CHAPTER - SECOND
2.1 INTRODUCTION

Industrial development of country is always dependent on various factors, including its natural resources, capital formation, manpower, technology, demand of products, purchasing power of the people etc. However, the policies of the Government for industrial development are the Key factor. The Procedures and policies of the Government are the most important to facilitate the growth of the industries in a country and their balanced development as well.

After independence of the country in 1947, the Government paid its attention to this vital aspect and need of the time and this resulted into evolution of industrial policy resolutions in the country. The government thus called an Industrial Conference in December 1947 to improve matters and remove the uncertainties and suspicions in the minds of investors and entrepreneurs.
The conference adopted a resolution for industrial peace and recommended a clear-cut division of industries into the public sector and private sector.

2.2 EVOLUTION OF INDUSTRIAL POLICY IN INDIA

The Industrial Policy reflects the direction and pattern of Industrial development, the country desires to have, to help to realize the economical social and political objectives of national development by means of industrialization. Thus, the industrial development will be guided and fostered by Industrial Policy.

The Industrial Policy indicates the respective wills of the public, private, joint and cooperative sector and also of the large, medium and small scale sector and will underline the national priorities. It would express government's policies towards "foreign capital and know how" the labour policy, the tariff policy, etc. in respect of the industrial sector.

A number of policy statements on industrial development have been made by Government of India after independence, starting with the Industrial Policy Resolution of 1948. As the old policy statements became irrelevant, when new ones are made, only the Industrial Policy Statement of 1991, the latest comprehensive policy statement is important for this study.

However, some reference to the other policy statement are also made to look into the major developments and evolution of Industrial Policy of India. Right from the independence the Government of India felt it necessary to make clear their policy towards industrialization of the country and the first important industrial policy resolution was issued on 6th April, 1948, which has since been modified by several subsequent policy resolutions and statements.
2.3 INDUSTRIAL POLICY STATEMENTS

After independence of India, the Government of India announced its first policy statement vide Industrial Policy Resolution of 1948. The policy was reviewed and modified from time to time in 1956, 1973, 1977, 1980 and 1991. The perspectives of these policy statements are discussed as follows:

INDUSTRIAL POLICY RESOLUTION 1948

Industrial policy of 1948 laid the foundation for mixed economy in the country. Following were the features of the 1948 industrial policy.

(a) Acceptance of the importance of both Private and Public Sector

The industrial policy resolution provided a framework of industrial set up, in which both public and private sector would play a role. A complementary rather than competitive role was conceived for the two sectors. It adopted a two-prolonged strategy –

(i) expansion of the state sector in areas where it was operating and in new lines of production, and

(ii) allowing the private sector to subsist and expand albeit under proper direction and regulation.

(b) Division of the Industrial Sector -

Industries were divided into four broad categories.

(a) Public Sectors Industries – where state had a monopoly – Manufacture of Arms and Ammunitions, production and control of atomic energy and the ownership and management of railway transport. Government was empowered to take over any industry vital to national defence.
Public and Private Sector Industries – Mixed Sector - In this category, the following 6 industries were specified: coal, iron and steel, aircraft manufacture, ship building, manufacture of telephone, telegraph and wireless apparatus (excluding radio sets) and mineral oils.

Private Sector with Regulation of Government-18 industries of national importance were included in this category. Automobiles, tractors, heavy machinery, machine tools, heavy chemicals, fertilizers, non-ferrous metals, rubber, cement, sugar, textiles, paper and sea transport etc.

Private Sector – Remaining industries were left to private enterprises, individual and co-operative etc.

In the Industrial Policy of 1948, the Cottage and Small Scale Industries had been given important place, as they were instrumental in offering job to large number of people and help the process of decentralization. Fair working conditions and proper wages for labour were also been recognized in order to maintain harmonious relations between workers and management.

It also admitted the need for foreign capital and ventures, but at the same time emphasized that, as a rule, the major interest in ownership and effective control should always be in Indian hands.

INDUSTRIAL POLICY RESOLUTION 1956

The Directive Principles of State Policy as provided for in the Constitution of India, the concept of mixed economy adopted by the Planners, the successful implementation of First Five Year Plan and Policy of establishing Socialistic pattern of Society in India envisaged after the formulation of Industrial Policy 1948 coupled with the developmental needs of the country necessitated a new Industrial Policy. Accordingly, the Government of India announced new
resolution on Industrial Policy in 1956, the important features of which are discussed as follows:

1. Industries were, now, divided into three categories -

   (a) **Public Sector** – 17 Industries listed in Schedule “A” and include defence Industries, heavy industries like steel, machinery, heavy electrical, mining industries, energy and power, transport and communications. The existing private sector units in these industries were allowed to continue. The State may involve private sector in establishing new units, if the national interest demands.

   (b) **Public and Private Sector** – 12 industries were included in Schedule “B” and included machine tools, ferro-alloys, non-ferrous metals, fertilizers, drugs and pharmaceuticals, dye-stuffs and plastics, road and ocean transport synthetic rubber etc. State as well as companies sector would set up news units and existing units may be expanded by private sector.

   (c) **Private Sector** – Other residual industries were left open to private sector, state will have the power to start any new undertaking in this category also in public interest. However, the state encourage the private sector to start new units in this category.

1. The ideals and philosophy of mixed economy were reiterated in the Policy resolution.

2. The State announced to provide developmental incentives and facilities to the private sector and expected of it to conform itself to national priorities and State Policy of Regulation.

3. The resolution of 1956 also recognized the critical role of small scale and cottage industries in co-ordination with
large scale industry. Balanced industrial development also aimed to encourage in order to develop backward regions.

4. Reasonable wages, good working conditions and participative management were given emphasis, as measures to promote industrial peace and harmony.

Thus, 1956 Industrial Policy Resolution laid emphasis on the dominant role of the State in industrialization, on the imperative of regulating private sector so that it sub-serves, public interest and on the criticality of balanced development of large and Small Industries and of all regions.

**INDUSTRIAL POLICY STATEMENT 1973**

The policy statement of 1973 upheld the continued validity of Industrial Policy Resolution of 1956 as a basis for a planned and rapid industrialization. However, a few modifications were introduced. The concept of joint sector as advocated by Dutt Committee was accepted in which both public and private units jointly participate in Industrial Ventures. Joint ownership and management of the ventures was the key idea. The Statement also took note of the provisions of MRTP Act 1969 and clarified the role of MRTP undertakings in establishment of core, heavy investment, export oriented and high technology industrial units.

**INDUSTRIAL POLICY OF “JANTA GOVERNMENT” 1977**

The new policy statement announced by Janta Government in ...... 1977 note of the various distortion in pattern of industrial development and emphasized the need of close inter-action between the agricultural and industrial sector of the country’s economy. The main emphasis was given on decentralization. The small scale and tiny sector was proposed to be encouraged. The list of items exclusively reserved for small scale sector was expanded considerably.
INDUSTRIAL POLICY STATEMENT 1980

The return of Congress Party to power in 1980 necessitated to re-start its policy framework of 1956 and 1973 and to repudiate the Janta Government’s Policy of 1977. It focused attention on the need for promoting competition in domestic market, technological up-gradation and modernization. The policy laid the foundation of an increasingly competitive export base and for encouraging foreign investment in high technology area. The main features of the 1980 policy were as under:

1. Employment generation at high rate;

2. Preferential treatment to agro-based industries in order to correct regional imbalances and promoting inter sectoral relationship;

3. Faster development of export oriented and import substitution industries.

4. Promoting economic federalism with an equitable distribution of investment and the dispersal of returns amongst widely spread small but growing units in rural as well as urban areas.

5. Optimum utilization of the installed capacity coupled with maximizing production and achieving higher productivity.

6. Consumer protection against high prices and inferior quality.

7. Thus, once again faith in the public sector was reiterated, while at the same time it was conceded that the private sector will continue to play a vital role in pursuing the goal of a vibrant self-reliant and modern economy. It also laid emphasis on foreign investment in advanced technology area.
2.4 POLICY TRENDS & REFORMS VIS-À-VIS NRIs' VENTURES AND INVESTMENT

Investment facilities for NRIs were first introduced in the 1970s when, *inter-alia*, Non-Resident External Account (NRE) Scheme and Foreign Currency Non-Resident Account (FCNR) Schemes were introduced. In 1973, R.N. Malhotra Committee was appointed to examine foreign exchange remittance into India.

In 1981, the Economic Administration and Reforms Committee headed by Shri L.K. Jha was also asked to review taxation policy for non-residents. Facilities for non-residents were considerably liberalized at the time of presentation of 1982&83 Budget. Jalan Committee was appointed to review the non-resident investment and consequent concessions were announced in 1983-84.

But in May, 1983, on account of stiff opposition from the Indian Industrialists, 1% individual and 5% overall ceiling on purchase of equity shares and convertible debentures of companies by NRIs through Stock Exchange was imposed.

In 1985-86, there was general liberalization in approach when the estate duty was abolished, de-licensing of industries was announced and three year Export – Import Policy was introduced.

A brief account of reforms during the current decade during 1992-93 to 98-99 can be given as under:

**CAPITAL MARKET REFORMS**

1. The Capital issues (Control) Act, 1947 was repealed. Office of the Controller of capital Issues was abolished and share pricing was decontrolled, the companies fan approach capital market after clearance from SEBI.

2. The Securities & Exchange Board of India was established in February, 1992 armed with necessary authority and powers for regulation and reform of the capital market.
3. Through a notification issued under the Securities contracts Regulation Act, 1956, the power to regulate stock exchanges was delegated to SEBI. This includes recognition rules articles voting rights delivery contracts stock exchange listing and nomination of public representatives.

4. Redressal of complaints of investors is to be encouraged, sharing it with the recognized investors associations. This will facilitate the filing of class action suits in consumer courts against erring companies.

5. Foreign institutional investors allowed access to Indian capital markets on registration with SEBI. 337 FIIs have been registered by December 1995.

6. Investment norms for NRIs liberated so that NRIs and overseas bodies corporate can buy shares and debentures with prior permission of RBI.

7. The Indian companies permitted to access international capital markets through Euro equity shares.

8. SEBI's authority reinforced by allowing it to issue registrations and file suits without prior approval of the central government.

9. Over the counter Exchange of India and the National Stock Exchange of India with nation-wide stock trading and electronic display clearing and settlement facilities commenced operations.

**PRIMARY MARKET REFORMS**

1. Merchant banking brought under SEBI regulatory framework and a code of conduct issued.

2. The bankers to the issue brought under purview of SEBI for investors protection.
3. The due diligence certificate by lead managers regarding disclosures made in the offer documents has been made a part of the offer document itself for better accountability.

4. SEBI has prescribed improved disclosures standards introduction of prudential norms and specification of issue procedures.

5. Companies required to disclose all material facts and specific risk factors associated with their projects while making public issues.

6. Stock Exchange required to ensure that companies concerned have a valid acknowledgement card issued by SEBI. SEBI vets the offer documents to ensure that all the disclosures have been made by the company in the offer document at the time the company applies for listing of its securities in the stock exchanges.

7. Stock exchange advised to amend the listing agreement to ensure that a listed company furnishes annual statement of stock exchanges showing variations between financial projections and projected utilization of funds made in the offer documents and actuals.

8. To discourage the use of stock invest by institutional investors, the facility has been restricted to mutual funds and individual investors.

9. SEBI introduced a code of advertisement for public issues for ensuring fair and truthful disclosures.

10. To reduce the cost of issues, underwriting by the issues made optional, subject to the condition that if an issue was not underwritten and was not able to collect 90% subscription, the entire amount collected would be refundable to the investors.
11. The extant guidelines for issue of bonus shares have been relaxed.

12. The practice of making preferential allotment of shares at prices unrelated to the prevailing market prices was stopped and fresh guidelines were issued by SEBI.

13. An expert committee chaired by Sh. Y.H. Malegam reviewed the existing disclosure requirements and issue procedures and suggested actions based on which new guidelines were issued.

14. SEBI to vet the draft prospectus within 21 days and mandatory period between the date of approval of the prospectus by the registrar of companies and the opening of the issue to be reduced to 14 days.

15. The details of abridged prospectus to be scrutinized by SEBI before the issue of acknowledgement card.

16. SEBI reconstituted the governing boards of the stock exchanges, introduced capital adequacy norms for the brokers and made rules for making the client-broker relationship more transparent in particular segregating client and broker accounts.

SECONDARY MARKET REFORMS

1. SEBI introduced regulation to substantial acquisition and takeovers and lays down conditions under which disclosure and mandatory public offers are to be made to the shareholders.

2. Renewal of transactions in B Group shares prohibited so that the transaction can be settled within 7 days.

3. Private mutual funds permitted and several have been set up, all mutual funds allowed to apply for firm allotment in public issue.
4. UTI was brought under the regulatory jurisdiction of SEBI.

5. Fresh guidelines for advertising by mutual funds issued and the requirement of pre-vetting of advertisement removed.

6. To improve the scope of investments by mutual funds permitted to underwriting public issues guidelines for investment in money market instruments relaxed.

7. The procedure for lodgment of securities for transfer was considerably eased for institutions through introduction of jumbo transfer deed and consolidated payment of stamp duty.

8. Stock exchanges would be allowed to introduce carry forward system only with the prior permission of SEBI and subject to effective monitoring and surveillance system and infrastructure.

9. The financiers funding the carry forward transactions being lenders of funds will not be permitted to square up their positions till repayment of the loan.

10. The carry forward position shall be disclosed to the market scrip wise and broker wise by the stock exchange at the beginning of the carry forward session.

11. Capital adequacy norms of 3 percent for individual members and 8 percent for corporate members in outstanding positions announced.

12. Graded margins of 25 for individual members and 6 percent for corporate members in their outstanding positions announced.

13. Members doing financing of carry forward transactions will be subject to a cap of Rs. 10 Crores.
14. The depositories introduced to provide a legal framework for the establishment of depositories to record ownership details in book entry form.

15. The programme to introduce changes in legislations like Companies Act, SCRA, stamp act and income tax act.

**REFORMS IN THE INDUSTRIAL SECTOR**

1. The number of items in respect of which industrial licensing remains reduced to 15. These industries account for only 15 percent value added in manufacturing sector.

2. The number of industries reserved for the public sector reduced to 6 viz. defence products, atomic energy, coal and lignite, mineral oils railway transport, minerals specified in the Schedule to the Atomic Energy Order 1953.

3. Private participation in some of these sectors is also permitted on a case by case basis.

**2.5 HIGHLIGHTS OF NEW INDUSTRIAL POLICY 1991**

In pursuance of its liberalization measures, Govt. of India announced the New Industrial Policy on 24th July, 1991. The new Policy announced a series of measures designed to unshackle Indian industry from the myriad administrative and legal controls which have become unnecessary in the changed national and global economic environment. The new policy reiterates the objectives:

1. To capitalize the gain already made;

2. To correct distortions or weakness that may have crept in;

3. To maintain international competitiveness.

The pursuit of these objectives will be tempered by (a) the need to preserve the environment and (b) the need to ensure efficient use of available resources.

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1- Based on "New Industrial Policy Text" – Economic Times, 20 Aug., 1991
In pursuit of the above objectives, Govt. has decided to take up a series of initiatives in respect of policies relating to following areas:

A. Industrial Licensing
B. Foreign Investment
C. Foreign Technology Agreement
D. Public Sector Policy
E. MRTP Act.

The other highlights of the Industrial Policy of 1991 are summed up as below:

**Industrial Policy**

(i) Industrial Licensing will be abolished for all projects except for a short list of industries related to security and strategic concerns, social reasons, hazardous chemicals and overriding environmental reasons, and items of elitist consumption (list attached as appendix B). Industries reserved for the small scale sector will continue to be reserved.

(ii) Areas where security and strategic concerns predominate, will continue to be reserved for the public sector.

(iii) In projects where imported capital goods are require, automatic clearance will be given:

(iv) In projects where imported capital goods are required, automatic clearance will be given:

(a) In cases where foreign exchange availability is ensured through foreign equity, or (b) if the CIF value of imported capital goods required is less that 25% of total value (net of taxes) of plant and equipment, up to a maximum value of Rs. 2 crores, in view of the current difficult foreign
exchange situation, this scheme {i.e. (iii) (b)} will come into force from April, 1992.

(b) In other cases imports of capital goods will require clearance from the Secretariat of Industrial approvals (SIA) in the Department of Industrial Development according to availability of foreign exchange resources.

(ii) In locations other than cities of more than 1 million population (Appendix D) there will be no requirement of obtaining industrial approvals from the Central Government except for industries subject to compulsory licensing. In respect of cities with population greater than 1 million, industries other than those of a non-polluting nature such as electronics, computer software and printing will be located outside 25 kms. of the periphery, except in prior designated industrial areas. A flexible location policy would be adopted in respect of such cities (with population greater than 1 million) which require industrial re-generation. Zoning and Land regulate industrial locations appropriate incentives and the design of investments in infrastructure development will be used to promote the dispersal of industry particularly to rural and backward areas and to reduce congestion in cities.

(iii) The system of phased manufacturing programmes run on an administrative case by case basis will not be applicable to new projects. Existing projects with such programmes will continue to be governed by them.

(iv) Existing units will be provided a new broad banding facility to enable them to produce any article without additional investment.

(v) The exemption from licensing will apply to all substantial expansions of existing units.
(vi) The mandatory convertibility clause will no longer be applicable for term loans from the financial institutions for new projects.

**Procedural Consequences**

(i) All existing registration schemes (Delicenced Registration, Exempted Industries Registration, DGTD Registration) will be abolished.

(ii) Entrepreneurs will henceforth only be required to file an information memorandum on new projects and substantial expansions.


**INDUSTRIAL LICENSING**

The 'highlights of the policy measures show a substantial reduction in the number of industries requiring compulsory licensing. The Govt. has done away with industrial licensing except only 18 industries those specified in the Schedule II of the notification No. S.O. 477 (E) dated 25th July, 1991, irrespective of level of investment. The industries, where industrial licensing will continue include areas like coal, petroleum, sugar, cigarettes, motor cars, hazardous chemicals, drugs and pharmaceuticals and some luxury items. Compulsory licensing in these areas has been considered for security and strategic consideration, safety reasons, and over-riding environmental concerns and also the need to regulate production of articles of elitist consumption.

Barring these, the entrepreneurs are allowed to freely develop their industries, become more Competitive, nationally and internationally, more efficient and modern, where freedom has been given to major industries to grow, reservation of items for the Small
Scale is continue so as to promote the industrial and agro-industrial employment base.

2.6 COMMENTS ON NEW INDUSTRIAL POLICY OF 1991

The New Industrial Policy reflects that the focus of economy philosophy of the Government of India has shifted now. It is now guided by the considerations of unshackling the Indian Industry from needless and irksome controls, encouraging the growth-promoting entrepreneurial energies, providing the frightful control for market mechanism in determining the allocation of resources, getting rid of costly delays, inefficiency and wastage, developing industrial structure based on technological dynamism and international competitiveness and making India a real formidable power in the Community of nation by the turn of twentieth century.

The far reaching liberalization announced in the New Industrial Policy is one full swoop done away with rigors of industrial regulations and restrictions, while the policy continues to swear by the erstwhile multiplicity of goals of strengthening public enterprises, reducing socio-economic disparities, expanding gainful employment, removal of poverty and attainment of self-reliance.

One of the most important merits of the policy is that while encouraging competitive forces internally, it has recognized the role and the urgency of foreign investment and the advantage of technology transfers including from NRIs also. In fact, our industries have not acquired such strength, maturity and sophistication as to absorb the newer technologies and confidently face competition from a foreign entrepreneur without much disruption or dislocation and there are as many as 34 industries wherein direct foreign investment upto 51% of the equity ownership has been allowed. To make things more attractive provisions relating to royalty payments to foreign investors and Non-Resident Indian have also been relaxed.
Post 1991 Developments

Post - 1991, the reforms policy was pursued further by opening up for the same. Much of the differences in perceptions were anchored in differences in political ideologies. Even the liberalisation to the extent of foreign participation in Indian industry was beset with differences in perception. In fact between 1998 to 2002 the pace of reforms slowed down considerably due to political pressures and uncertainties and the necessities and constraints of a coalition Government at the center. The reform message also did not get percolated to the State level and various State Governments seemed to be not quite responsive to the need for sympathetic reforms at their respective State level regulations and policies.

Some of the major policy initiatives and highlights for the year 2001 – 02 are as under:

❖ The FDI Policy framework was further liberalised by enlarging the automatic route. Apart from this, a few more sectors were opened to FDI, viz. integrated township development (up to 100%), metro mass rapid transit systems (up to 100%) and defence industry sector (up to 26%).

❖ To further liberalize and facilitate realization of cess from salt industry, Government has introduced self Removal Procedure in place of consignment-wise permit system for removal of salt from the salt factories vide Notification dated 4th September, 2001. The said notification is a further step towards removal of Government control over the salt industry.

❖ Commerce & Industry Minister led high level official and business delegations to Germany and Spain, in May 2001, and to Italy and Netherlands, in February 2002, to participate in the "Destination India" campaign, create awareness about favourable investment climate in India and to attract foreign direct investment.
Government undertook modernisation of the Intellectual Property framework in India as a strategic response to the emerging challenges posed by globalisation and the increasing relevance and importance of intellectual property in a knowledge based development environment. Government initiatives include appropriate legislative changes in relevant IP laws covering Patents, Trade Marks, Designs and Geographical Indications.

These are being complemented by simultaneous upgradation and modernization of the infrastructure of the infrastructure of the Patent Offices. Two modernized patent offices at Delhi and Chennai were operationalised in July and August, 2001 respectively and a modern Geographical Indications Registry operationalised at Chennai in August, 2001.

Annual Forum for the Asia Pacific Region on policy development, institution building and demystification of intellectual property rights issues was organised in New Delhi in August, 2001. In addition, a number of seminars were organized in different parts of country on various aspects of patents, trade marks and designs and their international protection related issues.

Operational phase of the project 'International Centre for the Advancement in Manufacture Technology (ICAMIT)' has been approved. This three-year project aims at making advanced manufacturing technologies available to small and medium enterprises in developing countries and improving their competitiveness. National Projects for the development of Machine Tool and Lock industries were taken up under ICAMT.
Industrial scenario and performance of industries – an overview

Investment climate

The New Industrial Policy announced in July 24, 1991 has created a climate in which the entrepreneurs make investment decisions on the basis of their own commercial judgment. The policy is investor-friendly and the entrepreneurs are now free to take investment decisions on their own perception, with greatly reduced regulatory role of the Government. Industrial licensing has been virtually abolished, except in the case of six industries on strategic, public health, safety and environmental considerations.

Investment climate depends on various factors such as domestic economic conditions, capital markets, policy governing foreign investment rate of return, interest rate, exchange rate, tax rates, incentives and facilities available, world economic trends, strategies of global investors etc. Despite global economic slowdown during the year when most of the developed economies like the USA, Japan could not sustain positive growth rates and gradually slipped into recession, India economy has shown resilience due to Governments' pro-active role in handling the situation.

The Government welcomes foreign investment which is in the interest of the country's industrial development. The advantage of India as an investment destination lies on India's second economic fundamentals. It has been acknowledge internationally that India has one of the best foreign investment policies. Its investment policy is very liberal even when compared to those in many developed countries.

The domestic capital market has been increasingly deregulated in most respects since the liberalisation in 1991. To bring an up-turn in the depressed share market, amendments were made in the Companies Act to ease buy-back of shares. Likewise, investment limit for foreign institutional investors (FII) has been increased to the level
of Foreign Institutional (FDI) ceilings in all the sectors. To attract FDI, a number of initiatives were taken during the year.

As per data available from Secretariat for Industrial Assistance (SIA), the total amount of proposed domestic investment during the calendar year 2001 stood at Rs. 92,577 crore against Rs. 73,374 crore, registering a growth of 26.17%.

Investment by Foreign Institutional Investors (FIIs) has shown improvement despite uncertainties and economic slowdown. According to latest available data published by the Reserve Bank of India (RBI), the inflow of FII investment in dollar terms during April-November, 2001, stood at a record level of US $ 799 million against US $ 267 million in the corresponding period of the previous year.

As per data available from Securities and Exchange Board of India (SEBI), the net FII investment in Rupee terms has accelerated in the year 2001 to Rs. 13,292.7 crore from Rs. 6,511.2 crore in the year 2000, registering a growth of 104.15%. The net FII investment in 2001 is the highest ever since 1993.

**NRI Investment**

Proposals envisaging NRI investment of Rs. 10,142.36 crore (excluding approvals granted under RBI Schemes) have been approved by the Government from 1991 to December, 2001. NRI inflows have been of the order of Rs. 8,906.18 crore, (the amount of NRI inflows includes the inflows of special NRI schemes administered by RBI).

**FDI Approval & Inflow**

During January-December, 2001, the FDI inflow has been of the order of Rs. 19,265.10 crore against Rs. 19,341.74 crore during the corresponding period last year. The implantation rate of 39.66%.

**Investment Facilitation**

Foreign investment Implementation Authority has been established to assist the investors obtain necessary approvals. A six
point strategy for attracting FDI was announced. As part of the strategy, FIIA has, to start investments of Rs. 100 crore and above, asking them to inform FIIA if they are encountering any difficulties in the implementation of their projects and whether they would like FIIA to take up such issues with concerned agencies for resolution. All fresh FIPB approvals issued since September, 2001, also contain information of FIIA and its e-mail address for investors to approach FIIA in case of any difficulties.

Direct contracts have also been established with the investors to get a first hand feedback on any difficulties being faced by them. FIIA interacted regularly with the FDI approval holders when Government of India Ministries, senior officials from State Government apex industrial association like CII, FICCI and ASSOCHAM have also participated, Besides this meetings with major investors from specific countries such as Australia, Singapore, Germany, Japan etc., have also been held.

A study was commissioned by the Department of Industrial Policy & Promotion with Centre for Monitoring Indian Economy (CMIE) to identify the reasons for the slow progress in the implementation of investment projects. This study based on the response from promoters of 304 projects, comprising of 16. This study has also revealed that about 19% of the respondents considered Governmental clearance to be a problem in project implementation. This study has further shown that getting clearances from local authorities is a greater problem than from the Central or State Government. The findings of the study are summarized below:

<table>
<thead>
<tr>
<th>Clearance by</th>
<th>Seriously problematic</th>
<th>Mildly Problematic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Government</td>
<td>2.3%</td>
<td>15.3%</td>
</tr>
<tr>
<td>State Government</td>
<td>3.9%</td>
<td>14.8</td>
</tr>
<tr>
<td>Local Government</td>
<td>2.6%</td>
<td>18.2%</td>
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Current Industrial Performance

Monitoring the trend of industrial growth is one of the functions of the Department. The share of the industrial sector comprising mining & quarrying, manufacturing, electricity, gas and water supply in 2000-01 accounts for about 20% of Gross Domestic Product (GDP) at factor cost in terms of market prices. The share of manufactured goods in total exports is about 79.4%.

Importance of Industry

The growth of the industrial sector is indispensable for the growth of the economy. The industrial sector also plays a vital role in the development of 'services' sector through its forward linkage effects. According to CSO classification, the services sector covers trade, hotels, transport and communication; financial, real estate & business services; Community, social and personal services. Industrial sector is basically a commodity-producing sector, which manufactures by transforming the primary raw materials with the help of technology. The services sector accounts for about 50% of GDP of the country.

2.7 INCENTIVE SCHEMES FOR NRIs

Incentives are used by Government to attract investment, to steer investment into favoured industries or regions, or to influence the character of an investment, for instance when technology-intensive investment is being sought.

In general, incentives can be addressed to foreign Multinational corporations (MNCs), to local companies or to both. Most investment incentive are directed to domestic and foreign investors alike, although, sometimes de facto only foreign investors can access certain incentives e.g. when specific foreign investors, or where advanced technologies are involved that can only be provided by foreign investors. As long as foreign direct investment (FDI) was not sizeable, overwhelmingly to domestic firms only, they were primarily a matter of

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3- Source Introduction – Incentives and Foreign Direct Investments, current studies, series A. No. 30
domestic policy. However, in an open world economy, in which barriers to FDI are falling and integrated international production system driven by TNCs is emerging, a country's incentive system enters the locational consideration of investors from abroad in other words the internationalisation of production brings with it the internationalization of the reach and effect of erstwhile national incentive policies. This, in turn, raises the question of incentives, competition, among countries specially in a regional context for the purpose of attracting (FDI) and retaining foreign and domestic investment and the cost and benefit associated with such competition.

Incentives are any measurable economic advantages afforded to specific enterprise or categories of enterprise by a government, in order to encourage them to behave in a certain manner. They include measures specifically designed either to increase the rate of return of a particular FDI undertaking or to reduce its costs or risks. The following type of incentives for Foreign Direct Investment can be distinguished.

**FISCAL INCENTIVES**

Their overall objective is to reduce the tax burden for a foreign investor. Tax incentive schemes can be classified in different ways, depending on the tax base. In addition, some incentives relate to the entire tax regime.

**TABLE 2.7.1 MAIN TYPES OF FISCAL INCENTIVES FOR FDI**

<table>
<thead>
<tr>
<th>SL. No.</th>
<th>Nature of Incentive</th>
<th>Description of incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Profit based Incentives</td>
<td>Reduction of the standard corporate income-tax rate; tax holidays; allowing losses incurred during the holiday period to be written off against profits earned later (or earlier)</td>
</tr>
<tr>
<td>2.</td>
<td>Capital Investment based incentives</td>
<td>Accelerated depreciation, investment and reinvestment allowance.</td>
</tr>
<tr>
<td>3.</td>
<td>Labour based incentives</td>
<td>Reductions in social security contributions; deductions from taxable earnings based on the number of employees or on other labour-related expenditure.</td>
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4-UNCTAD - DTCL, 1993
5-IBID
<table>
<thead>
<tr>
<th></th>
<th>Incentives</th>
<th>Description</th>
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<tbody>
<tr>
<td>4.</td>
<td>Value based Incentives</td>
<td>Corporate income-tax deductions or credits based on the net local content of outputs; granting income-tax credits based on net value earned.</td>
</tr>
<tr>
<td>5.</td>
<td>Income Based Corporate Income Tax Deductions</td>
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</tr>
<tr>
<td>6.</td>
<td>Incentives based on other particular expenses</td>
<td>Corporate Income -Tax deductions based on other on, for example, expenditure relating to marketing and promotional activities</td>
</tr>
<tr>
<td>7.</td>
<td>Import based Incentives</td>
<td>Exemption from import duties on capital goods, equipment or raw material, arts and inputs related to the production process.</td>
</tr>
</tbody>
</table>
| 8. | Export Based Incentives        | a. Out-put, e.g. exemptions form export duties; preferential tax treatment of income from exports; income-tax reduction for special foreign exchange earning activities or for manufactured exports,; tax credits on domestic sales in return for export performance.  
  b. Input – related, e.g. duty drawback tax credits for duties paid on imported materials or supplies; income tax credits on net local content of exports; deduction of overseas expenditures and capital allowance for export industries |

Notes:

a. "Net local content" is the value of sales less depreciation of capital equipment and the value of imported raw materials and supplies.

b. "The net value earned" is the value of sales less the cost of raw materials and components, supplies and utilities, and depreciation of capital equipment.

It may be clarified that applying to a TNC in a host country, for example, tax stabilization consists of freezing the fiscal regime at its existing level for extended periods. This form of incentive relates generally to special regimes applying to important project (e.g. in mining). The various types of tax incentives in a host country can have a different effect on the overall corporate tax paid by a parent company, depending on the host countries. The purpose of double
taxation agreements is to allow for taxes paid in the host country to be deducted from corporate income taxes at home. However, this does not necessarily prevent a home country from taxing the income that is exempted from tax in a host country. For this reason certain types of double taxation agreement provide for tax sparing, whereby the home country gives credit to taxes that would have been paid in the host country if no tax exemption had been given. This device ensures that tax concessions given in a host country benefit foreign investors instead of resulting in a transfer of tax revenue from the host to the home country.

FINANCIAL INCENTIVES

Financial Incentives are those involving provision of funds directly to firms to finance new foreign investments or certain operation, or to defray capital or operation costs. The most common types include government grants, subsidised credit, government equity participation and insurance at preferential rates etc.

**TABLE 2.7. 2 MAIN TYPES OF FINANCIAL INCENTIVES FOR FOREIGN DIRECT INVESTMENT**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Nature of Incentive</th>
<th>Description of incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Government Grants</td>
<td>A variety of measures (also loosely referred to as &quot;direct subsidies&quot;) to cover (part of) capital production or marketing costs in relation to an investment project.</td>
</tr>
<tr>
<td>2.</td>
<td>Government Credits at subsidised rates</td>
<td>Subsidised Loans, guarantees and guaranteed export credits</td>
</tr>
<tr>
<td>3.</td>
<td>Government Equity Participation</td>
<td>Publicly funded venture capital participating in investments involving high commercial risks.</td>
</tr>
<tr>
<td>4.</td>
<td>Insurance Cover at preferential rates.</td>
<td>Usually available to cover certain types of risks such as exchange-rate volatility, currency devaluation or non-commercial risks such as expropriation and political turmoil,</td>
</tr>
<tr>
<td>5.</td>
<td>Government provided Insurance cover</td>
<td>This type of insurance is provided through any international Agencies.</td>
</tr>
</tbody>
</table>
OTHER INCENTIVES

Some types of incentives elude easy classification, their common denominator being that they are designed to increase the profitability of foreign affiliate by non-financial means. For example, subsidised dedicated infrastructure; certain subsidised services; market preferences and preferential treatment on foreign exchange.

### TABLE 2.7.3. MAIN TYPES OF OTHER INCENTIVES FOR FDI

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Nature of Incentive</th>
<th>Description of Incentives</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Subsidised dedicated Infrastructure</td>
<td>Include provision, at less-than-commercial prices, of land, buildings, industrial plots or specific infrastructure such as telecommunications, transportation, electricity and water supply etc.</td>
</tr>
<tr>
<td>2.</td>
<td>Subsidised Services</td>
<td>Services offered may include assistance in identifying finance, implementing and managing projects; carrying out pre-investment supply of infrastructure advice on production process and marketing techniques; assistance with training and retraining; technical facilities for developing know-how or improving quality control.</td>
</tr>
<tr>
<td>3.</td>
<td>Market Preference</td>
<td>Preferential government contracts, closing the market for further entry; protection from import competition; granting of monopoly right.</td>
</tr>
<tr>
<td>4.</td>
<td>Preferential treatment on foreign exchange</td>
<td>Special exchange rates; special foreign debt-to-equity conversion rates; elimination of exchange risks on foreign loans; concessions of foreign exchange credits for export earnings; special concessions on the repatriation of earnings and capital.</td>
</tr>
</tbody>
</table>

These Incentives may be granted conditionally or unconditionally. The former may be linked to performance requirement which in some cases can have a disincentive effect on the investment (incentives are then used to compensate for this
disincentive). They can be granted, financed and /or administered at all levels of government i.e. at the supranational, national, regional and local levels. Incentives may be granted automatically (upon compliance with certain qualifying conditions) or there may be varying degrees of discretion on the part of the administering authority to decide on the awards. Also, awards may be granted before the conditioning element has taken place, or retroactively, after the condition has been met (obviously, the choice between ex ante and ex post facto awards is closely dependent on the type of incentives chosen)\(^6\).

Thus, not only is there a wide array of choices for designing FDI incentives but, in addition, the characteristics of their administration and implementation can also make a difference. Indeed, the same benefit for the foreign investor may cost a government more or less, depending on the type of incentive used and on how it is administered. In practice, however, in the case of large or important FDI projects, incentives are often granted as part of a negotiation process with an investor, with investors not seldom demanding incentives, be it to match incentives offered elsewhere or to compensate, e.g., for perceived higher structural costs. In this event, the line between what is an incentive strictu sensu and then a larger package of conditions and counter-conditions being negotiated is often difficult to draw. In this connection there are certain important points to be noted:

1. A distinction should be made at the outset between an incentive, as herewith defined, and a subsidy which is "financial aid granted by a government of other organisation to an individual or legal entity for something that is considered to be of some advantage to the public"\(^7\).

2. A subsidy may take the form of a payment by the Government or of Government’s foregone revenue it would otherwise but conditions the assistance on a particular performance by the recipient\(^6\)

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6- Bernard and Colli. 1992, Page 330
7- ibid, page 331
3. A similar classification of incentives can be found in, among others, OECD, 1983 and 1989.

4. A similar classification can be found in Rhee, 1985

2.8 SPECIAL INVESTMENT SCHEMES FOR NRIs

Government of India has, from time to time announced various scheme to encourage the foreign direct investment as well as large amounts of funds available with NRIs. Therefore, NRIs and persons of Indian as well as eligible overseas corporate bodies (OCB's) have various opportunity of investment in India.

Reparability has been a major considerations for NRIs making investment into India. Hence investment is permitted on non-repatriation as well as on repatriation basis. Besides, this investment can be made by NRIs in the following broad categories:

Investment in non-resident bank account:

a. Repatriable Accounts – Non-Resident External (NRE) accounts, which can be classified as –
   i. NRE Rupee A/c
   ii. Foreign Currency Non-Resident Account (FCNR A/c)
   iii. FCNR (Bank) Scheme.

b. Non Repatriable Accounts: which can be classified as –
   i. NRO Rupee Account
   ii. Foreign Currency (Ordinary non-repatriable A/C
   iii. Non-Resident (Non-repatriable) Rupee Deposit

Investment in Security –

   i. Investment in Government Securities/units of UTI.
   ii. Primary market investment in shares/debentures.
   iii. Secondary market investment in shares/debentures.
iv. Direct investment by subscription to the memorandum
and articles association of an Indian Company.

The above investment avenues can also be classified on
repatriation and non repatriation basis.

2.9 FORMS OF BUSINESS ORGANIZATION

We have already considered the various avenues available to the
NRI for investing his funds and setting up and industrial venture in
India. The qualified and experienced NRI may try to establish an
industrial venture in his mother country. The various forms of
business organization by which he achieve this objective are discussed
as under:

SOLE PROPRIETORSHIP

The simplest form of business organization would be sole
proprietorship of any venture. The NRI could take a premises on leave
and licence basis to start with and do business of any commodity or
product. He will have to get his undertaking registered under the law
to which he is the subject. He will be assessed to Income Tax on his
business in accordance with the provision of IT law. But this form of
organization is suitable to small sector units only.

PARTNERSHIP

The Second alternative is to enter into partnership with relative/
friends and do business or start industrial venture in the name of a
partnership firm which may or may not be registered under the Indian
Partnership Act, 1932. The minimum number of partners is two and
the maximum number being twenty. A partnership may be at will or
for a specified period as per deed.

THE JOINT STOCK COMPANY

By far the best and most suitable form of business organization
is the joint stock company which as held by the Apex court in "Tata
Engineering and Locomotive Company Limited vs. State of Bihar" is
equal to a natural person and has a legal entity of its own. The entity of the corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from that of its member; it can sue and be sued exclusively for its own purposes, its creditors cannot obtain satisfaction from the assets of its members; the liability of the members of shareholders is limited to the capital invested by them; similarly the creditors of the members have no right to the assets of corporation. In this way a company is a legal entity distinct from its members. In this way a company is a legal person and have a separate legal entity distinct from its members.

**Private and Public Companies** – A Private Company can be formed with just 2 members. Maximum members are 50 excluding past and present employees who are members of the company. It imposes restriction on transfer of its shares and also cannot invite the public to subscribe for its shares or debentures. Minimum membership in the case of Public Limited Company is seven. There is no restriction upon number of maximum members. The Companies Act, 1956 is applicable to all the companies.

**2.10 FORMATION OF A LIMITED COMPANY**

First of all name of the Company may be selected and its availability can be confirmed by Registrar of Companies by making an application in a prescribed form. Once the name has been approved, the promoters have to submit the following documents to the concerned registrar for incorporation of a Company.

a. Memorandum of Association of Company, which is the primary document of co. constituting the objects for which the company has formed, duly subscribed and stamped;

b. Articles of Association of the Company which are bye laws inter se of the members, duly stamped;
c. A declaration in form 1 signed by a person named in the Articles as a Director or Secretary of the Company to the effect that all requirements of the Companies Act, in relation to the Incorporation of the company have been duly complied with;

d. Notice of the situation of the Registered Office of the Company in Form No. 18;

e. Consents in Form 29 from the proposed Directors in the case of a Public Limited Company; and

f. Form 32 giving certain particulars of Directors of the company.

If the Registrar is satisfied with the formalities, he issues a Certificate of Incorporation in the name of Company which is conclusive proof that all the requirements of the Companies Act in regard to incorporation have been complied with. A Private Limited Company can start its function immediately after getting the Certificate of Incorporation. A Public Limited Company will have to obtain a certificate of commencement of business before it commences its functions.

2.11 INDUSTRIAL LICENSING POLICIES AND PROCEDURE

The Industrial Policy lays down the national objectives to be achieved through industrialization and the strategy of development to be pursued to achieve these objectives. To ensure that the pattern and direction of development confirm to the policy, the government should have the power to control the development and performance. A number of law like the Industries (Development and Regulation) Act, MRTP Act, FERA have been enacted to empower the Government with authority to control the industrialization in public interest.
The Industries (Development and Regulation) Act, 1951 empowers the Central Government to regulate the development of industries by means of licensing.

A licence is a written permission from the Government to an industrial undertaking to manufacture specific articles included in the schedule. It includes particulars of the industrial undertakings, its location, the articles to be manufactured, their capacity on the basis of maximum utilization of plant and machinery and other appropriate conditions which are enforceable under the Act. It is also subject to a validity period within which the licensed capacity should be established.

Before the announcement of New Industrial Policy 1991, every industrial undertaking in India, whether it is in the small, ancillary, medium or large scale sector, should either be registered or have necessary industrial licence. But the New Industrial Policy, 1991, by virtue of its operation has almost made Industries (Development & Regulation) Act 1951 ineffective. Only 18 specific industries which are contained in Schedule II of the 1991 Policy, are within the ambit of the above Act and subject to licensing.

Therefore, under the new policy, Industrial licence is now required only for the following industries.

1. Where the proposed article(s) of manufacture is included in the list of industries reserved for public sector (Schedule I of NIP 1991) or the list of industries in respect of which industrial licensing is compulsory (Schedule II of NIP 1991).

2. The proposed project is located within 25 kms from the periphery of the standard urban limits of a city having a population of more than one million according to 1991 census (23 cities contained in this category)
PROCEDURE FOR OBTAINING INDUSTRIAL LICENCE

Industrial Undertaking covering the project for manufacture of articles requiring compulsory licence are required to apply in Form "IL" in a set of 10 copies with a covering letter to the Secretariat for Industrial Approvals, Department of Industrial Development, Udyog Bhawan, New Delhi, with a demand draft of Rs. 2500/- drawn in favour of Pay and Accounts Officer, Department of Industrial Development, Ministry of Industry payable at State Bank of India, Nirman Bhawan, New Delhi 110001.

WHEN TO APPLY

Rule 7 of the Registration and Licensing of Industrial Undertaking Rule, 1952 requires that an application for Licence for (i) establishment of a new Undertaking Under Section 11 (ii) for the manufacture of new article under Section 11A or (iii) for effecting substantial expansion in capacity under clause (d) of Section 13(1) should be made before –

a. Issue of capital to the Public;

b. Commencing construction of a factory building;

c. Placing order for plant and machinery.

An application under clause (c) of Section 13(i) for change of location of an industrial undertaking should be made before-

a. acquisition of land at the new site

b. construction of premises for housing the industrial undertaking at new site;

c. dismantling any machinery at the existing site.

Application for “carry on Business” (COB) is to be made within the time specified or fixed for the purpose in the Act, or in the relevant notification.
All application for industrial licence are required to be submitted to Secretariat for Industrial Approvals (Central Receipt and Dispatch Section) Udyog Bhavan, New Delhi – 110001.

**LETTER OF INTENT**

When an application for grant of licence is approved by the Government, a letter of intent/industrial licence is issued – The initial validity period, from the date of issue of letter of intent, is 12 months. The concerned Administrative Ministry can grant two extensions not more than of 6 months on each occasion.

**CONVERSION OF LETTER OF INTENT INTO INDUSTRIAL LICENCE**

Besides above licensing requirements, the setting up of an Industrial unit may entail taking of permission/dealing with other entities like Local Authorities, Pollution Control Board etc. When the subsequent clearance are finally obtained viz. foreign collaboration approval, capital goods, clearance and certificate relating to environmental pollution, the letter of intent is automatically converted into industrial licence.

In consequence of the New Industrial Policy, existing Scheme of registration namely, the De-licensed Industries Registration Scheme (DIR), Exempted Industries Registration Scheme (EIR) and Registration with Director General of Trade Development (DGTD) have been abolished.

However, the registration scheme of small scale industries with State Directorates of industries will continue as before.

**2.12 PROCEDURE AND RELATED OBLIGATIONS FOR NRIs’ INDUSTRIAL VENTURE**

Most of the procedures for obtaining permission and industrial licence for NRI is similar, However, for foreign investment as well as investment from NRIs special treatment is given with priority
processing and clearance and as far as possible single window clearances to avoid any inconvenience to the NRIs.

A Special form “IL(NRI) has been prescribed for Non-Resident Indian. This form should be submitted in set of 11 copies. It should be noted that no separate Memorandum of information for exempted industries has been prescribed for NRIs.

In cases where an application needs capital goods clearances and/or foreign collaboration clearance, in addition to industrial licence, the applicant may make simultaneous application for all approval required. Such composite applications enable the Government to give a composite or simultaneous clearance.

The Reserve Bank of India has announced a single window clearance for foreign direct investment as well as investment from NRIs under the new Industrial Policy.

Thus, the procedural formalities for the Non-Resident Indian have been simplified over the period of time and the policies aim clearly for attracting NRI investment in the country in as much as possible.

In the backdrop of these policies and procedural simplification, it has become really full of prospects for the NRIs to contemplate industrial ventures in the country and launch a come back to their own country.