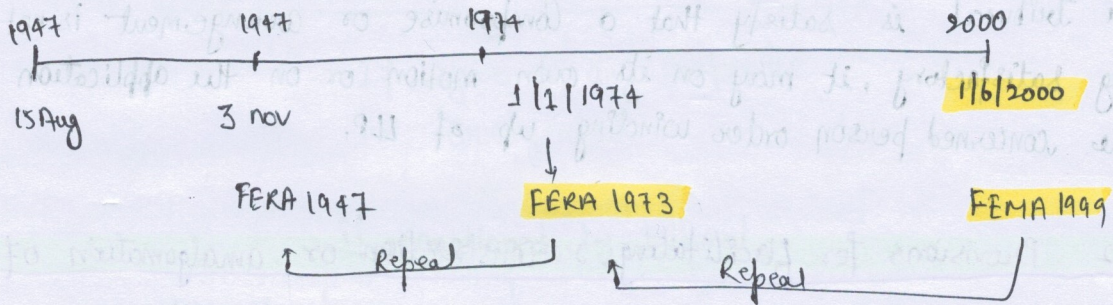


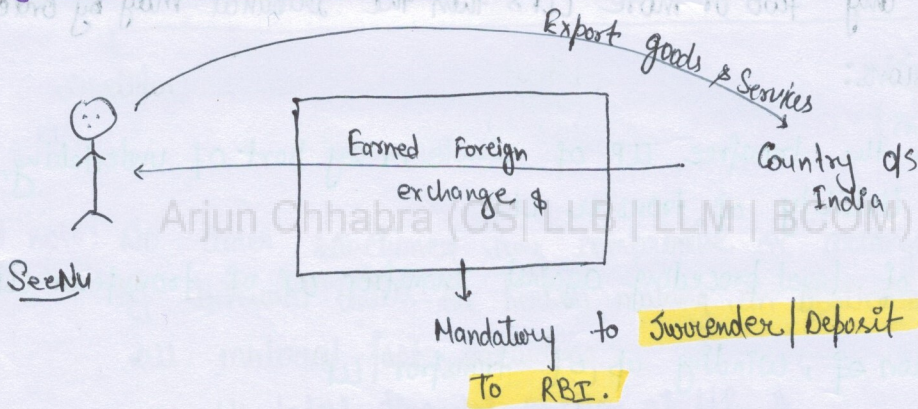
# Foreign Exchange Management Act, 1999 [FEMA]

## Background/History

- Before Foreign Exchange Management Act, 1999, there was foreign exchange Regulation Act, 1973/1947



## Journey from FERA To FEMA



• Why?? RBI Treasury \$ → low ↓ - 1947/1973

↓  
RBI - protect/conserve  
↓  
Why

India was  
Garib desh

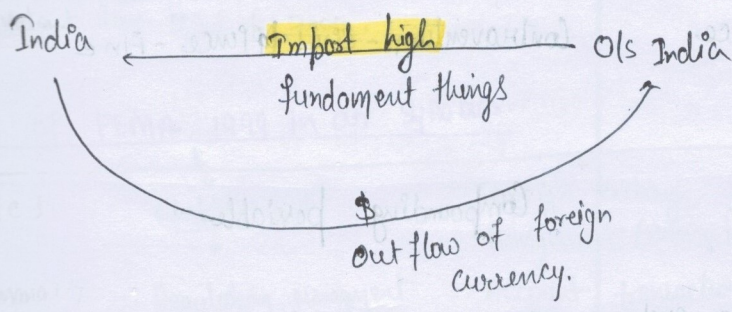
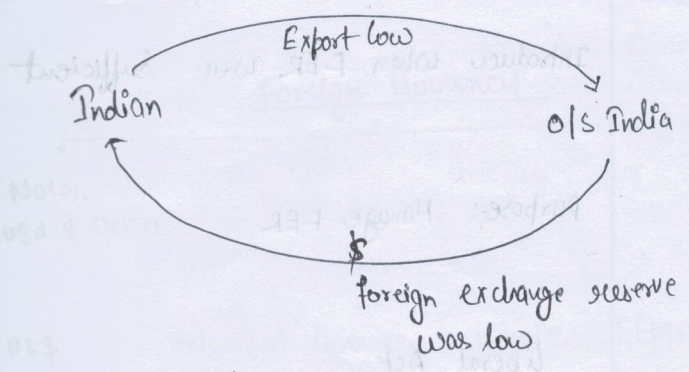
Dependent on imports

↓  
Petroleum  
Product

↓  
Fundamental needs  
like food etc

↓  
To imports this RBI was  
using \$

To understand the fundamental we can say exports was low and import was high.

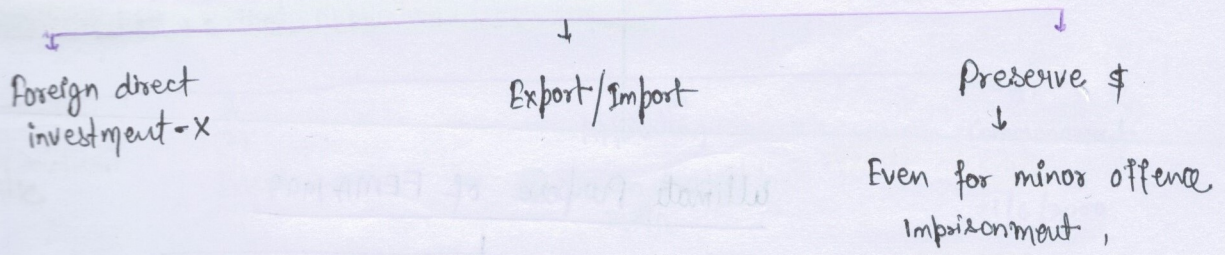


That's why there was need to protect/conservate foreign exchange \$ and any person earning foreign exchange has to surrender/deposit foreign exchange to RBI, and use to get ₹ in return

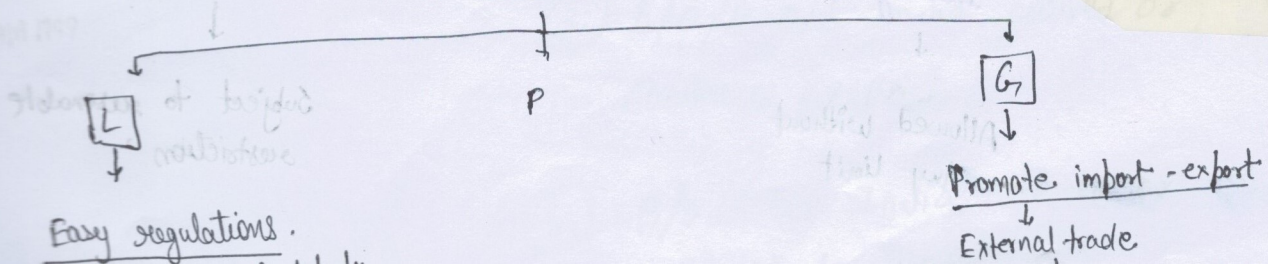
India hesitate FDI and levy.

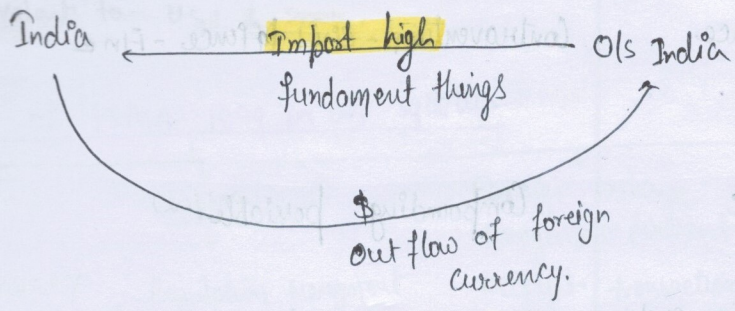
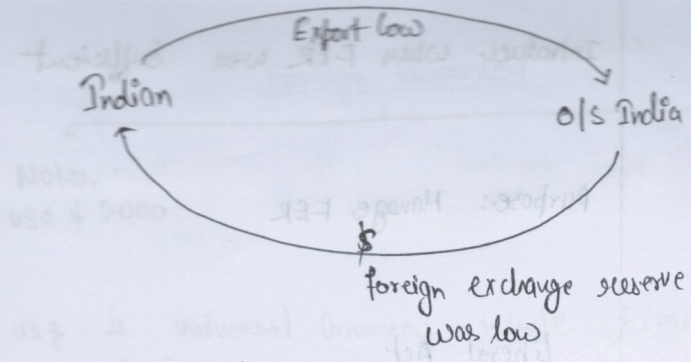
300% on Import duty, resulting No FDI in India

FERA - Draconian Act/Rigid Law



1990-1991 - Reform by Manmohan Singh.



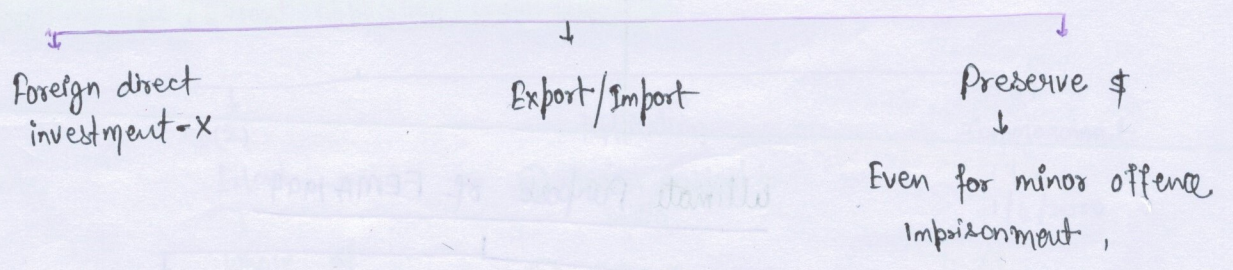


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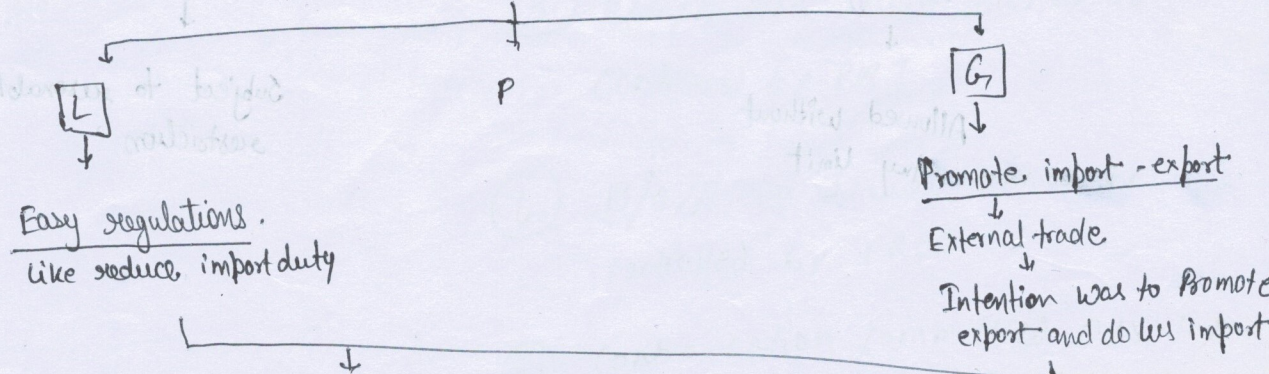
India hesitate FDI and levy.

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FERA - Draconian Act/Rigid law



1990-1991 - Reform by Manmohan Singh.



FERA was creating barrier since such Act was regulating but not Navigating

FERA [ FEMA Repeal FERA ]

## FERA

Introduced - when foreign exchange reserve was low.

Purpose: Conservation of foreign exchange reserve

Rigid law/ Draconian Act

Contravention: criminal offence  
- imprisonment

Compounding not possible

Prohibits withdrawal of foreign exchange even genuine purpose, like education, medical etc.

Prohibits / Restricts

## FEMA

Introduced when FER were sufficient

Purpose: Manage FER

Liberal Act

Contravention - civil offence - Fine

Compounding possible

Allows withdrawal of foreign exchange for education, medical treatment, subject to reasonable restriction.

- Facilitate external trade and payments
- Promote development and maintenance of foreign exchange market in India.

### Ultimate Purpose of FEMA 1999

Incoming \$

Allowed without Any limit

Outgoing \$

Subject to reasonable restriction

upto what amount a PRI Can hold foreign exchange currency

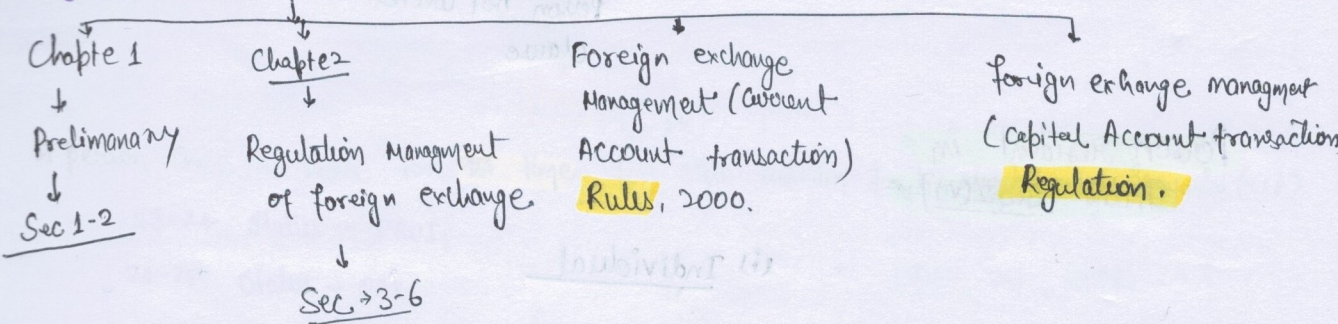
### Foreign Currency.

Notes  
USD \$ 2000

Coin  
unlimited

**Note:** As us\$ is universal currency, whole FEMA consist of us\$. So if a person is having Pounds. He can hold Pounds upto that value, which is equivalent to USD \$ 2000.

### Coverage of FEMA 1999 in our syllabus.



Arjun Chhabra (GS | LLB | LLM | BCOM)

### FEMA 1999

Residential Status

Current ac transaction

Capital ac transaction.

### Section 1: Short title, Extent, Application, Commencement

(1) Short title  
↓  
ST  
↓  
FEMA 1999

(2) Extent  
↓  
Whole of India

#### Application

- ① Person Resident in India
- ② PROI
- ③ B/O/A O/S India owned or controlled by PRI
- ④ B/O/A in India owned or controlled by PROI

#### Commencement

1/6/2000

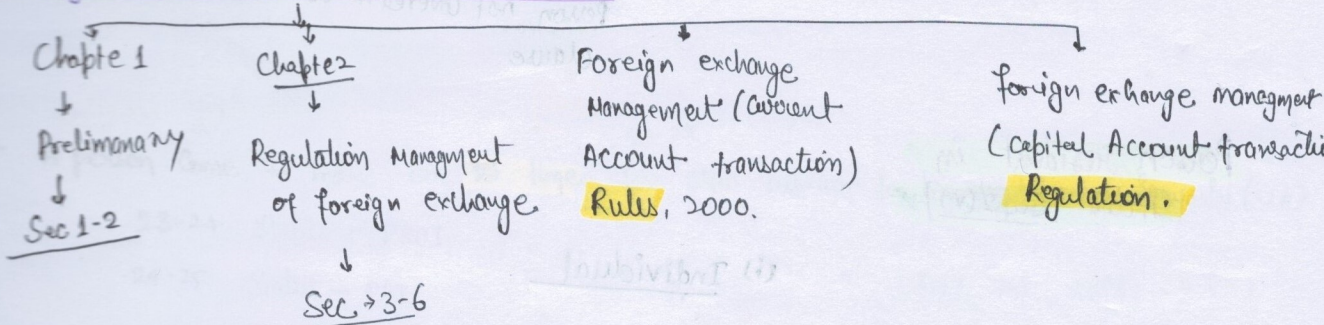
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USD \$ 2000

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## FEMA 1999

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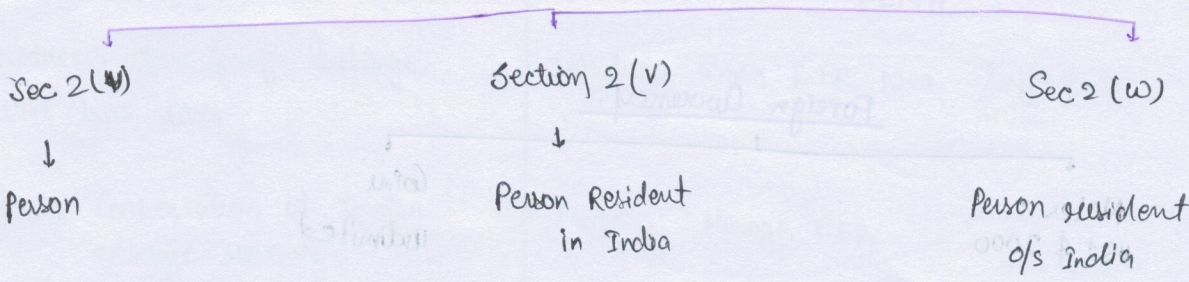
(2) Extent  
↓  
Whole of India

### Application

- (1) Person Resident in India
- (2) PROI
- (3) B/O/A O/S India owned or controlled by PRI
- (4) B/O/A in India owned or controlled by PROI
- (5) Contravention committed O/S by person to whom this Act applies.

(3) Commencement  
1/6/2000

# Residential Status



- Person [Sec 2(v)] ⇔ Person includes
- (i) Individual
  - (ii) HUF
  - (iii) a company
  - (iv) Firm
  - (v) AOP/BOI Inc or not
  - (vi) Any other artificial judicial Person not covered in above clause
  - (vii) office agency branch owned or controlled by such Person.

## Person resident in India [Sec 2(v)]

### (i) Individual

[Primary Condition] P.F.Y - 183 days or more reside in India

↓  
But does not include

(A) Person Owner of India

(B) ~~Person comes to India~~

~~Exclude (C)~~  
Person comes to India Purpose other than

- (a) Employment
- (b) Business or vocation
- (c) uncertain period

- (a) Employment
- (b) Business or vocation
- (c) uncertain period

PROI

PROI

Ref: 15.8

Person 183 days or more reside India P.F.Y  
 Person comes to india for employment business vocation and for uncertain period

↓  
PRI

Q - A person never gone of India and never will?

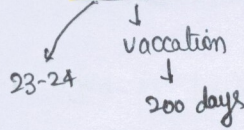
Ans - PRI

Q - A person never come to India and never will?

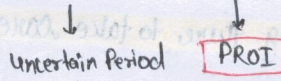
Ans: PROI

Q - A person Came to India for **1st time** ?

Ans PROI



24-25 - Status - Osho Ashram - 10 days



Q - A person Came to India for **1st time** for Osho ashram for beginning becoming Sanyashi (U#)

23-24 Status - PROI

24-25 Status - PRI

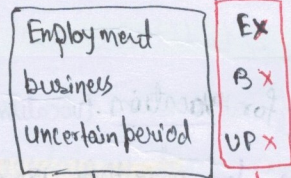
Special note: ① Consider 183 or more reside in India P.F.Y

P.F.Y

② C.F.Y

In India

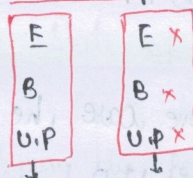
Matter - Purpose



↓  
 PRI      PROI

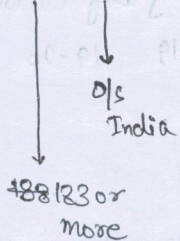
Ofs India

Matter purpose



↓  
 PROI      PRI

Section 2 (v) (i) (A) (B)



(ii) Any person or B.C. reg. or Inc in India.

(iii) B/O/A → India — own or Controlled — PROI

(iv) B/O/A — Ofs India — own or Controlled — PRI



2 (v) (i) → Individual - (A) (B)

ii  
iii  
iv } - B.C / other than individual

See 2 (w) PROI means a person who is not PRI.

**RBI Circular:** Dated 8<sup>th</sup> December 2003

Students will be considered as non-resident. This is because usually student start working there to take care of their stay and cost of studies.

Q → A person who in F.Y 19-20, resided in India for 200 days. Whether he is PRI in 19-20

Ans: **No**, for **PRI** in 19-20, we need to check his status of 18-19

Q - what if he resided in 18-19 for 182 days

Ans: **No**, he must resided in 18-19 for more than 182 days

Q → Arjun goes out of India for 1st time in 18-19 for vacation. Arjun is for 18-19

✓ (A) **PRI**    (B) **PROI**    (C) No Comment

Q - What if the above case, he has gone for vacation. (vacation)

→ Even though in 17-18, he was in India for more than 182 days, but as he gone out of India for vacation. He is **PROI**.

Q - In 18-19, Arjun gone for world tour (vacation) for very long duration. So in 18-19 he stays in India only for 150 days. 17-18, 18-19, 19-20

17-18 - **PRI**

18-19 - **PRI**

19-20 - **PROI** - AS it is given in Ques itself that in 18-19 he stays only 150 days only.

④ Mr Arjun Comes to India for 1st time in FY 18-19 for business/vocation for 200 days. In FY 18-19, what is status of Mr Arjun for 18-19, 19-20.

Ans: In 18-19 — **PROI**, as he fails to reside in India in 17-18 for more than 182 days.  
 In 19-20 — **PROI**, as he was in India in 18-19 for more than 200 days i.e. more than 182 days or more, and came for business.

⑤ what if the above case, Arjun is leaving India in 19-20 forever. What is status in 19-20.  
 Ans:— He is **PROI** for 19-20 as provided in Sec 2(v).

⑥ What if Mr A Comes to India for 1st time in FY 18-19 for vacation for 200 days.  
 Status → 18-19 — **PROI**  
 19-20 — **PROI**

Ans:— for 18-19 — **PROI** as he came India for 1st time  
 19-20 **PROI** even though in 18-19 resided more than 182 days but he came for vacation.

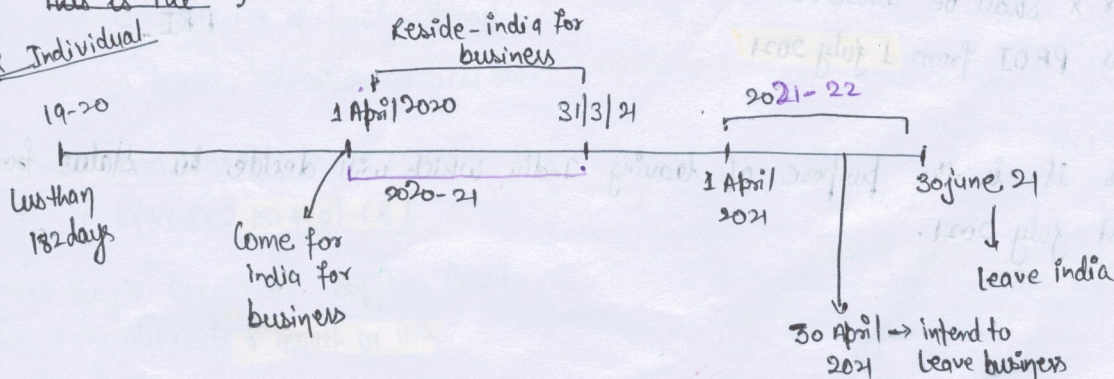
Q. One Air hostess stayed in India in 17-18 for 200 days or per airway regulations. What is the status of Air hostess for 18-19?

Ans:— **PROI**, even though stayed more than 182 days in India for employment because there is a difference b/w a person who stayed in India and reside in India. Air hostess stayed in India for compliance purpose.

Special Note for Section 2(v)(i) i.e. Residential State of Individuals

- Residential status not for the year it is for a particular date.
- FEMA is a regulatory law. one has to know the person's status at the time of undertaking the transaction.
- ~~This is the~~

Mr X Individual



Residential Status — Mr X

2020-21 — ?

2021-22 — ?

## Residential Status

### Interpretation of bare Act

RS - 2020-21

X - **PROI** since he was in India for less than 182 days in FY-19-20

RS - 21-22

X → PRI since he was in India for more than 182 days in 20-21 and he continued in India in FY 21-22 for the purpose of business.

### Interpretation of ICAI Module -

RS - 20-21

X - PRI from **1st April 2020**. Since he came to India for business

(Module ignored the condition of residing in India for more than 182 days in P.F.Y.)  
Module is directly considering 3 purpose of coming in India

ie. **Employment**  
**Business or vocation**  
**uncertain period**

RS - 21-22

X - PRI - Same interpretation of bare Act

In financial year **21-22** X shall be considered as person resident in India for 1 April 2021. However, Mr X is leaving India on 30th June 2021.

If Mr X is leaving India

**O/S India**

**Employment**

**Business or vocation**

**uncertain period**



Mr X shall be considered

as **PROI** from **1 July 2021**

If Mr X is leaving India

**O/S India**

**EX**

**B or vocation X**

**U.P X**



Mr X shall continue to be

**PRI**.

**Note:** Thus it is the purpose of leaving India which will decide his status from 1st July 2021.

## Section 2(c) Authorized Person:

means

Authorized dealer

Money Changer

Off-shore banking unit

or other person authorized by RBI u/s 10(i) to deal with in foreign exchange or foreign security.

Note: (1) Authorized dealer are usually banks which provide large amount of foreign currency.

(2) Money changer is usually available at Airport or 5 star hotels or a local authorized outlet which provide small amount of foreign currency for a short trip

(3) Off shore banking unit usually in SEZ which provide loan in foreign currency to those company who operate in SEZ

(4) ~~How~~ foreign exchange Management Act, 1999 Managers foreign exchange transaction <sup>for</sup> Authorized person.

Current account transaction  
[Sec. 2(i)]

capital account transaction  
[Sec. 2(e)]

Transaction other than Capital a/c

Transaction which alter.

Example.

1. Foreign trade - Short term Credit
2. Income from investment, interest on loan
3. Living expenses of family abroad
4. foreign travel, education medical etc.

- (i) Foreign Assets / Liability of PRI
- (ii) Indian Assets / Liability of PROI

→ for short term credit

[L Refr: 15.4 of CB]

means buys credit or Supplier Credit for a duration of 6 month or less

↓  
[Refr example Pg: 15.8 - 15.9]

## Special note in case Current of transaction:

- ① If an Indian resident imports machinery for a vendor in UK for installing in his factory. it is a current account transaction.
- ② An Indian resident imports machinery from vendor in UK for installation in his factory on a credit period of 3 months - it is a Current of transaction since short term banking in the ordinary course of business are considered as CUT.
- ③ PRI Transfers US Dollar 1000 \$ to his NRI brother in New York as Gift → Current account transaction
- ④ If person resident in India Gives a PROI a gift in India in Indian Currency, for PROI it will result in capital of transaction.
- ⑤ If PROI Gives a gift to PRI by Remitting the funds in India, It is a Current account transaction.
- ⑥ If The PROI Gives the fund abroad to PRI. The PRI Cannot keep it abroad. He has to bring it in India. as per Section 8 of FEMA.

## Section 3: Dealing in foreign exchange

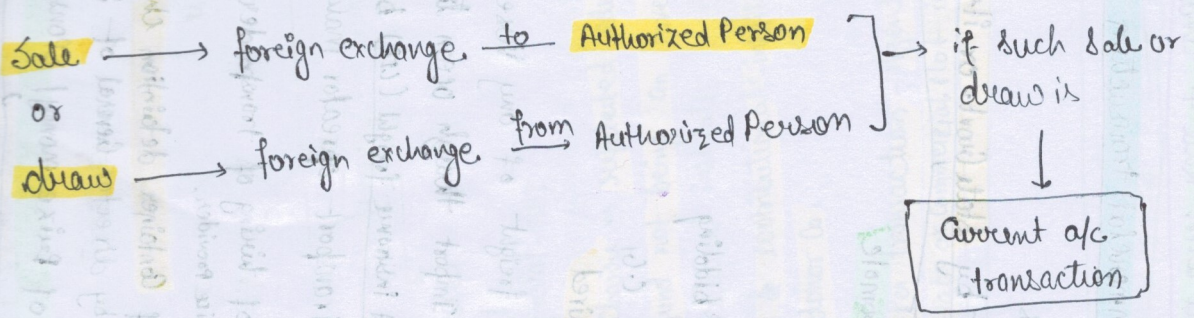
- No Person shall Deal in or transfer any FE to any Person other than Authorized Person
- No Person shall make any payment for the Credit of any Person resident of India
- No Person shall receive otherwise through an authorized person any payment on behalf of PROI
- No Person shall ~~Enter~~ Enter into any financial transaction in India as Consideration for creation of a right to acquire any asset of India, by any person, i.e. Hawala transaction.

Section 4: Holding of Foreign Exchange

↳ Refer Page: 15-8 of Concept book.

Section 5: Current account Transaction - Q.2B.

Any Person may



Proviso: CGI in Consult with RBI impose reasonable restriction Current account transaction in Public interest. (CUT)

Rules - Foreign Exchange Management (CUT) Rule, 2000

Rule	Schedule	Transaction
3	I	<u>Prohibited</u> withdrawal CUT
4	II	<u>Permissible</u> Commercial CUT requiring <u>approval of CGI</u>
5	III	<u>Permissible Person</u> CUT requiring <u>approval of RBI</u> , if the <u>withdrawal exceeds</u> Prescribed limit.

Section 5 - Read with Rule no 3 and schedule I

Prohibited withdraw for Capital account transactions (CUTs)

Section 5 - Read with Rule 3 and Schedule I

Prohibited withdrawal for ~~capital~~ <sup>current</sup> account transactions (CURs)

- ① A travel to Nepal and or bhutan
- ② A transaction with a person resident nepal or bhutan.
- ③ Remittance out of lottery winning
- ④ Remittance of Income earn from starging / Riding etc or any other body
- ⑤ Remittance to Purchase lottery ticket, banned magazin, ~~sweep staker~~ sweep staker, Football pools
- ⑥ Payment of Commission on export towards equity investment in joint venture / wholly owned subsidiary abroad by Co (indian Co.)
- ⑦ Remittance of dividend by company to which requirement of dividend balancing is applicable
- ⑧ Payment of Commission on exports, except upto 10% of Invoice value of export on tea and tobacco.
- ⑨ Payment in relation to call back service of telephone
- ⑩ Remittance of ~~net~~ <sup>interest</sup> income on funds held in non-resident Special super etc

Section 5 - Read with Rule 4 and Schedule II

Permissible Commercial transaction requiring C.G. approval

- ① Cultural tours
- ② Advertisement by State Govt. or its PSU: foreign media Print
  - Purpose - Promote
    - ① tourism
    - ② FDI
    - ③ International bidding
      - Approval of C.G. not required
  - Other than Purpose
    - upto 10,000 USD
      - Approval of C.G. not required
    - above 100 USD
      - Approval of C.G. is required
- ③ Remittance of freight of any Vessel chartered by PSU.
- ④ Payment of Impost through ocean transport by Govt dept / PSU on Cost insurance freight (CIF) basis.
- ⑤ Multimodal transport operator making payment to their agent abroad.
- ⑥ Remittance of hiring of transponders. (a) TV channel (b) ISP Internet service provider.
- ⑦ Remittance of Container detention charges, exceeding the rate prescribed by director General of Shipping.
- ⑧ Remittance of Prize money / Sponsorship of Sport activity
  - International / State / National / International Sport body
    - Approval of C.G. is not required irrespective of withdrawal amount
  - Other than
    - upto USD 10,000
      - Approval of C.G. is not required
    - above USD
      - Approval of C.G. is required
- ⑨ Remittance for membership in Protection & indemnity Club, (Ship insurance)

Section 5 - Read with Rule 3 and Schedule I

Prohibited withdrawal for current account transactions (CURs)

Travel to Nepal and or bhutan transaction with a person resident nepal or bhutan.

Remittance out of lottery winning

Remittance of income earned from racing/riding etc or any other body

Remittance to purchase lottery ticket, banned magazine, sweep stake, sweep stakes, Football pools

Payment of Commission on export towards equity investment in joint venture/wholly owned subsidiary abroad by Co (Indian Co.)

Remittance of dividend by Company to which requirement of dividend balancing is applicable

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    - above USD 1L
      - Approval of C.G. is required
- ⑨ Remittance for membership in Protection & indemnity Club. (Ship's insurance)



Section 5: read with rule 5 and Schedule III

Per individual & FY] Permissible **Person** Current account transaction requiring approval of RBI if withdrawal exceeds Prescribed Limit **Person**  
 ↑ ↓  
 USD, 2,50,000

[Liberalised Remittance Scheme]

- (a) Private visit to any country except Nepal and Bhutan
- (b) Gift or Donation.
- (c) Going abroad for employment
- (d) **Emigrations**
- (e) Maintenance of close relative abroad.
- (f) (i) Travel (iv) Abroad - Medical checkup.  
 (ii) Abroad - business meeting (v) Abroad - Accompany to a Patient who is going abroad for medical checkup.  
 (iii) Abroad - specialized training
- (g) Expense in connection with medical treatment abroad.
- (h) Studied abroad
- (i) Any other current account transaction.

Note → for (a) (f) (h) i.e. for emigration, medical treatment and studies abroad, an individual may avail foreign exchange in excess of ₹2,50,000 USD if it is required by a Country of Emigration, medical institute or the university without approval of RBI.

→ The limit of USD 250,000 is for Per individuals including minor / financial year

→ The limit of USD 250,000 is inclusive of all transaction above and not an individual transaction limit.

Permissible **Commercial** Current account transaction requiring approval of RBI if withdrawal exceeds prescribed limit. [Other than individuals]

2 (a) Donation Exceed

1% of Foreign exchange earning during 3FY USD 5,00,000

Lower - Amount

Exceed  
Approval - RBI

- ① For **Creation of Chairs in reputed education institute**
- ② Contribution to any **fund not being an investment fund**. Promoted by educational institutes
- ③ Contribute towards **contributory institution** in the form of activity of donor Co.

(b) Commission + Per transaction - Agent - abroad - Sale of **residential flat or commercial plot in India**

USD 25,000

5% in Liberalised Remittance Scheme

Higher - Amount

Exceed

Section 5: read with rule 5 and Schedule III

Individual Permissible **Person** Current account transaction requiring approval of RBI if withdrawal exceeds

Prescribed Limit

2,50,000

Realised Remittance Scheme

Private visit to any country except Nepal and Bhutan  
Gift or Donation.

Going abroad for employment

Emigrations

Maintenance of close relative abroad.

- (i) Travel
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Expense in connection with medical treatment abroad.

Studied abroad

Any other current account transaction.

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Permissible **Commercial** Current account transaction requiring approval of RBI if withdrawal exceeds prescribed limit. [Other than individuals]

2 (a) Donation Exceed

1% of Foreign exchange earning during 3FY

USD 5,00,000

Lower - Amount

Exceed

Approval - RBI

Do not exceed

No approval of RBI is required

- 1 For Creation of Chairs in reputed education institute
- 2 Contribution to any fund not being an investment fund. Promoted by educational institutes
- 3 Contribute towards a contributory institution in the field of activity of donor Co.

(b) Commission - per transaction - Agent - abroad - Sale, residential flat or commercial flat in India

USD 25,000

5% inward remittance

Higher - Amount

Exceed

- RBI - Approval

Do not exceed

No approval of RBI

A limit of ₹ 2,50,000 USD for an individual including minor is also permissible for Capital account transaction or a combination of Current and Capital account transaction.

→ Consolidation of limit of \$2,50,000 USD is permitted

→ Consolidation/clubbing is not permitted for **Capital a/c**

**Transaction**, such as opening a bank a/c /

Investment/ purchase of Property if the individuals are not the co-owners /

Co-partners of such bank a/c / investment / Property.

7) Citizen of a foreign state (other than Pakistan) a foreign citizen residing in India (but not a permanent resident)

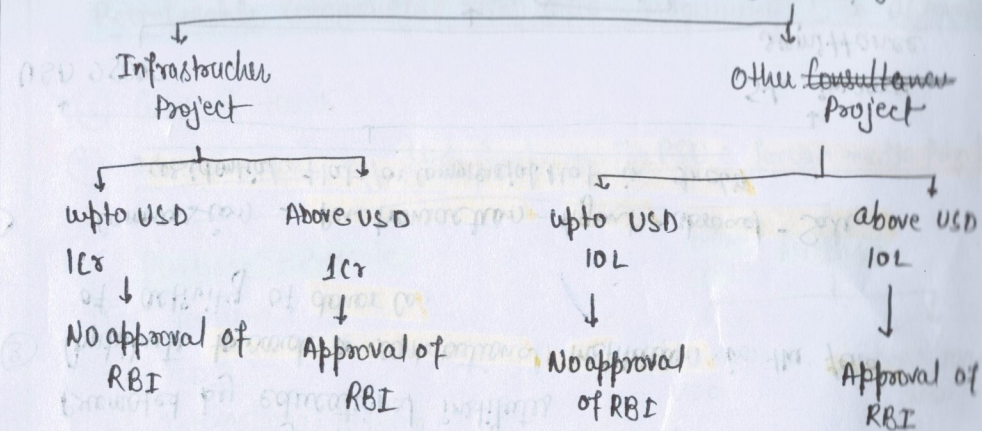
Can remit their net salary abroad. This applicable to expatriates working in India for a specific period but who didn't intend to settle here.

8) Citizen of India on Deputation: An Indian citizen on deputation to the office or branch of a Foreign Co. Can also remit their net salary abroad.

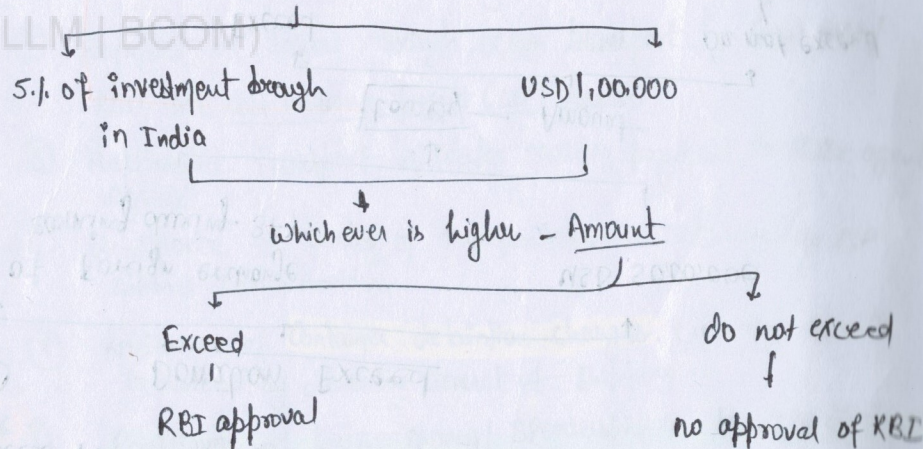
9) Resident but not permanently resident

- Applies to someone who is resident of India due to their employment
- The duration of their stay does not exceed three years hence they consider resident but not permanent resident in FEMA
- This classification allow them to remit their salary abroad to the net amount after mandatory deduction

10) Remittance for **per project** for any Consultancy exceeding



(d) Remittance pre-incorporation expense as reimbursement by Indian entity



## Exemption

for Remittance from  
RFC of/c



If any remittance has to be made for transaction listed in Schedule 2 & 3 above from RFC of/c then **no approval** is required

for Remittance from  
EEFC of/c



for transaction listed in Schedule 2 & 3, then no approval is required



## Exceptions

CGI approval



Remittance for membership of P & I club  
(Approval required)

RBI approval

- (a) Commission to agent abroad for sale of flat in India if prescribed limit exceeds
- (b) Remittance for pre-incorporation expense exceeding the prescribed limit

If a person is on a visit abroad, he can incur expenditure stated in **Schedule 3**

if he incurs it through **International credit card**.

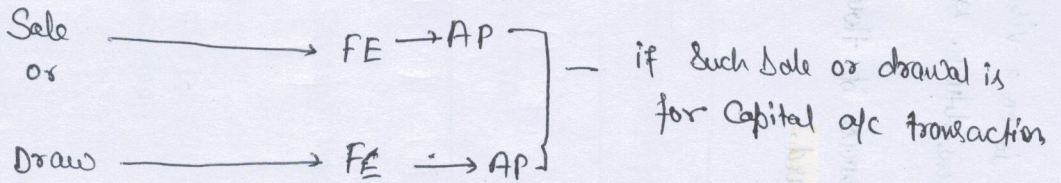
## Super Special Note: for Current account transaction

If the transaction is not listed in any of the above three Schedules, it can be freely undertaken.

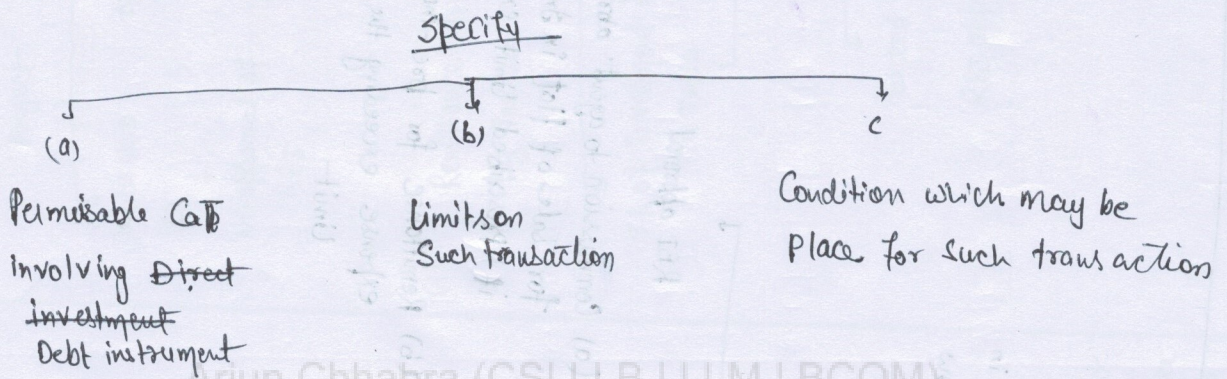
# Section 6. Capital account transaction

Definition Sec(e)

(1) Subject to Provision of Sub-sec 2  
any Person may

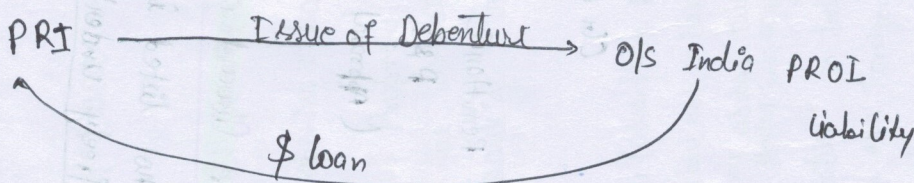


(2) The RBI in consultation with CbI.



Proviso:- RBI or CbI shall not impose any restriction on drawal of FE

- ① Payment due on ac of amortization of Loan (Repayment on foreign law)
- ② Depreciation of direct investment in OCB (Recapitalization of Foreign Sub)



② Empower RBI Prescribe Permissible CAT

Foreign exchange management (FCMR) Regulation 2000

- 3 May 2000

Commence - 1/June/2000



## Regulation 3

### Schedule I

PCAT - PRI

Investment by person resident in India in **foreign security**

**foreign currency loans** in India and abroad by a person resident in India

→ eg: India Co. raising loan in US dollar from international bank

**Transfer of immovable property** o/s by PRI

**Guarantee** issued by PRI in favour of PROI (**contingent liability**)

**Export/Import** or holding of currency/currency notes

**loans and overdrafts** (borrowings) by PRI from a PROI

→ eg: Mr B an I/R borrows USD 50,000 from a relative o/s India (for personal use)

**Maintenance of foreign currency** etc in Indian and o/s India by PRI

eg: RFC etc

### Schedule II

PCAT - PROI

(a) Investment in India by PROI in securities issued by body corporate in India. Contribution by PROI to the capital of firm or a proprietary concern or AOP in India.

(b) Acquisition and transfer of immovable property by a person resident ~~in~~ India

(c) Guarantee by PROI in favour of PRI (contingent liability)

(d) Import/Export of currency/notes by PROI

(e) deposit b/w PRI and PROI

(f) Foreign currency accs in India of a PROI

H) Taking out of **insurance policy** by PRI from an insurance co. of India

I) **loans and overdraft** by PRI to PROI

J) **Remittance of India of Capital assets of a PRI**

eg: Mr F a resident of India owns a residential property in India he sells this property and receives the sale proceeds in Indian ₹. Mr F may sale those ₹ to AP and withdraw dollars to remit the same in UK where F plans to relocate.

K) Sale and Purchase of foreign exchange derivative in India and abroad and Commodative derivative by PRI abroad by PRI.  
**(Derivative Contract)**.

Special note: The general rule to understand is that Current ac transaction are freely Permitted unless specifically prohibited and Capital Account transaction are prohibited unless specifically or generally Permitted

(g) Remittance of ~~of~~ India of a Capital Asset in India of a PROI

(h) Undertake derivative contract





→ Classification by RBI (Circular no 90 9<sup>th</sup> Jan 2014)

- (i) Foreign Currency a/c's — A PRI may continue to maintain a <sup>o/s</sup> foreign currency a/c he had opened when he was R<sub>N</sub> in India.
- (ii) Income earned abroad :- Any Income earned abroad while the person was resident of India whether through employment business or investment can be held in F.C after PROI become PRI.
- (iii) Foreign Exchange acquired :- Any FC inherited from a person who was a resident o/s India can be held without restriction via inheritance.
- (iv) Utilization of Assets :- A person who returned to India can freely utilize the foreign assets he held abroad as well as income generated from the assets, for making new investment abroad or making payment, provided these investments are financed exclusively from the eligible assets.

### Subsections

For person who is PROI but was previously PRI

A person who was previously a resident of India but now has become a non-resident is permitted to hold, own, transfer or invest in India currency, securities or immovable property in India provided that these assets were acquired when he was residing in India or has inherited from someone who was resident in India.

### Note for Capital a/c transaction

No person resident in India may be engaged in capital a/c trans. with citizen resident or entities from North Korea w/o specific approval from Cx and subsequent amendments.

Existing investment or assets in North Korea that are not permitted must be closed, liquidated or settled within 180 days unless extended by Cx approval.

## Note for Cap a/c and Current a/c transaction

in relation to the limit of USD ~~250,000~~ 2,50,000 given under LRS scheme.

No part of the foreign exchange or USD 2,50,000 drawn shall be used for remittance directly or indirectly to countries notified as non-cooperative countries and terrorist by financial action task force (FATF) from time to time and communicated by RBI to all concerned.

## Enforcement of FEMA

entrusted to a separate 'Directorate of Enforcement' ED

[All remaining definition in 15.5 of concept book]

Arjun Chhabra (CS | LLB | LL.M | BCOM)