2.1 Competition Act 2002 (With Back Ground of MRTP)

MRTP Act 1969 (Monopolies Restrictive Trade Practices Act)

It is an important piece of economic legislation designed to ensure that operations of economic system do not result in concentration of economic power to the common detriment. The act was promulgated on patterns of Nehruvian-Mahalanobis model for establishing socialistic society. It came into force June 1 1970, and amended in 1974, 1980, 1982, 1984 and 1991.

Objectives of MRTP

- It’s objective is to keep a check on monopolistic trade, unfair trade and restrictive trade practices.
- To safe guard interests of consumer from various malicious trade practices.

Monopolistic trade practices (MPT)

Maintaining the prices of or the charges of the services at unreasonable level by limiting, reducing, or otherwise controlling production or the supply. Unreasonably preventing or lessening competition in the production, supply or distribution of any goods or services.

To maximize the profit firms involve in controlling flow of goods and services and increasing prices. The reasons is monopoly. The dominant produce, raises the prices. In order to bring balanced economic growth, it is necessary to bring such kind of practices in control.

Tests determining trade practice is MTP or not

- Unreasonable prices of goods or services.
- Limiting technical development.
- Preventing competition from market.
- Allowing quality of goods deteriorate.
- Unreasonable increase in selling price of the product.
- Adoption of practices to restrict flow of after sales services in market

Regulations of MPT

- Regulation of production, fixing term of sale.
- Prohibiting action that restricts competition.
- Fixing standards for goods produced.

Restrictive trade practices (RTP)

In order to increase the influence market, traders indulge into trade practices which are restrictive in nature for competitors.

Following are the RTP’s which are described by sec. 33 of MRTP act.

- Refusal to deal with person or classes of person.
- Tie in sales or full line force selling.

- Exclusive dealing agreement.
- Collective price fixation
- Discriminatory dealings
- Re-sale price maintenance.
- Restriction on output.
- Price control.
- Controlling manufacturing process

Similarities in MPT & RTP

- Are deemed to be prejudicial to public interest.
- Both need inquiry by commission.
- Temporary injunction can be issued by the commission.
- Compensation awarded in both the cases to the party suffered.

Unfair trade practices

It refer to any trade practices which lead to exploitation of consumer by trader.

Any trade practice referred under clause 1 of section 5 of MRTP act.

- Misleading advertisements
- Advertisement of bargain price or switch selling
- Offering pseudo gifts
- Offering unsafe or hazardous gifts
- Hoarding or destroying of goods.

Consumer protection

- MRTP Commission set by government.
- Director –general of investigation and registration
- Central government
- Supreme court
- Competition commission of India
- Consumer Forum
    - District Forum- claims does not exceed rupees twenty lakhs.
    - State Commission- claims exceeds rupees twenty lakhs but does not exceed rupees one crore

- National Commission- claims exceeds rupees one Crore

Consumer Protection Act 1986 (COPRA)

A trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice"

Consumer Protection act, 1986 seeks to provide for better protection of the interests of consumers and for the purpose, to make provision for the establishment of Consumer councils and other authorities for the settlement of consumer disputes and for matter connected therewith

Aims of CPT, 1986

a) the right to be protected against marketing of goods which are hazardous to life and property;

b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;

d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;

e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

f) right to consumer education.

Complainant" means-

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act,1956 (1 of 1956) or under any other law for the time being in force; or

(iii) the Central Government or any State Government;

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

Complaint" means any allegation in writing made by a complainant that an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider. The goods bought by him or agreed to be bought by him suffer from one or more defects.

Competition Act 2002,

An Act to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto. The Monopolies and Restrictive Trade Practices Act, 1969 [MRTP Act] repealed and is replaced by the Competition Act, 2002, with effect from 01st September, 2009 [Notification Dated 28th August, 2009].

2.2 FEMA Act (with background of FERA)

Foreign Exchange

"Foreign exchange is the system or process of converting one national currency into another, and of transferring money from one country to another."

Foreign currency

Foreign currency means any currency other than Indian currency.

Foreign security

Foreign security means any security, in the form of shares, stocks, bonds, debentures or any other instrumental denominated or expressed in foreign currency and includes securities expressed in foreign currency but where redemption or any form of return such as interest or dividends is payable in Indian currency.

Inception of Law

The 1973 law was created during the tenure of Prime Minister Indira Gandhi with the goal of conserving India's foreign exchange resources. The country was facing a trade deficit, which was followed by a devaluation of the currency and an increase in the price of imported oil. The act specified which foreign exchange transactions were permitted, including those between Indian residents and non-residents.

Introduction to FERA (Foreign Exchange Regulation Act)

The FERA (Foreign Exchange Regulation Act) deals with laws which relate to foreign exchange in India. The laws were made to manage foreign investments in India. The FERA has its origin at the time of Indian Independence. In the beginning, it was a temporary arrangement to control the flow of foreign exchange. In 1957 the act was made permanent. As the industrialization grew in India, there was an increase in the foreign exchange investments. As a result, there arose a need to protect it.

Accordingly, in 1973 the Foreign Exchange Regulation Act was amended. FERA consists of 81 complex sections. Under FERA, any offence was a criminal one which included imprisonment as per code of criminal procedure, 1973.

Objectives of FERA

- To prevent the outflow of Indian currency
- To regulate dealings in foreign exchange and securities
- To regulate the transaction indirectly affecting foreign exchange
- To regulate import and export of currency and bullion
- To regulate employment of foreign nationals
- To regulate foreign companies
- To regulate acquisition, holding etc of immovable property in India by non-residents
- To regulate certain payments .
- To regulate dealings in foreign exchange and securities.

- To regulate the transactions indirectly affecting foreign exchange.

Provisions of FERA

- Regulation of dealing in foreign exchange.
- Restrictions on payments.
- Restrictions regarding assets held by non-residents and import & export of certain currency & bullion.
- Duty on persons entitled to receive foreign exchange and payment for exported goods.
- Restriction on appointment of certain persons and companies as agents or technical or management advisers in India
- Restriction on establishment of place of business in India
- Prior permission of Reserve Bank required for taking up employment in India by nationals of foreign state
- Restrictions on immovable property

Amendment in the Act

Government proposed to introduce comprehensive amendments in FERA due to changes in economic policy, especially liberalization of industrial sector and most to open up the economy through changes in trade policy and encouragement of foreign investment. As a result, the required changes were announced in budget speech of 1992-1993. The changes so introduced by issue of notification by RBI or Central Government.

The important changes are :

1. Power of central government to direct payment in foreign currency in certain cases.
2. Export & transfer of securities.
3. Custody of securities by a depository or any other person.
4. Restrictions on the holding of immovable property outside India.
5. Restriction on persons resident in India associating themselves with or participating in concerns outsides India.
6. Regulation on booking passages outside India & restriction on foreign travel.

Transition from FERA to FEMA

- The main objective of FERA framed against the background of severe foreign exchange problem and controlled economic regime, was conservation and proper utilisation of the foreign exchange resources of the country.
- FERA created flourishing black market in foreign exchange. It brought into the economic lexicon the word “HAWALA”.
- There was a demand for a substantial modification of FERA in the light of ongoing Economic liberalization and improving foreign exchange reserves position. Accordingly, a new act, FEMA (Foreign Exchange Management Act) 1999 replaced the FERA.

Requirement of FEMA

The demand for new legislation was basically on two main counts

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

FEMA Replaced FERA

The older version had very strict laws (for example, a person was assumed guilty unless proven otherwise.) All the unnecessary restrictions were removed. The rules regarding foreign investments were simplified to encourage more foreign investment in India and consequently ensure better foreign cash flow. However, FERA was not in accordance with the pro-liberalization policies of the Indian Government. Finally, in 1999 the FEMA was passed which replaced the FERA, though certain provisions of FERA 1973 still exist under FEMA 1999.

FEMA came into effect from 1st June, 2000. Some structural changes were made. The FEMA combines and improves the laws relating to foreign exchange It makes the procedure for foreign investment easy and consequently encourages foreign exchange in India. Under FEMA, violation of foreign exchange rules has ceased to be a criminal offence and would now be treated as a civil offence and the ***Enforcement Directorate*** would no longer have the power to arrest persons for such offences. Extreme cases of money laundering, drug trafficking and gun running would now be dealt with under the proposed new legislation aimed at curbing money laundering.

FEMA 1999 (Foreign Exchange Management Act)

In the Lok Sabha on ***August 4th,1998***. the bill was referred to parliamentary standing committee. After incorporating creation modifications and suggestions of the standing committee, the central government introduced the foreign exchange management bill 1999.the bill was finally passed by Lok Sabha on ***December 2nd 1999***. The act may be called the foreign exchange management act 1999. The FEMA came into force on June 1st 2000. However the cases under FERA can be initiated within 2 years from repeal of FERA i.e. up to may 31st 2002.

Reasons behind replacing FERA

1. FERA was not suitable for liberalization policy. Though certain amendments were made in 1993 but they were not sufficient.
2. after 1993, many important changes took place. Foreign exchange reserve also increased
3. The provisions of FERA were not favourable for these changes.
4. The objective of FERA was to conserve foreign exchange resources which badly affected the comfortable foreign exchange reserves. So the FEMA came into existence.

Objective of the FEMA

- To facilitate the external trade and payment
- To promote of an orderly maintenance of the foreign exchange market In India.
- Regulation of foreign capital in India.
- To remove imbalance of payment.
- To make strong and developed foreign exchange market.
- Regulation of employment business and investment of non-residents .
- To regulate foreign payments.
- The new law is more transparent in its application. it has laid down the areas where special permission of the reserve bank/government of India is required.

Salient Features of the Act

- Full freedom to a person resident in India to hold or transfer any foreign securities or immovable property situated outside India.
- A person resident outside India is also permitted to hold shares, securities and property acquired by him while he was resident in India.
- The EEFC account holders and RFC account holders are permitted to freely use the funds held in EEFC\RFC accounts for payment of all permissible current account transactions .
- The limit for permitting overdraft against NRI accounts balance has been raised from 20,000 to 50,000.

Major Amendments of FEMA

- Automatic approval for external commercial borrowings.
- Amendment relating to inbound Investments.
- Amendment relating to Outbound Investments.

Similarities between FERA and FEMA

- The RBI 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.
- The Directorate of Enforcement continues to be the agency for enforcement of the provisions of the law such as conducting search and seizure.

Difference between FEMA and FERA

BASIS FOR COMPARISON	FERA	FEMA
Meaning	An act promulgated, to regulate payments and foreign exchange in India, is FERA.	FEMA an act initiated to facilitate external trade and payments and to promote orderly management of the forex market in the country.
Enactment	Old	New
Number of sections	81	49
Introduced when	Foreign exchange reserves were low.	Foreign exchange position was satisfactory.
Approach towards forex transactions	Rigid	Flexible
Basis for determining residential status	Citizenship	More than 6 months stay in India
Violation	Criminal offence	Civil offence
Punishment for contravention	Imprisonment	Fine or imprisonment (if fine not paid in the stipulated time)

To Whom Act is Applicable?

- The FEMA, is applicable-
  - To the whole of India.
  - Any Branch, office and agency, which is situated outside India, but is owned or controlled by a person resident in India.
- Broadly speaking FEMA, covers, three different types of categories, and deals differently with them. These categories are:
  - Person

- Person Resident In India
- Person Resident Outside India

Provisions in Section 3

- Prohibits dealings in foreign exchange except through an authorized person
- Make any payment to or for the credit of any person resident outside India in any manner
- Receive otherwise through an authorized person, any payment by order or on behalf of any person resident outside India in any manner
- Enter into any financial transaction in India for acquisition or creation or transfer of a right to acquire, any asset outside India by any person

Section 4 –

- Restrains any person resident in India from acquiring, holding, owning, possessing or transferring any foreign exchange, foreign security or any immovable property situated outside India except as specifically provided in the Act.

Section 5 – deals with current account transaction

- Any person may sell or draw foreign exchange to or from an authorized person if such sale or drawl is a current account transaction

Section 6 - deals with capital account transactions.

This section allows a person to draw or sell foreign exchange from or to an authorized person for a capital account transaction.

2.3 Securities and Exchange Board of India Act, 1992 [As amended by the Securities Laws (Amendment) Act, 2014]

SEBI (1992)

An Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market and for matters connected there with or incidental there to.

Reasons for establishing SEBI

With the growth in the dealings of stock markets, lot of malpractices also started in stock markets such as price rigging, 'unofficial premium on new issue, and delay in delivery of shares, violation of rules and regulations of stock exchange and listing requirements.

Due to these malpractices the customers started losing confidence and faith in the stock exchange. So government of India decided to set up an agency or regulatory body known as Securities Exchange Board of India (SEBI).

Short title, extent and commencement

- This Act may be called the Securities and Exchange Board of India Act, 1992.
- It extends to the whole of India.

- It shall be deemed to have come into force on the 30th day of January, 1992.

Definitions

(a) “Board” means the Securities and Exchange Board of India established under section 3;

(b) “Chairman” means the Chairman of the Board;

1 [(ba) “collective investment scheme” means any scheme or arrangement which satisfies the conditions specified in section 11AA;]

(c) “existing Securities and Exchange Board” means the Securities and Exchange Board of India constituted under the Resolution of the Government of India in the Department of Economic Affairs No. 1(44) SE/86, dated the 12th day of April, 1988;

(d) “Fund” means the Fund constituted under section 14;

(e) “member” means a member of the Board and includes the Chairman;

(f) “notification” means a notification published in the Official Gazette;

(g) “prescribed” means prescribed by rules made under this Act;

(h) “regulations” means the regulations made by the Board under this Act;

2[(ha) “Reserve Bank” means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);]

(i) “securities” has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956).

3[(2) Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 (42 of 1956) 4[or the Depositories Act, 1996], shall have the meanings respectively assigned to them in that Act].

Powers and Functions of the Board

- Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.
- Promoting and regulating self-regulatory organisations;
- Prohibiting fraudulent and unfair trade practices relating to securities markets;
- Promoting investors’ education and training of intermediaries of securities markets;
- Prohibiting insider trading in securities;
- Regulating substantial acquisition of shares and takeover of companies;

History of SEBI

- SEBI was a non-statuary body, without any statuary power.
- In 1995, SEBI act was amended and powers were given to SEBI.
- In April 1998, SEBI was constituted as regulator of Capital market in India.

Functions of SEBI

- Regulatory Functions
- Development Functions

Regulatory Functions

- Regulation of stock exchange and self regulatory organizations.
- Registration and regulation of stock brokers, sub-brokers, Registrars to all issues, merchant bankers, underwriters, portfolio managers etc.
- Registration and regulation of the working of collective investment schemes including mutual funds.
- Prohibition of fraudulent and unfair trade practices relating to securities market.
- Prohibition of insider trading.
- Regulating substantial acquisition of shares and takeover of companies.

Developmental Functions

- Promoting investor's education.
- Training of intermediaries.
- Conducting research and publishing information useful to all market participants.
- Promotion of fair practices.
- Promotion of self-regulatory organizations.

The changing dimension of these laws and their impact on business

- FERA was replaced by FEMA, thus regulation of foreign currency became management of foreign currency.
- The rigidity involved in managing foreign exchange has lead towards maintenance of less personal stash for foreign currency.
- Companies are more careful in producing and providing services to the customers with consumer protection act in existence.
- With SEBI act the investors are safeguarded. The incidents of financial frauds have decreased over the time. Trust of investor increased.

Stock Exchange

*"The stock Market is a wonderfully efficient mechanism for transferring wealth from impatient to patient"***. Warren Buffett**

The Securities Contracts (Regulations) Act, 1956 has defined Stock exchange as an association, organisation or body of individuals, whether incorporated or not, established for the purpose of assisting, regulating and controlling business in buying, selling and dealing in securities.

Organization of Stock Exchange

- There is no uniformity in the organisational pattern of various stock exchanges in India.
- Under the Securities Contracts (Regulation) Act, 1956, the Central Government is empowered to nominate a maximum of its three representatives on the governing board.
- In the day-to-day management, the governing board is assisted by a number of subcommittees like listing committee, arbitration committee, defaulters committee admission committee, and share-examination committee.

Functions of Stock Exchanges

- Ready Market
- Mobilisation of Savings
- Evaluation of Securities
- Capital Formation
- Proper Canalization of Capital

Methods of Trading in Stock Exchange

- *Specialists*
- *Floor Brokers*
- *Stockbrokers/Financial Advisers*
- *Day Traders*
- *Casual Traders*
- *Online Trading*

Factors Affecting Stock Exchange

- Economic Factors
    - Inflation And Deflation
    - Interest Rates
    - Foreign Markets
- Market Factor
    - Demand AND SUPPLY
    - Market Cap
    - News
    - Earning/Price Ratio