Role and Importance Of MNCs
ROLE AND IMPORTANCE OF MNCs

An attempt is made in this chapter to discuss many arguments in relation to the presence of Multinational Corporations (MNCs) in developed and developing economies. The Modern Corporation is the big business enterprise in Corporate form\(^1\). The terms “transnational” and multinational corporations is associated in our minds with giant corporations of the developed countries\(^2\). The current tendency of Multi-National Companies (MNC’s) or Transnational Companies (TNC’s) to relocate geographically and setup production units in other areas of the world with cheaper labour more lenient health and safety requirements lower environmental protection standards and favourable tax laws in order to maximize profits.\(^3\) They are perhaps, like other human institutions: they can act in different ways to maximize profits or minimize risk, and some of those ways may or may not warm the heart of Adam Smith\(^4\).

The multinational phenomenon is not new, because certain companies have been in existence for more than a century. Many of these were able to survive wars, economic crises and technological changes. Others were nationalized, partially or totally, or absorbed by more successful firms. Infact, their behavior has been guided by a number of principles or objectives, which were apparent throughout their history – Survival, profit and growth\(^5\).

It is note that the MNCs are simply the agents of exploitation; they also act as agents of development. By establishing manufacturing plants, providing production, managerial, technical, organizational and marketing skills, and by harnessing their resources, the MNCs have helped in augmenting the GNP of

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2. A. Vaidyanathan *India’s Economic Reforms and Development* 2003 p. 90.
Singapore, Hongkong, Taiwan, and Canada\textsuperscript{6}. They overwhelmingly dominate not only global investment but also international production, trade, finance and technology\textsuperscript{7}.

Tens of Thousands of MNCs/TNCs with numerous subsidiaries conduct business around the world. The drastic political changes in the erstwhile communist and socialist countries and the economic liberalization across the world have enormously expanded the opportunities for the proliferation and growth of the MNCs\textsuperscript{8}. The basic objective of the TNC is to maximize global profits\textsuperscript{9}. Such firms expand overseas primarily through Foreign Direct Investment (FDI), whose purpose is to achieve partial or complete control over marketing production, or other facilities in another economy; Such investments may be in services, manufacturing or commodities. FDI can entail either the purchase of existing business or the building of new facilities (called “Greenfield” investment). Overseas expansion is frequently accompanied by mergers, takeovers, or intercorporate alliances with firms of other nationalities. Whereas the purpose of portfolio investment is to obtain a financial return on the investment, FDI, as well as alliances mergers, and similar ventures, are usually part of an international corporate strategy to establish a permanent position in another economy\textsuperscript{10}.

Multinational Corporations (MNCs) in advanced industrial countries with a free enterprise system have been operating on the basis of mutual infiltration or interpenetration\textsuperscript{11}. “In the case of underdeveloped countries, there is widespread apprehension about the dangerous implications of the amalgam of the power economics of the multinational corporations and power politics\textsuperscript{12}. The long term primary interest is nothing but the maximization of profits for “home” through the subsidiaries, whose innovations are also used not for the host countries, but

\textsuperscript{7} Ibid.
\textsuperscript{9} Devendra Thakur *Political Economy of the Third World Countries*, 1987 p. 116.
\textsuperscript{10} Robert Gilpin *Global Political Economy Understanding the International Economic Order* 2001, p. 278.
\textsuperscript{11} B.N. Ganguli *Multinational Corporations* 1974 p. 104.
\textsuperscript{12} Ibid at p. 105.
‘home’. Such is the tentacle of MNCs.\textsuperscript{13} The movement for international regulation of TNCs arose from the inability of individual countries, particularly the developing ones, to control the activities of the corporations within their territories.\textsuperscript{14}

The globalization process has led to a configuration of the ways in which TNCs pursue their resource seeking, market seeking and efficiency seeking objectives. Globalization policies of firm require following complex integration strategies under which firm split up the production process into various specific activities or segments of these activities with each of them carried out by subsidiaries in locations best suited to the particular activity. This process creates an international intra-form division of labour and a growing integration of international production networks.\textsuperscript{15} But on the whole Transnational Corporations are a phenomenon of the twentieth century and to a large extent only of the second half of the twentieth century.\textsuperscript{16} Today, the dominance of American Transnational Corporations are decreasing, while the significance of European and Japanese Corporations are increasing.

### 2.1 WHAT IS MULTINATIONAL CORPORATION?

There is no agreed definition of the multinational enterprise\textsuperscript{17} and there is a difference of opinion over the definition of “multinational”, “transnational” and “international corporation”. It has various names like “direct investment”, “international business”, “international firm”, “international corporate group”, “the multinational corporation”, the “multinational enterprise”, “the multinational family group”, “worldwide enterprise” and so on\textsuperscript{18}.

\begin{itemize}
  \item \textsuperscript{13} V.B. Singh, \textit{Multinational Corporations and India} P. 1979 p. 55.
  \item \textsuperscript{14} Kwamena Acquaah \textit{International Regulation of Transnational Corporations: The New Reality}, 1986 p. 38
  \item \textsuperscript{16} Luzius Wildhaber \textit{Some Aspects of the Transnational Corporations in International Law} 37 Neth. Int’l L. Rev. 80 (1980).
  \item \textsuperscript{17} \textit{Multinational Enterprise and Social Policy} 1973 at p. 3.
\end{itemize}
A Multinational Corporation/Company is an organization doing business in more than one country. “In other words it is an organization or enterprise carrying on business in not only the country where it is registered but also in several other countries. It may also be termed as international corporation, global giant and transnational corporation.”

According to the United Nations a Multinational Corporation is, “an enterprise which owns or controls production or service facilities outside the country in which it is based”. In the words of W.H. Moreland, “Multinational Corporations or Companies are those enterprise whose management, ownership and controls are spread in more than one foreign country”. Thus a multinational company carries on business operations in two or more countries. Its headquarters are located in one country (home country) but its activities are spread over in other countries (host countries). MNC’s may engage in various activities like exporting, importing, manufacturing in different countries. It may also lend its patents, licenses and managerial services to firms in host countries.

A Multinational Corporation is a firm that conducts parts of its business across national boundaries. Some find it’s determining characteristic in the organization of its activities that is the extent to which its operations in different countries are actually co-ordinate by a corporate centre, or the degree of “global outlook” to be found in the enterprise’s decision making. Others use us criteria the number and type of its subsidiaries, the number of countries in which these subsidiaries operate, and the proportion of foreign sales, assets and employment in the enterprise’s total sales, assets and employment. Still others look to the nationality mix of its management or to its ownership characteristics. But

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19 www.preservearticles.com
20 Ibid.
21 Ibid.
22 Ibid.
24 Even the designation “Multinational” is not accepted by all other terms in use include “international enterprise” and “transnational corporation”. Some authors have sought to ascribe technical significance to their choice of terminology. Such nuances of meaning may serve to differentiate among multinational firms for particular analytical objectives, but the economic and social consequences of multinationals. See Supra Note 17.
essentially all MNCs keep their headquarters in one country and build factories, manufacture, and sell their products simultaneously in different countries.\textsuperscript{25}

Transnational Corporations (TNCs) are incorporated or unincorporated enterprises comprising parent enterprises\textsuperscript{26} and their foreign affiliates.\textsuperscript{27} According to the World Investment Report 1999, a subsidiary enterprise, associate enterprise and branches are foreign affiliates. A subsidiary is an incorporated enterprise in the host country in which another entity directly owns more than a half of the shareholder voting power and has the right to appoint or remove a majority of the members of the administrative, management or supervisory body. An associate is an incorporated enterprise in the host country in which an investor owns a total of at least 10 percent, but not more than a half, of the shareholders’ voting power. A branch is a wholly or jointly owned unincorporated enterprise in the host country which is one of the following: i) A permanent establishment or office of the foreign investor; ii) An unincorporated partnership or joint venture between the foreign investor and one or more third parties; iii) land, structures (except structures owned by government entities) and/or immovable equipment and objects directly owned by a foreign resident; iv) mobile equipment (such as ships, aircraft, gas or oil-drilling rigs) operating within a country other than that of the foreign investor for at least one year.\textsuperscript{28}

A Multinational Corporation (MNC) is a company, firm, enterprise with its headquarters in a developed country such as the United States, Britain, West Germany, Japan, etc., and also operates in other countries, both developed and developing. They are spread not only in the LDCs of Asia, Africa, and Latin America, but also on the continents of Europe, Australia, Newzeland, and South America. They are engaged in mining, tea, rubber, coffee, and coco plantations,


\textsuperscript{26} A Parent enterprise is defined as an enterprise that controls assets of other entities in countries other capital stake than its home country, usually by owning a certain equity capital stake.

\textsuperscript{27} A foreign affiliate is an incorporated or unincorporated enterprise in which an investor, who is resident in another economy, owns a stake that permits a lasting interest in the management of that enterprise.

\textsuperscript{28} \textit{Supra Note} 8 at p. 314.
oil extraction, and refining, manufacturing for home production and exports, etc. Their operations also include such services as banking, insurance, shipping, hotels and so on. Thus, “like animals in the zoo, MNCs come in various shapes and sizes perform distinctive functions differently and their individual impact on the environment.”

Some of the Criteria often used to define the MNC are given below:

- **Definition by size:** The term MNC implies bigness. But bigness also has a number of dimensions. Such factors as market value, sales, profits, and return on equity when used to identify the large multinationals, will yield varying results. It should however be noted that the extent of internationalization need not depend on the size. Many small firms are, indeed, much more global than larger ones. However firms certain size is normally excluded from the definition of multinational.

- **Definition by Structure:** According to Aharoni, an MNC has at least three significant dimensions, performance, and behavioral. Structural requirements for definition as an MNC include the number of countries in which the firm does business and the citizenship of corporate owners and top managers.

- **Definition by Performance:** Definition by Performance depends on such characteristics as earnings, sales, and assets. These performance characteristics indicate the extent of the commitment of corporate resources to foreign operations and the amount of rewards from that commitment.

- **Definition by Behaviour:** This is somewhat an abstract as a measure of multinationalization and it refers mostly to the behavior characteristics of top management. Globalization, basically, is a mind-set that reflects the global orientation of the company.

The U.S Senate Finance Committee defines them for its purposes in very broad terms that over most international firms; “All firms – industrial, service and

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29 Supra Note 6 at pp. 492 - 483.
32 Supra note 30 p. 18.
financial – doing international business of all types, within a Myraid of organizational structures.” The U.S. Department of Commerce, in its study entitled The Multinational Corporation: Studies on U.S. Foreign Investment States: “There is no agreed definition of what constitutes a Multinational Corporation (MNC). Some authorities define it as a company whose foreign sales have reached a ratio of, say, 25% (or some other share) of total sales. Some find the definition in organization, i.e., a company that has global product divisions rather than an international division. Other looks to the distribution of ownership or to the nationality mix of managers or directors as the determining characteristics. Professor Raymond Vernon of Harvard University, an outstanding authority on the Multinational Corporation, regards it as though there were no national boundary, on the basis of a common strategy directed from a corporate center. According to Vernon affiliates are locked together in an integrated process and their policies are determined by the corporate center in terms of decisions relating to production, plant location, product mix, marketing, financing, etc. Mr. Jacques Maisonrouge, President of IBM World Trade Corporation, characterizes the Multinational Corporation as one that: a) Operates in many countries; b) Carries out research, development and manufacturing in those countries; c) has a multinational management; and d) has multinational stock ownership.”

A Multinational Corporation (MNC) or Transnational Corporation (TNC) also called Multinational Enterprise (MNE) is a corporation or enterprise that manages production or delivers services in more than one country. It means any business corporation in which ownership, Management Production, and marketing extend over several national jurisdictions. It can also be referred as an International Corporation or International Enterprise or Global Corporation. Actually, for an enlarging business firm, multinational is beginning step, as it gradually becomes transnational and then turns into a global corporation for transnational corporation represents a stage wherein the ownership and control of the concerned organization crosses the national boundaries. The transnational

33 U.S. Congress, Senate Committee on Finance Implications of Multinational Firms for World Trade and Investment and for U.S. Trade and labor 93rd Congress 1st session, 1973, p. 83.
34 Supra Note 13 at pp. 1-2
corporation develops into a global corporation when it has capacity to allocate production across countries and the company can equalize the cost of capital across the nations to an extent. A global corporation aims at market maximization and profit – maximization rather than welfare maximization.36

By definition, these companies are large and multinational. Both these terms have large implications for these companies. Being large means that, these companies are not easy to compete against. Competing companies have to be almost equally large. Being large also means that these companies are able to spend a large amount on research and development (R & D) and keep their distance from their competitors, in terms of development of products.37

While Richard D. Robinson emphasizes concentration of powers and control of these firms by host country managers at the headquarters,38 Jacques Maisonrouge categorically pronounces management to be multinational. He puts four objective test for any firm to be classified as an MNC: (1) it should operate in more than one country; (2) should carry on research and manufacturing in those countries; (3) its management must be multinational; and (4) the stock ownership must be multinational.39

Both Raymond Vernon40 and J.N. Behrman, emphasize the control; and high degree of central coordination of various activities of MNCs in different

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37 Biplab Dasgupta *Globalisation: India’s Adjustment Experience* 2005 pp. 60-61.
38 In “Multinational Firms”, international interest and expertise are located throughout the firm, but top corporate managers are still home country nationals and initially lack international experience and expertise. There is nonetheless, an effort to make decisions less nationally biased. Associated foreign firms are increasingly managed by local managers, and a loss of control is experienced by headquarters, particularly if local equity participation is permitted As the firm grows locally, political pressures develop to compel greater control and hence subsidiary autonomy. But over time, with the growth of international competence in corporate headquarters the advantages policy is reversed. This reversal causes instability within the firm, either the firm becomes transnational or it is forced back to a decentralized system. Richard D. Robinson, *Beyond the Multinational Corporations* (Unpublished manuscript, 1973), p. 27 quoted in Mahander Kumar Saini *Politics of Multinationals: A pattern in Neo-colonialism* 1981, at p. 13.
40 Raymond Vernon defines “A multinational enterprise” as “…… a parent company that controls a large cluster of corporations of various nationalities. The corporations that make up each cluster appear to have access to a common pool of human and financial resources
countries. Behrman, while emphasizing the high degree of central coordination, says:

“The multinational enterprise is not acting like an agglomeration of domestic companies, loosely held by equity shares, but like a closely-controlled single enterprise, located in markets separated by national boundaries and operating under several national governments. Its essential feature is ‘unity in diversity’. 41

Although H.V. Perlmutter categorizes the multinational enterprise as ethnocentric (or home/country-oriented) polycentric (host-country-oriented) and geo-centric (world-oriented) yet he argues that firms having a geo-centric outlook with full integration of their global activities can truly be called multinationals 42. A few other various writers like Charles Kindle Berger and Sidney H. Rolfe prefer the term international corporation in place of Multinational Corporation. While Kindle Berger argues that an international corporation is one which owes equal loyalty to all countries of its operation, 43 some others have preferred the words ‘transnational’, “super national” and “global” to the “multinational”. However, these terms are generally used interchangeably. The choice of the United Nations Economic and Social Council has fallen on the term “transnational”. In view of

this, a United Nations Transnational Commission has been set up to study the various ramifications of Multinational Corporations. A meeting of the United Nations Commission on transnational companies could not agree on a definition of Multinational Corporation. However, “The Soviet Union and some Third World Countries resisted Western arguments that the definition should include state enterprises and foreign investments.” Raymond Vernon, who in his search for a definition of MNCs put the test of size, profitability, research and development, and advertising on 187 of Fortune’s list of 500 U.S. Industrial giants, concludes that “they portray a group of enterprises of extraordinary size and high profitability,” committed to activities that involve the relatively heavy use of skilled manpower and of advertising outlays – in short, a group of enterprises hearing the characteristics usually associated with oligopoly.”

Thus, many different attempts have been made to arrive at a concise definition of multinational enterprise. One of the principal reasons for the variety of definitions stems from different weightings attributed to the characteristics of companies which operate internationally. It is essential that a definition of transnational corporations be chosen that is both comprehensive and eclectic – the more so the better.

Interestingly, the key element of transnational corporations was present when the British East India Company and Dutch East India Company were operating in different countries than the ones where they had their headquarters. Nowadays many corporations have offices, branches or manufacturing plants in different countries than where their original and main headquarters is located. This is the very definition of a transnational corporation having multiple operation points that all respond to one headquarter. A multinational firm, per se, can be defined as a firm whose ownership is scattered in more than one Country. Products/services are generated/served in more than one country. Finances – both

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45 Neil Hood and Stephen Young *The Economics of Multinational Enterprise*, 1979 at p. 2.
46 Supra Note 16.
investment and cash – are integrated for use effectively and efficiently over a number of countries.

In India, the Foreign Exchange Regulation Act, 13 (FERA) provides a specific definition of Multinational Corporation as follows: “A corporation incorporated in a foreign country or territory shall be deemed to be multinational corporation if such corporation: (a) is a subsidiary or a branch or has place of business in two or more countries or territories, (b) carries on business or otherwise operations in two or more countries or territories.”

It is interesting to note that the Soviet Union has argued that state owned enterprises should not come within purview of the definition. The test of 1) Ownership and 2) area of operation should be applied to define multinational corporations. Any Business Organization could be called a Multinational Corporation if it were privately owned, covered research, production and sale under one roof and used the trade – name or mark all over its area of operation and its operations extend to two or more countries.

A careful examination of these concepts and definitions will facilitate an understanding of the meaning and dimensions of MNCs. The above discussion clearly shows that a firm with several of operations in different countries is a Multinational Enterprise. These operations outside the company’s home country may be linked to the parent by merger, operated as subsidiaries, or have considerable autonomy.

2.2 HISTORICAL BACKGROUND OF MNCs

The multinational company is not the modern invention. From earliest history – we gave only to think of the Phoenicians 2500 years BC or the Venetians from the tenth century through the Renaissance – merchants have traded on an
international basis. The same is true of bankers, Churches too, spread outside of their home territory.51

The first known use of the term “Multinational Corporation” by David Lilienthal at a conference held at Carnegie Mellon University in 1960.52 They engaged in international transactions are not a new phenomenon.53 This fact, of course, has no bearing on the age of the MNC, an entity whose existence dates back at least several centuries.54

The antecedents of Multinational Corporations (MNCs) can be traced to the age-old commercial intercourse which grew up at a fairly early stage of human civilization.55 From the earliest times, international business has been fraught with problems including wars, civil strife, piracy, economic upheavals and cultural barriers. Despite this, there has never been any doubt of man’s desire – even imperative – to trade across international borders; equally there is no doubt that the profit motive has been principal driving force in encouraging the growth of international business in the face of some substantial disincentives.56

The genesis of MNCs lies in transnational trading in early days conducted by the Greek, Phoenician and Mesopotamian merchants. After the fall of the Roman Empire, trade between nations becomes difficult. When Europe and the Middle East steeped in feudalism resulting in wars between feudal lords and church prohibited trade with Muslim States. Later on, merchants/traders of Italy established trade who were considered the forerunners of the multinational firms. The cities of Genoa, Venice, Florence and Pica became the supply depots of traders. Active transnational operations flourished with the development of banks and money lending agencies.57

51 Supra Note 5 at p. 7.
53 Supra Note 9 at p. 113.
54 John H. Dunning Changes in the Level and Structure of International Production: The last One Hundred Years, In Mark Casson “Growth of International Business”, 1983, p. 84.
55 Om Prakash International and General Economics. at p. 105.
57 Supra Note. 31 at pp. 406-407.
Indeed, a number of classical scholars and economic and business historians trace the origin of MNCs to more than 2000 years ago. According to Karl Moore and David Lewis, “the business operated by the ancient Assyrian colonists [in the second millennium B.C] constituted the first genuine Multinational Enterprises in recorded history.”\(^{58}\) From the 13\(^{\text{th}}\) to the 16\(^{\text{th}}\) centuries, many European businesses involved in such diverse sectors as banking, mining and manufacturing had investments and operations across political borders and conceivably could be categorized as transnational or multinational.\(^{59}\)

In one sense, the origin of private international business enterprise in an organized form dates back to the early fifteenth-sixteenth centuries when European business companies started moving out to various parts of the globe. For example, the British East India Company (1599-1858), an organization of London merchants, was created with a view to trading with East Indies and was granted monopoly rights of this trade by a charter from the Queen in the year 1600. The Hudson’s Bay Company and the Royal African Company were also created in the same way by British merchants with the objective of trading with America and Africa respectively. These were the predecessors of the modern Multinational Corporations (MNCs).\(^{60}\)

In one sense, the Dutch East India Company, the Massachusetts Bay Company, and other companies of merchant-adventures were forerunners of today’s MNCs like IBM, Sony, and Daimler-Chrysler. The actual forerunners of today’s TNCs did not begin to develop until the end of the 19\(^{\text{th}}\) century\(^{61}\). What distinguishes the contemporary TNC from its forerunners is not only its size and the scope of its operations but also its structure, organisation and its view of the

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\(^{59}\) Yitzhak Hadari \textit{The Structure of the Private Multinational Enterprise}, 71 Mich. L. Rev., 729, 735 (1973); Mark B. Baker, Private codes of Corporate Conduct: Should the Fox Guard the Henhouse? 24 U. Miami Inter.Am. L. Rev.399, 401 (1993); Kwamena Acquaah “International Regulation of Transnational Corporations: The New Reality” 45 (1986) (some intellectual archaeologists have traced the origins of TNCs to the fifteenth century Fuggers merchant family which was based in Augsburg (Germany) and operated various economic activities throughout Europe”

\(^{60}\) \textit{Supra Note} 50 at p. 8.

\(^{61}\) \textit{Supra Note} 9 at p. 113.
world economy and its role in the development of that economy.\(^{62}\) In its contemporary form, the MNC is truly a product of the twentieth century. Its evolution has been variously described, often by its role.\(^{63}\)

- The emergence of the multinational private corporation as a powerful agent of world social and economic change has been a signal development of the postwar era.\(^{64}\)
- The multinational corporation has become well recognized as a key feature of the changing international business pattern.\(^{65}\)
- Multinational did not grow in a vacuum. They flourished because, after World War II, the major developed countries led by the U.S., established a framework for the world economy that encouraged the free flow of goods and private capital between countries on market principles.\(^{66}\)
- In most cases it can be taken for granted that a multinational corporation is a change agent in its country of origin. If it is also a change agent in another country, the corporation actually becomes a medium of intercultural interaction – in effect, an exchange agent.\(^{67}\)
- Today’s multinational enterprise is a logical outgrowth of widening markets overseas, improved managerial techniques and postwar cooperation.\(^{68}\)
- A potent agent of economic transformation and development, not only in the more larger “developed” countries, but also in the developing countries of the world.\(^{69}\)

\(^{62}\) Supra Note 9 at p. 114.


The earlier transnational firms, however, were far more powerful than contemporary MNCs are; they commanded armies and fleets, had their own foreign policies, and controlled vast expanses of territory: the sub-Asian continent (India, Pakistan, and Bangladesh), the East Indies (Indonesia), and South Africa. Modern MNCs are much more modest. Another major difference between those early transnational firms and today’s is that the former were principally interested in agricultural products and extractive industries in particular regions of the world, whereas major firms in the early twenty-first century are principally involved in manufacturing, retailing, and services, tend to operate on a regional or worldwide basis, and usually pursue an international corporate strategy. It is particularly significant that, whereas the earlier firms frequently exploited and subjugated native peoples, today’s MNCs, with some exception are important sources of the capital and technology required for economic development of the less developed economies.70

Some scholars, however, reject any notion of the existence of the MNC in earlier epochs. One Commander encapsulates the criticisms thus:

[M]ultinationals . . . have been traced back two thousand years by classical scholars. This is accurate in the sense that certain trading groups were transnational. It is anachronistic in that nation-states did not exist at the time, thus giving a different meaning to multinational. If we add the word “Corporation”, we again must realize that it is a legal term given precise meaning only recently. In any case, modern Multinational Corporations can be discerned emerging in the seventeenth century and flourishing, for example, in the shape of the Dutch and British East India Companies71’.

Still other scholar situate the emergence of the MNCs in the second half of the 19th century. One legal scholar notes: “Although business enterprises

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71 Bruce Mazlish A Tour of Globalization, 7 Ind.J. Global Legal Studies., 5, 11, (1999); see further, Sigmund Timberg, The Corporation as a Technique of International Administration 19 U. Chi. L. Rev. 739, (1952).
probably have had some type of foreign operations since the Middle Ages, Multinational Corporations as we know them did not appear until the mid-nineteenth century, when advances in technology, manufacturing, and management processes made possible the international division of a firm’s production. However, the earlier private companies of the eighteenth and nineteenth century were puny institutions by comparison.

The development of European and Japanese multinationals began at the beginning of the seventies and produced a significant increase in the number of home countries of multinationals. The new multinationals were mainly Japanese and European, but they also originated in developing countries like Brazil, Mexico, India, Hong Kong, Singapore and South Korea, as well as in Eastern European countries. Today, therefore, the multinational phenomenon is becoming worldwide.

Regardless of the precise history and evolution of the MNCs, some inescapable facts draw apt attention. One is that the modern MNCs differ in many significant respects from their precursors, particularly in terms of their size, reach and sophistication of operations. Secondly, MNCs were not significant features in the global marketplace or political landscape until fairly recently – perhaps as recently as after World War II.

2.3 DEVELOPMENT OF MNCs INTO NEW MARKETS

During the post-war years, the economic and political elites of the industrialized countries had eyes only for their own “economic miracle” that is, economic growth. The tremendous expansion of international trade in the past centuries has provided an unparalleled growth opportunity for multinational firms, and their activities have, in turn, stimulated trade expansion. Further, a

73 Eugene V. Rostow To Whom and for what Ends is Corporate Management Responsible? in Edwards S. Mason The Corporation in Modern Society 1960 p. 50.
74 Supra Note 5 at p. 10.
76 Supra Note 17 at p. 18.
corporation rarely becomes multinational overnight. While the process can be rapid if aided, for example, by merger and take-over of production facilities, it is more commonly the results of longer-term business planning. Other forms of international trading play their part in the formation of an MNE and frequently continue to play an important role thereafter.\textsuperscript{77}

Colonialism implied building of Multinational Corporations (MNCs). East India Company was a predecessor of the modern MNCs. At the time of the emergence of East India Company a world market system and the faster means of communication had not developed. So trade was more or less binational. The competition which grew as a result of lassiez-faire was also a different nature. Each colonial power tried to grab and kept as much exclusive colonial territory as possible to provide a safe market to its home industry\textsuperscript{78}. In a democratic, decentralized society the MNC owes its economic power to the state in the first place, but thereafter it can retain this power only through the goodwill of consumers who, by the daily selection of products they purchase, judge the usefulness of the MNC and put a value on the services it supplies. The survival of this goodwill depends entirely on profitable dealings with a clientele whose needs the MNC appreciates across national boundaries\textsuperscript{79}.

The growth in the number, size, and influence of TNCs has been a matter of international concern, particularly to developing countries, and their influence on the global economy is enormous for over last few decades. It was after the Second World War that multinationals have grown rapidly\textsuperscript{80}. It is even possible that to future generations the world wars of our time will seem to have been an incident in the rise of big-business society just as to many historians the Napoleonic wars has come to appear incidental to the industrial revolution. Even today, there are observers who interpret the conflict between the ideologies of

\textsuperscript{77} \textit{Supra Note} 45 at p. 18.  
\textsuperscript{78} \textit{Supra Note} 50 at p. 36.  
\textsuperscript{79} Eric Gabus \textit{Multinational Companies, the External Relations} in Gerard Curzon and Victoria Curzon \textit{The Multination Enterprise in a Hostile World} 1977, p. 133  
\textsuperscript{80} \textit{Supra Note} 8 at p. 312.
Western Democracy, Russian Communism and Fascism a primarily a conflict between different concepts of a big-business industrial society.81

In the years after the end of the Second World War, the activities of Transnational Corporations (TNCs) increased very rapidly.82 But two successive World War created great problems for the parent companies. They were having enough difficulties in just surviving at home to try to develop their activities abroad.83 Besides, the expansion of TNCs after the Second World War resulted from a number of factors, including spiraling labor costs in developed countries, the increasing importance of economies of scale, improved transportation and communication systems, and rising worldwide consumer demand for new products. They were able to begin moving into each other’s colonies only in the 1950s and 1960s with the end of the age of colonialism. This was also facilitated by the fact that a considerable number of independent Third World governments actively encouraged the Transnational Corporations (TNCs) to get involved in production activities in their territories, irrespective of the TNCs countries of origin.84

Developing power is mostly recognized too late: existing power is seen as a threat generally only after it has passed its peak. In the 1950s and 1960s Multinational Firms (MNFs) were able to embrace, octopus-like and without interference, Europe and the developing countries. The full implications of this evolution were recognized only in the late sixties when these firms had already attained their maximum power.85

By the early 1970s, TNCs had begun to attract considerable interest and concern. The global liberalization has paved the way for fast expansion and growth of the MNCs/TNCs.86 Critics of TNCs have argued that their post-war

81 Peter F. Drucker  *Concept of the Corporation* 1962, p. 9.
83 *Supra Note* 5 at p. 8.
86 *Supra Note* 8 at p. 316.
expansion has become increasingly focused on the exploitation of the natural and human resources of developing countries. Ethical issues from TNC activities include bribery and corruption, employment and personnel issues, marketing practices, impacts on the economy and development patterns of host countries, environmental and cultural impacts, and political relations with both host and home country governments. There is mounting evidence that an important transformation has been taking place in the structure of Multinational Corporations in a number of industries. A shift away from centralized and decentralized approaches and towards network based MNC models has attracted increasing attention during the last two decades. This trend towards network based MNC models has been heralded as a movement towards integrated worldwide strategy through globally distributed but interdependent resources and activities.

It is also frequently argued that TNCs have grown beyond the control of national governments and operate in a legal and moral vacuum “where individualism has free reign.” The notion of corporate nationality may become obsolete in a global economy. The trend towards integrated international production and the resultant reorganization of TNC structures to establish “non-equity” arrangements which allow some control over foreign productive assets contribute to this situation.

Despite the long-held concerns about ethical and other aspects of TNC activity, promotion of FDI has been a recent global political trend. A new international consensus was reached at the seventh United Nations Conference on Trade and Development in 1987 on “structural adjustment,” in the form of privatization, deregulation, and liberalization of national economies in return for the easing of the debt burden on developing countries. This has paved the way for a substantial expansion in TNC activities, particularly in the developing world.

This expansion has been assisted by recent regional and global free agreements, the principal beneficiaries of which may be TNCs.\textsuperscript{88}

In the early days, the United States was the home of the most MNCs. Now there are a large number of Japanese and European Multinationals (MNCs)\textsuperscript{89}. Current trends in the international marketplace favor the continued development of Multinational Corporations. They have been emerging from the developing countries too\textsuperscript{90}. Countries worldwide are privatizing government-run industries, and the development of regional trading partnerships such as the \textbf{North American Free Trade Agreement 1993} (Agreement between Canada, Mexico, and United States) and \textbf{The European Union} have the overall effect of removing barriers to international trade, privatization efforts result in the availability of existing infrastructure for use by multinationals seeking to enter a new market, while removal of international trade barriers is obviously a boon to Multinational operations.

Multinational Companies (MNCs) were not an important feature of Indian economic life until recently. From the time of Independence, the Indian economy was dominated by public enterprises, and there were many restrictions on export, import, and trade that stifled the functioning of these multinational companies in India. In addition, there were restrictions on private ownership such as the Monopolies and Restrictive Trade Practices (MRTP) Act, which did not dampened the enthusiasm of these companies for operating in the Indian market. While these companies were active in the South-East Asian Countries, they were virtually absent in India. The economic reforms unleashed in 1991, however, created opportunities for these companies to enter the Indian market\textsuperscript{91}.

Multinational Corporations (MNCs) follow three general procedures when seeking to access new markets: merger with or direct acquisition of existing concerns; sequential market entry; and joint ventures. The pattern of distribution of multinational enterprises according to geographical regions, the nature of

\textsuperscript{88} \url{http://www.questia.com/googleScholar.qst;jsessionid=LFp3dJFFgZJQ8wsxIPpGp2k3jGNh8lSpp?docId=5000274495}.
\textsuperscript{89} \textit{Supra Note} 8 at p. 312.
\textsuperscript{90} \textit{Ibid}.
\textsuperscript{91} \textit{Supra Note} 37 at p. 60.
industries and the extent to which they operate in developed industrial countries or industrially backward countries, throws interesting light on the complex factors which have a bearing on a rational appraisal of Multinational Corporations (MNCs)\textsuperscript{92}. Multinational Corporations are thus able to penetrate new markets in a variety of ways, which allow existing concerns in the market to be accessed a varying degree of autonomy and control over operations.

2.4 FEATURES OF MNCS

The Multinational Companies (MNCs) have almost total freedom worldwide as far as their range of products is concerned, particularly for new products. And also, totally free to develop new technologies in order to lower cost on existing products or create new products\textsuperscript{93}. This often results in very powerful corporations that have budgets that exceed some national GDPs. Multinational corporations can have a powerful influence in local economies as well as the world economy and play an important role in international relations and globalization. The presence of such powerful players in the world economy is reason for much controversy. Although, the underlying forces creating MNEs are varied and complex, the corporations have several common dimensions and distinguishing features\textsuperscript{94}. Some of them are:

1. The central feature of TNCs is the predominance of the large-sized firms\textsuperscript{95}.
2. TNCs are overwhelmingly oligopolistic in character (that is, they dominate in markets effectively controlled by a few buyers or sellers) and the essential characteristics of TNCs (technological innovation, product innovation and differentiation, heavy advertising and brand identification) are both a feature of, and reinforce, the oligopolistic market structure\textsuperscript{96}.
3. The unique feature of the TNC is that it is able to view the world as a single economic unit and thus it plans, organizes and manages on a global scale\textsuperscript{97}.

\textsuperscript{92} Supra Note 11 at p. 6.
\textsuperscript{93} Supra Note 5 at p. 96.
\textsuperscript{94} Supra Note 45 at p. 13.
\textsuperscript{95} Supra Note 9 at p. 114.
\textsuperscript{96} Ibid. p. 115.
\textsuperscript{97} Ibid.
4. Ownership of assets being the means to operational control which is of the essence of the flexibility and efficiency of a multinational corporation (MNC), control of a single institution is logically its basic characteristic\textsuperscript{98}.

5. Resources are transferred, but not traded in, according to traditional norms and practices of international trade.\textsuperscript{99}

6. MNCs have managerial headquarters in home countries, while they carry out operations in a number of other (host) countries\textsuperscript{100}. It operates on the basis of best possible alternative available anywhere in the world. Its local subsidiaries are managed generally by the nationals of the host country. For example the management of Hindustan Lever lies with Indians. The parent company Unilever is in The United States of America.

7. MNCs are characterized by a parent firm and a cluster of subsidiaries or branches in several countries\textsuperscript{101}.

8. A large part of capital assets of the parent company is owned by the citizens of the company’s home country.\textsuperscript{102}

9. The absolute majority of the members of the Board of Directors are citizens of the home country.\textsuperscript{103}

10. They make direct investments in a foreign country.\textsuperscript{104}

11. Decisions on new investment and the local objectives are taken by the parent company\textsuperscript{105}.

12. MNCs control production activity with large foreign direct investment in more than one developed and developing countries\textsuperscript{106}.

13. MNCs are not just participants in export trade without foreign investments\textsuperscript{107}.

14. Multinational companies have a very large influence on the government both of their home and their host countries\textsuperscript{108}.

\textsuperscript{98} Supra Note 11 at p. 1.  
\textsuperscript{99} Ibid. p. 2.  
\textsuperscript{100} Supra Note 36.  
\textsuperscript{101} Supra Note 35 at pp. 9-10  
\textsuperscript{102} Supra Note 36 at p. 406.  
\textsuperscript{103} Ibid.  
\textsuperscript{104} Supra Note 35 at p. 9.  
\textsuperscript{105} Supra Note 36 at p. 406.  
\textsuperscript{106} Ibid.  
\textsuperscript{107} Ibid.  
\textsuperscript{108} Supra Note 5 at p. 97.
Intra-firm trade plays a critical role in the operations of multinational companies. It may help an MNC to reduce costs, such as the distribution of goods or acquisition of inputs abroad, or it may help integrate production processes on a global scale. Intra-firm trade may respond differently to changes in economic conditions than trade between unrelated parties. For example, it may – at least in the short term – be more insulated from competitive forces in certain markets, or from overall changes in prices, exchange rates, or general economic conditions. Multinational Corporations (MNCs) earn what are commonly termed “super profits”. The large magnitude of profits on overseas operations, a high percentage of which is reinvested to expand the scale of operations or for diversification of consolidation of their business.109

The intra-firm trading patterns of US and of foreign MNCs in the United States are fundamentally different in terms of form and industry composition. The intra-firm trade of US multinationals reflects an international division of manufacturing production between affiliated parts of the MNC. For both exports and imports, most of this trade is between United States manufacturing parents and their foreign manufacturing affiliates. The intra-firm exports to these manufacturing affiliates have mainly consisted of materials and components for further processing or assembly.110

2.5 CLASSIFICATION OF MNCs

MNCs have two types of controlled affiliates abroad: first, foreign branches, that is, undertakings not registered under the local laws; and second, affiliates registered in the host country which may be wholly or partly owned by the MNC. In India, the Reserve Bank of India (RBI), defines two types of foreign controlled enterprises (FCEs) or controlled affiliates of MNCs: (a) foreign branches (FBs), as companies which are incorporated outside the country but have a place of business in India; (b) foreign controlled rupee companies, as joint stock companies registered in India in which 25 percent or more of equity capital is held abroad by a foreign company or its nominee or percent is held outside India111.

109 Supra Note 11 at p. 4
111 Nagesh Kumar Multinational Enterprises and Industrial Organization The Case of India
Further, it is now an easy step to identity the vertically integrated MNE as simply a species of vertically integrated firm whose production units lie in different nations.\textsuperscript{112}

Enabled by Internet based communication tools, a new breed of multinational companies is growing in numbers. (“How startups to global”).\textsuperscript{113} These multinationals start operating in different countries from the very early stages. These companies are being called \textit{micro-multinationals}\textsuperscript{114}. What differentiates micro-multinationals from the large MNCs is the fact that they are small business. Some of these micro-multinationals, particularly software development companies, have been hiring employees in multiple countries from the beginning of the Internet era. But more and more micro-multinationals are actively starting to market their products and services in various countries. Internet tools like Google, Yahoo, MSN, Ebay and Amazon make it easier for the micro-multinationals to reach potential customers in other countries.

Service sector micro-multinationals, like Facebook, Alibaba etc. started as dispersed virtual businesses with employees, clients and resources located in various countries. Their rapid growth is a direct result of being able to use the internet, cheaper telephony and lower traveling costs to create unique business opportunities.

A joint venture is a business association between two or more parties who agree to share the provision of equity, capital, the investment risk, the control and decision-making authority, and the profits or other benefits of the operation\textsuperscript{115}. For a variety of reasons, and MNC might decide to share the management of the subsidiary with one or more collaborating firms, and enter into a joint venture. Some joint ventures consist in setting up a joint subsidiary company for a particular object\textsuperscript{116}. As in the case of licensing, one of the strongest reasons for

\textsuperscript{112} Richard E. Caves \textit{Multinational Enterprise and Economic Analysis} 1982, p. 15.
\textsuperscript{116} Dennis Thompson \textit{The Competition Policy of the European Community} in Gerard Curzon
entering into joint ventures is that they reduce substantially the political and economic risks in proportion to the partners total contribution. Further, many governments – especially in developing countries – may require joint ventures as a means of inward foreign investment. Other reasons in favour of a joint venture include the following:117

a) It may enable an MNC to utilize the specialist skills of a local partner.
b) It may allow the MNC to gain preferential access to a partner’s local distribution system.
c) It is useful where the MNC lacks the capital and/or the management capability otherwise to expand its international activities.

The principal potential drawback is the loss of absolute control and freedom of operational flexibility. However, joint ventures are increasing in popularity and have become the chief strategic response of internationalizing Japanese MNCs118.

MNCs can be classified on the basis of several criteria, such as function, control, investment, origin, turnover, products etc. On the basis of functional criterion, the MNCs are broadly grouped into119:

(1) Service MNCs: A service MNCs is defined as a transnational company which derives more than 50 percent of its revenues from services. Service MNCs are found in areas such as banking, insurance, finance, transport, tourism, etc.

(2) Manufacturing MNCs: A manufacturing MNCs is on which derives at least 50 per cent of its revenue from manufacturing activity. A large number of MNCs has entered into the manufacturing sector. Out of the top 200 MNCs, 118 firms are manufacturing MNCs. They produce a variety of goods. For example, Parry and Cadbury Fry produce Chocolates, Colgate and Palmolive produce soaps and detergents, Ponds-cosmetic goods, Olivetti – Teleprinting equipments, Dunlop, Good Year, Ceat-tyres and tubes.

117 Supra Note 56 at p. 11.
118 Supra Note 56 at p. 12.
119 Supra Note 316.
(3) Trading MNCs: A trading MNCs is the one which derives at least 50 per cent of its revenue from trading activity. These are the oldest form of multinationals. Trading MNCs control about 60 per cent of the world’s export trade. Tatas, Liptons, Brooke Bond, Hindujas etc. are the trading MNCs.

2.6 MNCs AND OTHER LOCAL FIRMS

As international trade and business links have increased in complexity, it has been more and more different to establish the precise boundary line between domestic and international business. Certainly, every well-known MNC has developed from a domestic business. The major difference is that the domestic firm deals only with the home environment while the international company also has to manage a wide range of foreign environment together with the aggregate ‘international’ environment. Thus, operating as it does in a number of sovereign states, the international firm has to contend with different legal, monetary and political systems, which different peoples, cultures institutions, economic conditions and value systems120.

A multinational firm (MNC), like any other domestic or national firm, has the main objective of its survival in the fast changing world. The difference between the two is that of degree and of kind, which is – on account of their field or area of operation – wider or narrower. While the domestic firm operates within a known society and environment and has better ability to guage and adapt its strategy, the multinational firm, which has to operate in different environments may or may not be congenial than in the home country, has a less chance of that advantage. Though goal variables are similar for both, yet operational constraints may be more in case of the multinational firm than in case of the domestic firm121.

Multinationals are able to survive in the foreign environment because they possess certain intangible assets that give them a competitive edge over local firms. Examples of these intangible assets are international brand names and superior technological capability. Multinationals are likely to follow a strategy of

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120 Supra Note 56 at pp. 4-5.
121 Supra Note 47 at p. 3.
creating a competitive advantage based on product differentiation using their international brand names, high product quality and superior universal features. On the other hand, local firms, are unlikely to be able to match the product differentiation of multinationals and are, therefore, likely to compete on price122.

The difference in the strategic of multinationals and local firms is, in itself, unlikely to affect their segment choices. However, if one segment is more price-sensitive its needs are more likely to be met by local firms than by multinationals. Local firms might, therefore, enter the price-sensitive segment more readily than multinationals.123 It is truism to say that what causes concern with the “international” firm, as against the large national firm, is that the power of decision over matters of importance in and to one nation lies, or is thought to lie, in a foreign state.124

Multinational subsidiaries may be in a better position to introduce LDC products than local firms because of systemic factors that enable multinationals to develop global strategic advantage. Such factors could include access to resources, such as R & D and to markets for LDC products in other developing countries. Multinationals that operate in a number of developing countries may be in a position to avail of economies of scale in design and manufacture of LDC products.125

Large corporations are not of the same importance in all sectors of the economy. In agriculture they are of no importance; Conversely, activity in the utility, transportation, mining, manufacturing, and financial sectors is overwhelmingly the activity of corporations, and predominantly that of corporate giants.126

Some multinational subsidiaries may be discouraged from introducing LDC products because their parents emphasize product standardization across countries and allow little freedom to individual subsidiaries to introduce non-

122 Sushil Vachani  *Multinationals in India: Strategic Product Choices* 1991 at pp. 6-7
123 Ibid p. 7.
125 Supra Note 122 at p. 7.
standard products. Export-oriented subsidiaries and domestic-market subsidiaries differ in various ways: the former are more likely to be wholly owned by the parents and less reliant on local capital markets; as expected, there are no systematic or average differences in their profitability.

2.7 ADVANTAGES OF MNCs

There are many advantages of MNCs as multinational firms develop an integrated group of production facilities around the world, they provide opportunities for countries to share in the growing volume of international trade, even while new trade patterns develop. Multinational Corporations (MNCs) are said to have the attributes (potential or actual) and are resultants of advance communication, strong consumer economies, high technology, intensive capital investment, international peace, international government, bi-polarization between rich and poor nations, non-governmental international activity and regional integration.

Multinational Corporations have both benefits and drawbacks for transitional economies. Prominent among the benefits are they promotion of higher employment, greater access to international markets, and the mobilization of capital for productive purposes that might have gone to other less fruitful purposes. Among the most frequently heard criticisms are the misapplication of host country resources, the exploitation of host country wealth for the benefit of citizens of other nations and the diversion of local savings from investment by host-country nationals.

The ‘direct’ relationships that TNCs strike up with local suppliers or purchasers can constitute powerful mechanisms for stimulating (or retarding) economic, and particularly industrial, growth in LDCs. The ‘indirect’ effects that the entry and operations of TNCs may have on local industrial structure, conduct, and performance may be equally important: TNCs may change the nature and

127 Supra Note 122 at p. 7.
129 Supra Note 17 at p. 2.
130 Supra Note 13 p. 12
evolution of concentration; they may affect the profitability and growth of indigenous firms; they may alter financing, marketing, technological, or managerial practices of the sectors that they enter; they may, by predatory conduct, drive domestic firms out of business; and so on.\textsuperscript{132}

The advantages flowing from the MNCs to the LDCs are based on the theories of direct foreign investment. Such theories are related to oligopolistic interdependence and monopolistic behavior of the MNCs. Hence they confer the following advantages on MNCs:\textsuperscript{133}

1. MNCs are financially very strong and hence provide large and cheap capital to the LDCs by way of direct investment.
2. They undertake great risk in investing their funds in LDCs in the face of imperfect infrastructural facilities like power, transport, skilled labour, etc. low market demand and short supply of inputs.
3. They start new ventures and bestow the advantages of superior management, training, education and entrepreneurial ability in LDCs.
4. They transfer superior technology to LDCs based on R & D in the parent concerns because they are able to spend huge funds on R & D. This leads to the discovery and introduction of new processes and new and differentiated products in LDCs which tend to raise the standard of living of the people in LDCs.
5. MNCs bring in new techniques of marketing in LDCs through market research at their headquarters. They adopt novel advertising and promotional methods which impart information to buyers and create demand for particular brands and products. This encourages competition.
6. Above all, MNCs are socially desirable in LDCs because they lead to a new increase in capital formation, output and employment.
7. MNEs can also act as a cross-cultural vehicle for the transfer of attitudes and values.\textsuperscript{134}

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\textsuperscript{132} Transnationals; Domestic Enterprises and Industrial Structure in Host LDCs: A Survey in Sanjaya Lall \textit{The Multinational Corporation; Nine Essays} 1980, p. 29.  \\
\textsuperscript{133} Supra Note 6 at p. 484.  \\
\textsuperscript{134} Tamir Agmon and Charles P. Kindleberger \textit{Multinational from Small Countries}, 1977, p. 52
\end{flushleft}
The MNC help increase the investment level. They bring inward investment to countries that are not their home base. If they chose to expand by building production facilities they will be bringing in inward investment into the country. This investment is likely to provide a boost, not only to the local economy but also the national economy. Developing countries don’t have to choose between growth and protecting the environment.

It can also be expected that the additional income will find its way through the local economy. If additional people are hired, they will receive in income which they spend. Inward investment can act as a trigger to generating wealth in the local economy. If a MNC is attracted to an area then this might also lead to other smaller firms in the supply chain deciding to locate in those areas. Other firms providing services to these firms are then attracted to the area. By virtue of their very existence in host nations, MNEs clearly make some contribution to increasing the level of employment.

For less developed countries, inward investment can again act as a catalyst for other of investment. The effects of the investment might be less dramatic but nevertheless, it can be something that is seen as essential for helping a country escape from poverty. The Multinational Enterprise (MNE) is emerging as the dominant form of productive unit in the contemporary world capitalist system. They are expected to bring in new technologies and new production lines that are to form the basis for the ensuing growth in the consumer sector. Investment in the basic goods industries in India has by and large, been the work of the government and of indigenous private initiatives.

In one field, the MNCs have made a contribution. MNCs turn out to be mainly active in the consumer goods industry, frequently in competition with local industries and acquiring them in the process. MNCs bring with them new ideas.

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135 Supra Note 8 at p. 319
137 Supra Note 45 at p. 202
139 Kristoffel Lieten “Multinationals and Development: Revisiting the Debate” in Frans J.
and new techniques that can help to improve the quality of production and help boost the quality of human capital in the host country. Many will not only look to employ local labor but also provide them with training and new skills to help them improve productivity and efficiency.

In some cases this can prove a challenge but in others it can lead to improvements in motivation and productivity. The skills that workers build up can then be passed on to other workers and this improves the supply of skilled labour in the area. This makes the area even more attractive to new industry as it helps to reduce the costs of training and skilling of workers.

In some cases, production in a host country may be primarily aimed at the export market. However in other cases, the inward investment might have been made to gain access to the host country market to circumvent trade barriers. The location of businesses in different countries might mean the availability of high quality and relatively cheap products being available to the home market. But the LDCs argue that for centuries (e.g., in India the MNCs of the developed market economies have operated in these countries, but the areas of investment have been in plantations, extractive industries and luxury or semi-luxury goods; and the rate of growth has been low. In their post-independence period it is this trend which is dominantly prevailed140.

For the host country, these is a likelihood that the MNC will have to be subject to the tax regime in that country. As a result many MNCs pay large sums in taxes to the host government. In less developed countries the problem might be that there is a large amount of corruption and bad governance and as a result MNCs might not contribute the tax revenue they could and even if they do it might not find its way through to the government itself.

In addition to the investment in a country in production or distribution facilities, a company might also investment in additional infrastructure facilities

\[\text{Schuurman Globalization and Development Studies, Challenges for the 21st Century 200, p. 112.}\]

\[\text{Supra Note 13 at p. 46.}\]
like road, rain, port and communications facilities. This can provide benefits for the whole country.

2.8 THE COSTS OF MULTINATIONAL CORPORATIONS

Multinational corporations have come under vehement attack the world over. A common criticism against the MNCs is that they tend to invest in the low priority and high profit sectors in the developing countries, ignoring the national priorities. Their power over technology, finance, capital, labour markets and market place ideology affects the host countries in several ways. Once the MNCs are invested by the host countries, the host country may have to face their wider ramifications. Certain characteristics are inherent in the nature of the MNCs and these cast their impact on the various facts of life in the host country. As Leonard Gomes points out, the MNCs technology is designed for worldwide profit maximization, not the development needs of poor countries, in particular employment needs and relative factor scarcities in these countries. In general, it is asserted, the imported technologies are not adapted to (a) the consumption needs, (b) the size of domestic markets, (c) resource availabilities, and (d) stage of development of many of the LDCs.

The introduction of foreign corporations into the center of national life represents a complex challenge to the interests and to the sovereignty of the host country. The costs can be summarized in the points below – for the most part, the costs are closely linked to be benefits but it will depend on the extent of the benefits that might arise as a result of the activity of the MNCs.

- Employment might not be as extensive as hoped – many jobs might go to skilled workers from other countries rather than to domestic workers.
- There might be a limit in the effect on the local economy – it will depend on how big the investment into the local economy actually is.

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141 Supra Note 8b at p. 322.
142 Supra Note 50 at p. 160.
144 Theodore H. Moran Multinational Corporations and the Politics of Dependence, Copper in Chile 1974.
Some MNCs may be ‘footloose’; this means that they might locate in a country to again the tax or grant advantages but then move away when these run out. As a result there might not be a long term benefit to the country.

How many new jobs are created depends on the type of investment. Investment into capital intensive production facilities might not bring as many jobs to an area as hoped.

The size and power of multinationals can be used, it is argued to exploit weak or corrupt governments to get better deals for the MNC.

Pollution and environmental damage. Some countries may have less rigorous regulatory authorities that monitor the environmental impact of MNC activities. This can be long term problem.

Profits of the MNCs might go back to the headquarters of the MNC rather than staying in the host country – the benefits, therefore, might not be as great.

It marks a new stage in the process of concentration and centralization of capital on a world scale.\(^\text{145}\)

Multinational Corporations employ “inappropriate” capital intensive technologies that exacerbate rather than solve unemployment problems.

During the past decades the Multinational Corporations have caused much intrigue and much controversy all over the world. The controversy has captured the attention of scholars, writers, journalists and governments\(^\text{146}\). The United Nations Economic-Social Council appointed a group of so-called “eminent persons” to study the role of multinational corporations and their impact on the process of development, especially that of the developing countries, and also their implications for international relations, and to formulate a conclusion which may possible be used by governments in making their sovereign policy decisions in this respect, and to submit recommendations for appropriate international action\(^\text{147}\). At a meeting of the International Chamber of Commerce in Istanbul in 1959, most of the delegates opposed a discussion on ‘The Role, Rights and Responsibilities of the International Corporations.’ They feared that such a

\(^{145}\) Supra Note 138.


\(^{147}\) United Nations, Department of Economic and Social Affairs, Multinational Corporations in World Development, (New York, 1973), Doc., ST/ECA/19, p. VI.
discussion would bring the MNCs into the limelight, further alarming the developing countries to the detriment of their interests. They managed to avoid the attention, of the people and sidetrack the controversy as long as they could. But they newly liberated countries started examining the MNC increasingly as a capitalist organization which organizes one industry across many countries.148

2.9 MNCs IN THE ERA OF GLOBALIZATION

Globalization broadly speaking means “integration of economics and societies through cross-country flows of information, ideas, technologies, goods, services, capital, finance and people. The essence of globalization is connectivity. This laudable concept originally intended to sub-serve a more just a equitable world order. Research on the activities of firms from advanced countries demonstrates that their foreign investments are made most frequently in industries in which some firms have built an oligopolistic position.149

During the last two decades of the twentieth century the globalization of the world economy accelerated and Multinational Corporations became its primary integrative mechanism. They are seen as acquiring too much political and economic power in the modern business environment. The large size of MNCs, their market power, and their pursuit of global strategies have raised fears in many groups and countries that they will become subjugated to and exploited by MNC globalization of production and services. These concerns are not groundless, as MNCs do represent huge concentrations of economic and frequently political power.150

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The World Trade Organization (WTO), The International Monetary Fund (IMF) and the World Bank (WB) are the three institutions that underwrite the basic rules and regulations of economic, monetary, and trade relations between countries. Many developing nations have loosened trade rules under pressure from the IMF and World Bank. The domestic financial markets in these countries have not been developed and do not have appropriate laws in place to enable domestic financial institutions to stand up to foreign competition. The administrative setup, judicial systems, and law-enforcing agencies generally cannot guarantee the social discipline and political stability that are necessary in order to support a growth-friendly atmosphere. As a result, most Multinational Corporations are investing in certain geographic locations only.

The benefit of globalization in India proved good for economic development of the nation. Because of World Trade Organization (WTO), Indian Government has liberalized trade and commerce, and MNCs are looking at India in a big way. They are setting organizations here, investing lumps in R &D and infrastructure development. Trade and Commerce is exchanging at a large scale changes have taken place not only in quality of life (better living standards than in past) but also in the social architect of society (conventional to modern). Cultural values (for which India is known), have changed due to liberalization and globalization. As a result a global culture is emerging. The main effect of spread of MNCs in the reason has taken a toll on family structure. Indian society was considered a conservative society during pre-liberalization period but changes are clearly visible in post liberalization era.

In fact, the newly awakened countries of Africa and Asia have been in the recent decades been competing with one another in inviting foreign companies for investment in their countries by rolling out a red carpet embroidered with various concessions and inducements. Now even Indian companies become conscious of the fact that they have to not only manufacture the quality products but also have to control the prices of the product too. This proves beneficial for the consumers because they are getting superior goods at the cheaper price.

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However, there are also some of the drawbacks with the globalization and its impact on the developing countries particularly with the MNCs. The Transnational Corporations (TNCs), with their enormous economies resources and political power, bypass the poorer states of the Third World in order to dominate them. There is appears what kind of globalization is this? The globalization of production thesis exaggerates the degree of capital mobility in the world economy, which has important (and largely negative) implications for much of the so-called Third World. Today, the TNCs enjoy an enviable 50 percent share of the world’s largest economic sales units. Seizing the opportunities provided by this type of globalization process, the giant companies entirely or partly control national economies all over the globe, and are now able to move capital freely across national boundaries. With these trends, the economic sovereignty of the Third World has been lost\textsuperscript{152}.

FDI by an MNC differs from entry by either a new entrepreneur or a domestic diversifying from in one important aspect. It involves geographical expansion by an established firm of its operations in the base industry in the home country to another country\textsuperscript{153}. Throughout the Asia-Pacific region, for example, environmental standards have been lowered in the minerals sector to attract much needed outside investment. They worry that “host” countries will compete for the benefits of new FDI by lowering their environmental standards or by reducing efforts to enforce existing standards, and that firms will relocate to these “pollution havens”, to gain a cost advantage over their competitors.

In this scenario, developing countries are regarded as the most likely sites of pollution happens because they may be the country’s most willing to trade off their environmental quality for economic gains, and industrialized countries are cast in the role of predators willing to degrade the environment of developing countries in order to generate economic gains for themselves. In other words, host countries that offer what TNCs are seeking and/or host countries whose polices

\textsuperscript{152}  \textit{Supra Note} 131 at p. 31.
\textsuperscript{153}  K.R.S. Murthy, J. Ramachandran and Deepak K. Sinha  \textit{Acquisitions by MNCs in Developing Countries: Governance, Welfare and Shareholder Interest} in C. Jayachandran, N. Balasubramanian, S.M. Dastagir  \textit{Managing Economic Liberalisation in South Asia Directions for the 21\textsuperscript{st} Century} 1998 p. 107.
are most conductive to TNC activities, stand a good chance of attracting FDI\textsuperscript{154}. However, most research suggests that, overall companies do not invest overseas to obtain access to lower environmental costs.

Equity ownership by foreign companies can affect the economy in undesirable ways. Hence most countries have adopted a cautious approach in this respect. China, for instance, ‘has discouraged foreign investment in a number of products, including consumer durables and …. Processing and assembly investment is merely tolerated. It has received much genuine transfer of technology from labour intensive, export oriented activities ….’\textsuperscript{155}. However, it is difficult to determine whether FDI flows are affected by the level of environmental regulations existing in foreign countries. Foreign capital clearly flows to a wide range of countries, industries and companies – some of which are careful environmental stewards some of which are not. A firm may in any case invest in a country to take advantage of high quality labour force and other factors unrelated to environmental costs.

Investments made in the resource extraction and processing sectors, such as chemicals, metallurgy, logging, and pulp and paper, fall into this category. In these industries, pollution control costs can make up a significant proportion of the firm’s total costs. The result can be that small cost differences can translate into large changes in market share and profitability. These firms are more susceptible to the level of environmental costs, and therefore more likely to invest in “pollution havens”. However, this does not necessarily mean that countries actually lower their environmental standards to attract new investment.

\section*{2.10 MNCs IN INDIA}

It is interesting to examine the role of MNCs in Indian Economy. India is a country studded with scenic beauty, natural phenomenon, and various types of people, religion, art and culture. The northern belt is covered with the mountainous ranges and the southern belt with the Deccan plateau and in between


\textsuperscript{155} Manik Kher \textit{Technology Assimilation in Joint Ventures: the Indo-MNC Experience}, 2001, at p. 43.
the two, the fertile region of India’s Ganga-Brahmaputra belt, supporting the maximum population of the country\textsuperscript{156}. It is the world’s most-populous democracy and has one of the fastest economic growth rates in the world. The industrial growth of the India under the British rule during the second half of the nineteenth century had taken a very uneven shape\textsuperscript{157}.

India has been the host to a number of multinational companies (MNCs). Likewise, it is a home country for a growing number of TNCs of Indian origins\textsuperscript{158}. As a host country the national goal of India is to maximize gains from the operation of foreign TNCs in Indian Territory and minimize the negative impact of their activities. Because, in India, it is familiar with the inhuman, devastating destructive and counter-productive activities of the East India Company\textsuperscript{159}. On the other hand, as India assumes the role of a home country, it will have to adopt a more outward looking posture\textsuperscript{160}.

Yet even the larger sector Indian companies are small in many ways in comparison with the scale of operations of the MNCs. They are therefore, overpowered by the MNC strengths in technology and finance\textsuperscript{161}. In fact, since the financial liberalization in the country in 1991, the number of multinational companies in India has increased noticeably. Though majority of the multinational companies in India are from the U.S., however one can also find companies from other countries as well. There are a number of reasons why the multinational companies are coming down to India. India has got a huge market. It has also got one of the fastest growing economies in the world. Besides, the policy of the government towards FDI has also played a major role in attracting the multinational companies in India.

\textsuperscript{156} Pramod Singh \textit{Protect Indian Environment} in B.P. Chaurasia \textit{Environmental Pollution Perception and Awareness} 1992, at p. 228.
\textsuperscript{158} A home country is one where a transnational originates. A host country is a country where it operates.
\textsuperscript{159} Supra Note 13 at p. 2.
\textsuperscript{161} Manik Kher \textit{Technology Assimilation in Joint Ventures: The Indo-MNC Experience}, 2001, p. 134.
The multinational companies in India are ever-growing as a number of MNCs are coming down to this country now and then. Following are some of the major multinational companies operating their business in India: By the early 1990, there were an estimated 37,000 TNCs in the world, with at least 170,000 foreign affiliates. Of these, 33,500 were parent corporations based in developed countries. By 2004 the number of TNCs had risen to some 70,000 with at least 690,000 foreign affiliates, almost half of which are now located in developing countries. The role of TNCs in the world economy has thus continued to grow, as reflected in the expansion of FDI stock and in the operations of foreign affiliates. Sales, value added (gross product), assets, employment and exports of foreign affiliates have all resumed an upward trend since 2002.

TNCs are mainly based in developed countries, and are increasingly established in developing countries as well. The 100 largest non-financial TNCs worldwide and the 50 largest ones from developing economies ranked by foreign assets. It also includes an analysis of the ten largest TNCs from South-East Europe and the CIS and, for the first time in the WIR, and analysis of the transnationalization of the 50 largest financial TNCs worldwide ranked by total assets. The 100 largest TNCs play a major role in international production: they account for 12%, 18% and 14% respectively, of the estimated foreign assets, sales and employment of all TNCs in the world. In 2003, their assets and sales, both foreign and total, grew significantly. Overall, the rankings in the top 100 list in 2003 were fairly similar to those in 2002.

Since UNCTAD began publishing the list of the top 50 TNCs from developing economies in 1995, these companies have expanded their activities abroad. In 2003, their foreign assets climbed to $249 billion from $195 billion in 2002. Asia has reinforced its dominance in the top 50 with 39 enterprises on the list. The top 50 TNCs operate in a wide range of industries, the most important being electrical/electronic equipment and computers (mainly companies from Asia), followed by food and beverages. Other relatively significant industries for

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the top 50 include petroleum (6 TNCs), telecommunications (3), transportation (3), utilities (3) and hotels (3)\textsuperscript{165}. In 2003, the assets, sales and employment, both foreign and total, of the largest TNCs from developing economies registered a large increase over previous years. Moreover, when comparing the TNCs from developing economies with those from developed countries it is clear that the degree of internationalization of the former is lower.

Till 1991, India was more or less a closed Economy. The rate of growth of the economy was limited. The contribution of the local industries to the country’s GDP was limited that were the main cause of shortage of funds for various development projects initiated by the government.

In July 1991, a new industrial policy was introduced to attract foreign investment. The equity limit for foreign firms in a number of industries was raised from 40 percent to 51 percent\textsuperscript{166}. The New Economic Policy of 1991 drastically changed the face of India and India has seen considerable development since. In an effort to revive the industries and to bring the country back on the right track, the government began to open various sectors such as Infrastructure, Automobile, Tourism, Information Technology, Food and Beverages etc., to the Multinational Corporations (MNCs). The MNCs slowly but reluctantly began to pour capital investment, technology and other valuable resources in the country causing a surge in GDP and upliftment of the economy as a whole. This was the post 1991 era where the government began to invite and welcome giant MNCs into the country.

The entry of multinationals into the Indian market has been greeted with ambivalence by the Indian industrialists. At the beginning, in or around 1991, the support to MNCs was unalloyed and unquestionable. At that time, the entry of multinationals was justaposed against the predominant role of the state enterprise. When the multinationals began coming in large numbers, and initiated the

\textsuperscript{165} Ibid p. 16-17.
processes of mergers, takeovers and acquisition, such support was turned into a fear of these very large entities\textsuperscript{167}.

Perhaps the most significant area of change post 1991 was of foreign investments. The Foreign Exchange Regulations Act (FERA) had some patently retrograde provisions which could not continue if Indian business was to prosper or globalize. After various amendments to FERA, the Government of India realized that the said Act could still not keep up with the rapid changes taking place. This led to the passing of a new Act in 1999 namely, the Foreign Exchange Management Act (FEMA). FEMA was based on the realization that foreign investment is not merely beneficial for a developing economy but indispensable for an economy to mature and have global aspirations.

Relaxation of the legal framework saw immediate results in terms of increase in foreign investments. The cumulative FDI from 1991-2007 has exceeded USD 54,628 Million (in 2006-2007 alone it was USD 15,726 Million, which represents a 184\% increase from the previous year). The forex reserves of India currently stand at over USD 230 billion, while in March 1991 it was just USD 5.8 Billion\textsuperscript{168}.

There is also criticism on the India’s 1991 New Economy Policy that during 1990’s under the international pressure India signed GATT and slowly started opening its economy. Now the question is: Are MNCs bringing high technology intensive industries to India? No, not at all. They are actually denying sophisticated technologies to India. They are only bringing the FMCG industries – salt, chips, ketch-up, colas, for which India is a huge home market. They are into services like hotels, medical care, marketing. In other cases, they are just marketing the products manufactured at their bases in U.S.A. or Europe. They are not bringing in new production technologies in the areas like space research, nuclear energy, bio-technology, pharmaceuticals or pollution control, to India. Also, some MNCs are relocating their highly polluting industries to India, as they

\textsuperscript{167} \textit{Supra Note} 37 at p. 72.

\textsuperscript{168} \url{http://blog.phoenixbbkn.com/2009/05/07/tax-liability-of-foreign-companies-doing-business-in-india}. 
are subjected to stringent environmental protection standards in their own home countries.

Foreign investment has played an important role in the international economy since the later part of the nineteenth century\textsuperscript{169}. The in-roads of foreign capital in India can be traced back to 1500 A.D. when the Portuguese established a factory at Calicut. It was followed by East India Company in 1600, Dutch East India Company in 1602, and French Companies in 1614. All of them came in as merchants. While during the period of merchant capital (1500-1800) these companies competed with each other, East India Company was successful in colonizing India\textsuperscript{170}.

MNCs from developed countries are everywhere the main source of foreign direct investment\textsuperscript{171}. There are two main types of foreign investments: portfolio investments and direct investments. Portfolio investments are purely financial assets, such as bonds, denominated in a national currency. Direct investments, on the other hand, are real investments in factories, capital goods, land, and inventories where both capital and management are involved and the investor retains control over use of the invested capital\textsuperscript{172}.

More than two thirds of foreign direct investments take place in OECD\textsuperscript{173}. For quite a long time, India had a restrictive policy in terms of foreign direct investment. For example, during Previous License Regime foreign investment was not directly welcome in India. As people at that time perceived it as “Neo-colonization” & detested it. There were various restrictions on foreign investments. The local industrialists under monopolistic environment thrived.

As a result, there was lesser number of companies that showed interest in investing in Indian market. However, the scenario has changed during the financial liberalization of the country, especially after 1991. Government, nowadays, makes continues efforts to attract foreign investments by relaxing

\textsuperscript{169} Supra Note 45 at p. 10.
\textsuperscript{170} Supra Note 50 at p. 36.
\textsuperscript{171} Supra Note 2 at pp. 90-91.
\textsuperscript{173} Supra Note 16.
many of its policies. As a result, a number of multinational companies have shown interest in Indian market\textsuperscript{174}.

The basic objectives behind liberalization of FDI policy, namely access to latest technology, management skills, exports etc., have not been achieved so far\textsuperscript{175}. In addition to the Indian Government efforts, some of the following points also attracted to the MNCs in India. They are:

1. There is lack of comprehensive environmental norms.
2. The enforcement of environmental norms is lax.
3. The cost of health coverage, social security net to be provided to the workers exposed to the occupational hazards is less.
4. The cost of compensation to be paid to the persons who died or suffered damages does to occupational hazards/environmental pollution is meager.
5. The enforcement of labour laws are lax.
6. Public money can be easily raised through lending banks, primary market within India & the public can be easily cheated.
7. The tax can be evaded through various loopholes like transferring money to holding companies situated at Mauritius or countries which have double taxation avoidance agreement with India.
8. The tax can be evaded, company money can be cheated by lending money to sister/holding concerns at low interest rates or by selling shares, materials to their private companies at low rates or by buying shares, materials from their holding/sister concerns at exorbitant rates, etc.
9. The corporate governance laws are almost absent in India & it’s enforcement nil.
10. Above all, the time can be bought by very slow Indian legal system, if any dispute arises.
11. On top of it, well trained, technically qualified people are available at low rates through contractors.

\textsuperscript{174} http://business.mapsofindia.com/india-company/multinational.html.

\textsuperscript{175} Supra Note 155 at p. 136.
2.11 MNCs AND THIRD WORLD COUNTRIES

There is a general perception that TNCs pursue profits in developing countries without any regard whatsoever for the interests of these countries. Foreign subsidiaries operating in the LDCs tend to divide sharply into three categories. The exporters of natural resources and resource-based products need no explanation. They go where the resources are, if conditions in the sector call for vertical integration. The second class is made up of exporters of manufactured goods or components. The third class comprise producers largely engaged in serving the LDCs domestic market.

A large number of varied interpretations, unpalatable and dichotomous, have emerged regarding the role of MNCs in the developing countries. On the one hand, a group of social scientists command, in laudatory terms, the positive contributions of MNCs in the developmental process. This group relates assertions to analysis in the fields of transfer of technology, finances and new techniques through the institution of MNCs. The other group, on the other hand, emphasizes with equally powerful accusatory tone the harmful role of the MNCs in the Third World countries. It argues that MNCs are simply a new form of old exploitative international business firms with profit making as their basic motive. Wherever they go, their concern is not the development of the region (of the areas of their operation) into a self-sufficient independent entity but to earn enormous profits and to introduce certain processes which guarantee a continued flow of profits. In the 1960s, TNCs were referred to as “engines of development” by some observers. By the end of that decade, however, TNC activities in many parts of the world began to be viewed with considerable alarm and hostility, largely because of their negative impact on many countries, especially LDCs.

Multinational Companies whose importance has increased or improved depending on global capitalization and travelling around the world without

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176 Supra Note 14.
177 Supra Note 112 at p. 253.
178 Supra Note 50 at pp. 5-6
knowing borders have activities in developing countries due to suitable conditions (e.g., cheap workers costs, flexible legal arrangements). Generally speaking, the relative importance of the MNCs in developing countries is growing in the secondary and tertiary sectors, and declining in the primary sector, particularly in plantations. On balance, the over-all importance of the MNCs is growing. But according to Frans J. Schurman the cheap and abundant labour supply in the (poorest) developing countries, it appears, is not a factor that induces MNCs to invest in the countries most in need of external stimuli.

Why Multinational Companies have chosen these developing countries can be dealt under two titles. (1) Dirtying industries are choosing the countries which don’t have severe arrangements. (2) The public opinion in developing countries is unconscious of the harms that economical activities give to the environment. If the first finding hadn’t been true, the activities in most polluting sectors wouldn’t have been directed to the countries whole environmental laws are flexible/flexibly practiced. Besides, the public opinion in these low educational level countries doesn’t have enough knowledge about the environmental problems and importance environment. This information also gives assurance to the Multinational Companies that they don’t face with the opposing activities of the public there.

It is pertinent to emphasize that the developing countries cannot afford to ignore the environmental consequences of the process of development. Nevertheless, foreign capital is wanted by these countries to supply new technologies, to supply the political and economical support of the countries which export development and capital, to open their economy to other countries and to protect the environment of the country. But, in practice, these countries which are under pressure to pay their debts don’t pay attention to the ecological defects of the activities let the multinational companies to settle in the county,

180 Supra Note 13 at p. 126.
import the wastes which supply currency entrance, to be stored in the national borders and to be reused without evaluation.

MNCs have contributed significantly to the development of world economy at large.\textsuperscript{183} They are responsible for augmenting international trade and thus may help developing countries by pushing up their exports.\textsuperscript{184} Their importance in a developing country may be traced as follows:

1. MNCs help a developing host country by increasing investment, income and employment in its economy.
2. They contribute to the rapid process of development of the country through transfer of technology, finance and modern management.
3. MNCs promote professionalization management in the companies of the host countries.
4. MNCs help in promoting exports of the host country.
5. MNCs by producing certain required goods in the host country help in reducing its dependence on imports.
6. MNCs due to their wide network of productive activity equalize the cost of production in the global market.
7. Entry of MNCs in the host country makes its market more competitive and break the domestic monopolies.
8. MNCs accelerate the growth process in the host country through rapid industrialization and allied activities.
9. The growth of MNCs creates a positive impact on the business environment in the host country.
10. MNCs are regarded as agents of modernization and rapid growth.
11. MNCs are the vehicles for peace in the world. They help in developing cordial political relations among the countries of the world.
12. MNCs bring ideas and help in exchange of cultural values.

\textsuperscript{183} Supra Note 36 at p. 408.
\textsuperscript{184} S.K. Agrawala \textit{New Horizons of International Law and Developing Countries}, 1983, p. 418.
13. MNCs through their positive attitude and efforts work for the establishment of social welfare institutions and improvement of health facilities in the host countries.

14. Growth of MNCs help in improving the balances of payment status of the host country.

15. The MNCs integrate national and international markets. Their growth in these days has remarkably influenced economic, industrial, social environment and business conditions.

Developing countries are the host countries and there are many questions regarding the benefits of hosting a MNC. Are MNCs contributing to the sustainable development of a developing country? Or, do they simply exploit developing countries creating a country dependent on that MNC for their own economic, social and ecological growth? Critics and advocates of MNCs argue this point directing attention to the employment and treatment of indigenous workers, the transfer of new technologies to a developing country, the introduction of sophisticated managing techniques, and foreign direct investments. Depending on their point of view, either the MNC brings valuable tools to a developing which in turn infuses their economy with new jobs and raises the skills of the workers of the MNC fully exploits the developing country exporting the technology, capital and resources back to the parent country or other developed countries for profit.\textsuperscript{185}

Multinational Companies have activities in the fields like gold mining, petrol, chemicals and food industry which high potential effects on the environment in developing countries like Malaysia, Indonesia and Nigeria. As an Organization for Economic Cooperation and Development (OECD) study pointed out, as early as 1993: “Environmentally-dirty industries, particularly resource-based sectors, have migrated over the last two decades to lower income countries with weaker environmental standards; the result is a geographical shift in production capacity within sectors with a consequent acceleration of industrial

\textsuperscript{185} http://www.munfw.org/archive/49th/ecosoc2.htm.
pollution intensity in developing countries.” The study adds that ‘liberalized trade and investment rules among countries with unequal levels of environmental protection may create incentives for companies to relocate to jurisdictions with lower levels of environmental regulation and lower compliance costs.

Predatory MNCs based in the US, Europe or other countries of the global North today are running rampant in developing countries, in flagrant violation of domestic and international laws on industrial safety, hazardous and toxic materials and environmental pollution. Hazardous industries, sub-standard or obsolete technologies, banned or toxic materials, environmentally disastrous extractive industries, are all increasingly being thrust upon countries of the global South, even while the latter are prevented from developing their own self-reliant capabilities. Legal and regulatory frameworks in these countries are subverted by imposing neo-liberal polices favouring foreign investment and MNCs, often aided by the IMF, World Bank and other multilateral agencies that champion such policies. Multilateral trade agreements such as WTO and GATT are also being used by US imperialism and its allies to arm-twist developing countries into aligning their domestic policies with global corporate interests.

Third world countries became play fields for MNCs to make more profit because of cheap human labour and less stringent environmental regulations besides ready availability of raw materials. MNCs preferred third world countries rather than the industrialized first world nations with capital intensive technologies, expensive human resources and more expensive environmental restrictions. It is clear that MNCs had no special interest in developing the advanced countries. They have no concern for the environs of a developing nation and do not hesitate to exploit cheap human resources to convert their billions into trillions. It is well known critique of TNCs, Barnett and Muller summarized the negative impact of TNCs as follows:

“Global companies have their great levers of power – finance capital, technology, organizational skills, and mass communications – to create a Global

186 Candice Stevens, *Synthesis Report Environmental Policies and Industrial Competitiveness*, in Environmental policies and Industrial Competitiveness at 7 (OECD, 1993).
Shopping Centre in which the hungry of the world are invited to buy expensive snacks and a Global Factory in which there are fewer and fewer jobs.\textsuperscript{187}

Further, the influx of foreign investment by the Multinational petrochemical industry poses an additional danger. As Western industrialized countries become more aware of the hazards of toxic chemicals, chemical companies are rejecting and phasing out certain products and processes, due to regulatory mandate and popular pressure. The United States has already banned waste disposal practices such as dumping liquid hazardous waste in landfills. Production and the use of organ chlorines such as chlorinated solvents and pesticides are in decline. These products and processes are now showing up in India and other developing countries.\textsuperscript{188}

While third world countries expected that foreign investments would bring them avenues of employment, they brought unending misery and pollution. Veiled threats reached the government, the media and the legal institutions that imposing severe penalties on the MNC would deter other multinational players from entering the Indian Market, a possibility that was projected as dire. If the transferring MNC was to be let off lightly, it would send out signals that life was cheap in the developing world, and that profits could be essayed at the risk of death and disaster. There can be no other life example of death demon than one created by MNCs of developed nations is the Bhopal massacre caused by UCC. The death, disaster and dreadful conspiracy to exploit human labour in India and to unhesitatingly pollute the environment can be seen from the pathetic tragedy in Bhopal. UCC tried to shift blame saying it was local negligence and not design defect.

Interestingly, in recent times the idea of Multinationalism has developed in developing countries. Since the Second World War, most of developing countries have been putting in hard efforts to industrialise their economies by diversifying investment. Most of those countries experienced difficulties in maintaining their

\textsuperscript{188}  Kenny Bruno \textit{Gujarat Industrial Sacrifice Zones} Volume 16, Numbers 7 & 8, July / August 1995.
establishments in viable economic units. This was due to the limited size of domestic market which in turn increased the cost of capital, the unit cost and also created excess capacity. These factors motivated regional grouping of developing countries in order to enter into agreements which will enable them to enlarge the markets for their units and reduce competition by implementing the plan of complementary industries in the region. This, in turn, has helped in the formation of different types of firms, viz., non-equity co-operation, reciprocal share-holding, joint venture and multinational ownership.\textsuperscript{189}

It is primarily due to the vast disparities in access to justice that MNCs now want cases heard in developing country local courts, whereas victims wasn’t cases heard in the MNC home base courts. In many developing countries there is no legal aid system and public interest lawyers operate on “shoe-string” budgets. It would simply be impossible to run a difficult case on that basis, on anything like a “level playing field” against a well-resourced multinational. Up until recently MNCs have virtually avoided justice altogether when it comes to their developing country operations.

\textbf{2.12 MNCs AND GLOBAL ECONOMIC DEVELOPMENT}

A borderless world economy is now inevitable.\textsuperscript{190} The importance of the Multinational Corporation (MNC) is a key feature of globalization. The free access of MNCs to developing countries is a direct consequence of the participation in the globalizing economy.\textsuperscript{191} However, opinions differ greatly over the significance for domestic and international economic affairs of the globalization of corporate activities. Some commentators believe that the Multinational Corporation has broken free from its home economy and has become a powerful independent force determining both international economic

\begin{itemize}
  \item \textsuperscript{189} \textit{Supra Note} 47 at pp. 74-75.
  \item \textsuperscript{190} \textit{Supra Note} 155 at p. 141.
  \item \textsuperscript{191} Kristoffel Lieten \textit{Multinationals and Development: Revisiting the Debate} in Frans J. Schuurman \textit{Globalization and Development Studies, Challenges for the 21st Century} 2001 p. 112.
\end{itemize}
and political affairs. Others reject this position and believe that the Multinational Corporation remains a creature of its home economy.\footnote{Supra Note 10.}

As with many topics of intellectual debate, that of transnational companies (TNCs) and economic development has undergone changes in fashion. The early development literature saw direct foreign investment mainly as a means of transferring investible resources to countries which has little domestic savings and even less foreign exchange resources. Over time there was growing awareness of the other attributes of the investors-advanced technology, sophisticated marketing, complex organizations and all the good and bad characteristics of enormous size. The benefits that this could bring developing economies, with their pressing needs for all the knowledge and skills that TNCs possess, were obvious. The costs that may be associated with TNC presence also became apparent. At the crudest level, TNCs were ‘agent of imperialism’, and took out more money than they put in. At more suitable levels, they transferred inappropriate technologies and consumption patterns, did not export enough or pay due taxes, suppressed local technological development and the growth of indigenous enterprises, corrupted the local elite and generally launched the Third World on a dead-end route of ‘dependent capitalism’.\footnote{Sanjaya Lall Multinationals, Technology and Exports 1985 at p. 66.}

The fashion has changed again the past few years. TNCs are regarded, if not exactly with longing, with a mixture of cautious welcome and pragmatic hard-headedness by many developing countries. Several factors account for this change in attitude.

First, the economic realities of recession, protectionism and growing competition have forced many governments to look abroad for all possible sources of financial and other assistance. The quick relief offered by commercial bank lending has, equally quickly, raised problems of its own.

Second, the growing industrial capabilities of many developing countries (the NICs) have both induced them to look to TNCs for the more advanced
technologies and skills they need and also given them greater confidence to get these by direct investment (and to set up TNCs of their own).

Third, the passage of time has itself some of the greatest fears about TNCs-companies concerned have turned out to be less bad than feared (or their attractions greater than expected) and costly.

Finally, within the academic field, greater research and empirical experience have also served to tone down the strongest of the criticisms of TNCs in the Third World.

The opportunities for developing economies are significant as well. Some developing countries have a liberal entry policy towards transnational corporations. Through the application of capital, technology, and a range of skills, Multinational Companies (MNCs) overseas investments have created positive economic value in host countries, across different industries and within different policy regimes. There are two major levels for analyzing the economic effects of TNCs in the developing countries:

1. The general effects, that is, the total benefits obtained from the operations of TNCs by both the corporations and the host economy, and the way they are distributed between them; and
2. Specific effects, that is, an evaluation of different economic indicators as they relate to the host developing country alone. These indicators include balance of payments, employment creation, technology transfer, and impact on local businesses.

The single biggest effect evidenced was the improvement in the standards of living of the country’s population, as consumers have directly benefited from lower prices, higher quality goods, and broader selection. Improved productivity and output in the sector and its suppliers indirectly contributed to increasing national income. And despite often-cited worries, the impact on employment was either neutral or positive in two-thirds of the cases.

195 Supra Note 14 at p. 60.
Transitional economies are characterized by weak regulatory climates. Often, in order to attract multinationals these economies have to further weaken either the regulations or their enforcement. While such alternative may pose internal dilemmas for transitional economies, they pose additional incentives for multinationals to look elsewhere, where no such obstacles exist.\textsuperscript{196}

Investment by Multinational Companies (MNCs) allow developing economies to share in the considerable benefits of the global economy. Official incentives, trade barriers, and other regulatory policies, though, can result in inefficiency and waste. The early 1970s witnessed an explosion of criticisms about TNCs and their operations in many developing countries and the forum of the United Nations. Political interference in host countries, subversion of their national goals and policies, speculative financial transactions and damage to host country balance of payments, abuses of transfer pricing, and unethical conduct and restrictive trade practices in business are among the charges which have been leveled against TNCs, Government of India has been active in opposing such conduct and practices in international forums such as the UN and its agencies, and the Group of 77.\textsuperscript{197}

However, Case Studies reveal that in virtually all cases, MNC investment had a positive to very positive impact on the host country. Rather than leading to the exploitation of lower-wage workers, as some critics have charged, the investments fostered innovation, productivity, and an improved living standard. Therefore, government seeking those advantages would be advised to favour policies of openness, rather an regulation, when it comes to foreign direct investment. There are good reasons for countries – developed and developing – to admit wholly-owned affiliates of foreign Multinational Corporations (MNCs) to their territories. The case is especially good for manufacturing industries.\textsuperscript{198} MNCs have to take into consideration the policies, conditions and aspirations of each ‘host’ country. And reorganization of international capital market to assure

\begin{itemize}
\item \textsuperscript{196} Supra Note 131 at p. 163.
\item \textsuperscript{197} Supra Note 49 at pp. 747-748.
\item \textsuperscript{198} Rainer Hellmann \textit{The Multinational Enterprise the Nation State and Regional Groupings} in Gerard Curzon and Victoria Curzon \textit{The Multinational Enterprise in a Hostile World} 1977 p. 120.
\end{itemize}
that maximum freedom of capital flows. This implication new functions for the
World Bank and the IMF as well. 199

As discussed above, an attempt has been made in this chapter to examine
the various issues concerning MNCs for their origin, classification existence and
operations in different parts of the world. There origin in India and their role in
Economic have also been discussed above. How the Third World Countries
become play fields for MNCs to make more profit has also been examined in this
chapter. Further there significant contribution to the development of world
Economic has also been discussed in this chapter. This extensive study is
necessary to understand its nature, structure and institutional issues and to
examine the legal perspectives of these Global Business Enterprises.

The hypothesis that MNCs activities proved to be environmentally
hazards for the people working in and living around proved to be correct.

199 Supra Note 13 at p. 63.