transforming the economy of India. It must be understood that the contexts of formulating all the three legislations were different and sometimes even their areas of action were different. Thus, comparing them with each other would turn out to be a futile exercise. However, we may say that studying all of them together, as we did through this paper while analyzing the Indian business environment would always be the best approach and turn out to be fruitful for the researcher. In the end, it is hence proved that the three legislations did help to shape the economy and the business environment and also influenced them tremendously. They came with their limitations, but, that again is highly contextual.

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