 DOI: https://doij.org/10.10000/IJLMH.119992

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 3

2025

A Study on Forex Laws and Banking Facilities available for Non-Residential Indians and Persons of Indian Origin

M. SHIVYA LAKSHMI[1] AND J. PUGAZHENTHI[2]

ABSTRACT

The foreign Exchange Regulation Act (FERA) enacted in the year of 1973 managed the cash inflow and outflow beyond the borders of the country. Due to the poor economic conditions in the early post independence period, the FERA was stringent so that the cash outflow beyond the borders of India was regulated strictly to protect the economy. But at the wake of the economic reforms in the early 21st century needed a more flexible and lenient regulation in the area of Foreign exchange to enable easy credit inflow and outflow for business and other financial transaction purposes. The FERA was replaced by the Foreign Exchange Management Act (FEMA) in 1999. The FEMA rules does not allow a Non residential Indian or a Person of Indian origin to hold a savings bank account but has other facilities like a Non - Residential Indian Ordinary Rupee Account, Non - Residential Indian External Rupee Account, Foreign Currency Non - Resident Account. The aim of the paper is to know about the legislations regarding the Non Residential Indian Banking. The problem is to find the facilities available for the NRI in the area of banking that would benefit the NRI and the Indian Foreign Exchange. The researcher uses a descriptive method. The author has analysed the paper through the doctrinal research methodology. Secondary data including research papers, journals, case laws, books and online articles have been referred. The paper concludes that the NRI banking facilities are favourable for the NRI.

Keywords: *Forex, India, FERA, FEMA, NRI Banking*

I. INTRODUCTION

Foreign Exchange market is where the foreign currency is traded. The foreign currencies are bought and sold worldwide. The forex market does not have a geographical location but is connected worldwide. Trade happens in the way where one currency is exchanged for the value of another country's currency. The value of the currency of a country is determined by

[1] Author is an Assistant Professor at Vels School of Law, Vels Institute of Science, Technology and Advanced Studies, India.
[2] Author is an Assistant Professor at Vels School of Law, Vels Institute of Science, Technology and Advanced Studies, India.

the market value. The demand and supply of a particular currency play a vital role in the determination of the value of the currency. The Forex market is the one of the largest financial markets. The value of total activities in one country's currency is traded for another country's currency unit[3] The Forex market is currently regulated by the Foreign Exchange Management Act, 1999 which replaced the Foreign Exchange Regulation Act, 1973. The Non-resident Indian Banking facilities are authorized by the Reserve Bank of India needed special permissions. The FERA regime was a stringent era for the foreign exchange. [4]

For the purpose of imposition of direct taxes, Non resident Indian is a person who is of indian origin staying in territory of India for less than 182 days during the preceding financial year. Also if he stays for 365 days in the previous 4 years. The definition of Non resident is derived from the definition of Indian Resident[5] A Non resident may be a person staying outside the territory of India for the purpose of job, business outside of India for an indefinite period of time. A NRI can be a person of Indian Origin. (PIO)

PIO is a person other than a Pakistan or Bangladesh citizen. They must have held an Indian passport at any time whose parents or grandparents are Indians as per the Government of India Act, 1935 or their spouse is a citizen of India.

'Resident but Not ordinarily resident'(RNOR) has been brought by an amendment through the Finance bill of 2020. It has inserted a new provision to define RNOR[6]. RNOR is a Person who is an Indian staying in India for more than 120 days but the stay doesn't extend more than 182 days and the person's income exceeds 15 lakhs in the previous year from a foreign source. For a RNOR and a NRI, an income arising out of India from a foreign source falls under tax exemption[7]. The funds accrued from a foreign country deposited to any bank facility available for NRI is not taxable but conversion charges applies if the money had to be changed from one denomination to another.

A. Objectives

- To study about theFEMA
- To understand economical changes in the Indian history
- To know about the NRI Banking facilities

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[3] Keeris Tanamarttayarat, *The World's Largest Financial Market: Forex* (2018), https://papers.ssrn.com/abstract=3109245 (last visited Mar 26, 2025).

[4] Arun Kumar & Meenakshi Rajeev, Financial Services to Non-Resident Indians: Role of Indian Banks, 37 Indian J. Econ. & Dev. 18 (2021).

[5] Foreign Exchange Management Act, 1999, § 2 (v), No. 42, Acts of Parliament, 1999 (India)

[6] Income Tax, 1961, § 6(1A), No. , Acts of Parliament, 1961 (India)

[7]Rupayan Gupta & S. Aaron Hegde, An Exploratory Study of Financial Remittances Among Non-Resident Indians in the United States, 30 J. Fam. & Econ. Issues 184 (2009).

B. Research Methodology

The present paper was analysed through the doctrinal research methodology and descriptive method of research was used. Secondary data including journals, research papers, books, case laws and newspaper articles have been referred.

Although there are a number of other techniques, the researcher has followed a descriptive method as the aim of this study is to understand the Non residential banking facilities available in India. The researcher has done an effective literature review of data and then analyzed and interpreted the data. The researcher does not seek to examine a causal relationship between variables; thus, there are no independent or dependent variables in this descriptive study.

C. Review of Literature

According to (Sorte & Abyankar, 2017) Non resident deposits are a source of foreign exchange and they contribute towards India's Capital Account and correcting the deficit in the balance of Payments. The mobility of foreign currency facilitates its utilization in developmental activities.

According to (Gandhi & Kashyap, 2013), The repeal of FERA was due to its grant of unbridled powers to the enforcement directorates and Penal sanctions. It also was an impediment to India's markets to go global. It was an age-old enactment when India was facing an economic crisis and the foreign exchange at that period was a precious commodity. By the beginning of the twenty first century FERA had outlived all its utilities.

II. History of Foreign Exchange Management Act

The Foreign Exchange market was started in India by the Central Government of India in 1978. It was governed by the enactment The Foreign Exchange Regulation Act, 1973. The market was regulated by the Reserve Bank of India through the Exchange Control Department, which is a statutory body. The FERA was the statutory basis of the Department and it regulated some key functions of the foreign exchange.[8] Few of the transactions controlled by the Exchange Control department are permitted by the FERA in connection with the Non residential Indians.[9] as prescribed by the Exchange control Manual. During the pre-

[8] Reserve Bank of India - Exchange Control Manual, https://www.rbi.org.in/scripts/ECMUserView.aspx?CatID=10&Id=16 (last visited Mar 16, 2025).

[9] Those are : Payments to non-residents or to their accounts in India; Transfer of securities between residents and non-residents and acquisition and holding of foreign securities; Foreign travel with exchange; Export and import of currency, cheques, drafts, travellers cheques and other financial instruments, securities, etc.; Foreign direct investment and portfolio investment in India including investment by non-resident Indian nationals/persons of Indian origin and corporate bodies predominantly owned by such persons.

economic reform and the post independence period in the Indian History, the economic conditions prevailed in the country, allowing space for the Foreign Exchange control rather than Foreign Exchange Management. The Country was at the wake of the restoration of economic growth and was approaching the adoption of a mixed economy. More importance was given to the Domestic industries. To promote self sufficiency, foreign investments and imports from foreign countries were not encouraged. Protectionist ideas were encouraged to attain growth and to protect the domestic market. Most industries were regulated by the government itself. In the progressive years, this model of protectionism and conservative approach towards the foreign investments and less flow of foreign exchange led to inflation and money devaluation.[10] The shortage of foreign exchange during the 1960's and various other aspects like food shortage, wars, etc. led to a more stricter regime through the enactment of FERA, 1973. Foreign exchange was considered significant for the economy and the policy regime contained rules to allocate foreign exchange to various demands of the country.[11] In 1991, a structural revamping in the economy and the liberalisation birthed the New Economic Policy, 1991. The new Economic policy brought in liberalism in the Indian Economy by liberating individual entrepreneurship and giving way for private players in the market. Due to the economic crisis at the beginning of the 1980s the international monetary fund advised for the deregulation strategies in India. One of the components was to reduce the fiscal deficit.[12]

As a result of New Economic Policy, The Foreign exchange Regulation Act was scrapped and replaced by the Foreign Exchange Management Act in 1999. This aided in the external trade and payments. The enactment took away the impediments that discouraged the Foreign Direct Investments. Cross-border transactions were easily possible by the new forex law. FEMA was managed by the Reserve Bank of India. One of the biggest impediments in trade brought by FERA was the criminal liability. FEMA decriminalized and in case of any violations in the FEMA, it attracted only civil liability. FEMA also conforms to the Policy framework of the World Trade organization.

The new Economic Policy also opened the Forex market, the foreign exchange rates and the determination of market value of currency in 1993. The freedom to convert the indian rupee into any internationally accepted currency to make any payments helped in the growth of forex. As a result, Indian foreign reserves started growing. The liberalized Indian economy

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[10] Devika Sharma et al., *Metamorphosis of FDI Regime in India: FERA to FEMA* (2020), https://www.scconline.com/blog/post/2020/12/14/metamorphosis-of-fdi-regime-in-india-fera-to-fema/ (last visited Mar 16, 2025).

[11] https://www.fedai.org.in/DocumentUploadFiles/News/BP_KANUNGO_DG_RBI_Key_Note_Address_FEDAI_Conf_Beijing_19th_April.PDF (last visited Mar 16, 2025).

[12] SAGE Journals: Your gateway to world-class research journals, https://journals.sagepub.com/action/cookieAbsent (last visited Mar 23, 2025).

increased the inflow of foreign capital and investments inside India unlike the economy under FERA. The Forex transactions, clearing and settlement functions are taken up by the Clearing Corporation of India from 2001. [13]

III. Overview of FEMA

The objective of FEMA given in the preamble of the enactment is to consolidate and amend the laws regarding the forex with the reason to facilitate the external trade and payments and for the maintenance of the foreign exchange market in India. FEMA's replacement with FERA to an extent has boosted the Indian economy as it is flexible and also a civil offence in comparison with FERA.FEMA controls the transactions in the trade of goods and services. Contravention of the provisions are only civil offenses. FEMA can impose reasonable restrictions as per the public interest.

FEMA has seven Chapters, 49 Sections. Out of 49 sections, 12 sections deal with the operational part and rest is for penalty, adjudication, appeals, Enforcement Directorate as enforcing mechanism and Miscellaneous provisions. It also has a total of 5 rules and 23 regulations to aid its implementation. These regulations are made by the Reserve Bank of India. The FEMA allows current[14] and Capital account transactions[15].

Forex transactions in Bhutan and Nepal are prohibited since Nepal and Bhutan uses Indian currency for all the local transactions. India, Bhutan, Nepal use the same currency. Therefore, forex transactions with the residents of Nepal and Bhutan shouldn't be made but only with the authorized dealers.

The Act defines Foreign exchange in Sec. 2(n)[16]. Prohibitions under the act are the following

- Transfer of Forex or Foreign security to a person other than a authorized person
- Transfer payment or credit of a person resident outside of India through any person other than the authorized person.

[1313] Foreign Exchange Market in India, (2014), https://www.papertyari.com/general-awareness/banking/foreign-exchange-market-india/ (last visited Mar 24, 2025).

[14] payments due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business, (ii) payments due as interest on loans and as net income from investments, (iii) remittances for living expenses of parents, spouse and children residing abroad, and (iv) expenses in connection with foreign travel, education and medical care of parents, spouse and children;

[15] transactions which alters the assets or liabilities, including contingent liabilities outside India, of persons resident in India or assets or liabilities, in India, of persons resident outside India,Transfer or issue of security, Borrowing and Lending, Export, import or holding of currency or currency notes, Giving guarantee

[16] foreign exchange" means foreign currency and includes,- (i) deposits, credits and balances payable in any foreign currency, (ii) drafts, travelers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency, (iii) drafts, travelers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency;

- Receive any payment by order or on behalf of any other person through an unauthorized person
- enter into any financial transaction in India as consideration for transfer of a right to acquire, any asset outside India by any person

Any foreign exchange must be surrendered, if such is earned by a person not resident in India, must be surrendered within sixty days. In case, such as currency or coin acquired for travel, such should be surrendered for ninety days. A traveller's Cheque must be returned within one hundred and eighty days. [17] Foreign Exchange earned outside of India can be repatriated to India by

- selling it in exchange of Indian rupee to an authorized person,
- Retain the funds and hold in an account with an authorized dealer, only the maximum amount specified by the Reserve Bank of India.
- Use such currency for the discharge of debt or any liability to an extent specified by the RBI[18]

IV. Enforcement machinery under FEMA

The enforcement authority under FEMA is the Directorate of Enforcement[19](ED) under the Ministry of Finance, Department of Revenue. The Enforcement Directorate can investigate any violations of FEMA, prevent the malpractices in the foreign exchange market, it can act as an adjudicatory body to curb the breach of the law. Before the existence of the Enforcement Directorate, the investigating authority under FERA was the Exchange Control Department under RBI.

The Enforcement Directorate can investigate any contravention of FEMA provisions, rules, regulations, directions and adjudicate the matter. The aggrieved party shall appeal to a special director in the Enforcement Directorate. The appeal from the Special director in the Enforcement Directorate can be taken to the Appellate Tribunal. If a person is not satisfied with the orders of the appellate tribunal, they can move up to the High Court, which is the highest appealable authority. Appeal should be made within 60 days of communication of a decision or order from the appellate Tribunal.

[17] Reserve Bank of India - Notifications, https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=10269&Mode=0 (last visited Apr 10, 2025).
[18] Sukhvinder Mishra, Banking Law and Practice (S. Chand Publ'g 2012).
[19] Foreign Exchange Management Act, 1999, § 36, No. 42, Acts of Parliament, 1999 (India)

Unlike FERA, FEMA issues only civil penalties. If the penalty is issued by the adjudicating authority and at default, the fine may keep adding up at the rate of five thousand rupees per day. If such a fine is not paid within ninety days, the authority may order civil imprisonment.

V. BANKING FACILITIES FOR NON RESIDENTIAL INDIAN

After the FEMA was enacted, the Non residential Indians were allowed to open accounts and also benefit from the forex.. [20] The Foreign Currency Account opened and maintained by Non residential indians before the FEMA required special permission from the Reserve Bank. The RBI issues notifications under the FEMA for the banking facilities.

An exchange Earners Foreign Currency (EEFC) account can be opened and maintained by any person who is studying abroad, a resident who is on a visit to a foreign country, a person who participates in the trade fair or exhibition abroad for which the sales proceeds must be repatriated within a month of the closure of such fair or exhibition. This account is also used by exporters, individuals, companies, a unit located in the Special Economic zone(SEZ) who are exchange earners. A foreign Earners exchange account can also be opened by a person who is not a indian citizen residing in India and is employed in an Indian Company; an Indian citizen or a foreign citizen who is an employee of a foreign company for receiving the salary through the account. On the demise of the account holder, the nominee must bring the proceeds in the account through the banking channels back to India. A EEFC Account can be a joint account. But the nominee or other relative other than the main account holder can access the account only on the demise of the main holder. The type of account is a current account. In a EEFC account, the total earnings and accrual can be credited in other currency denominations but it must be converted into indian Rupees within the last day of the succeeding calendar month. The permitted credits are as follows;

- Foreign exchange received by any trade and export transactions
- Remittance of the advance in any export business
- Payment received for the export or transactions in counter trade
- Repayment of loans
- Re-crediting the unused foreign currency
- Divestment proceeds on conversion of foreign currency.
- Interest earned through any funds

[20] Reserve Bank of India - Foreign Exchange Management Act Notification, https://m.rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=164 (last visited Mar 29, 2025).

- Earnings of a professional by rendering any service
- Payment received through any sales etc., [21]

The permitted debits in the account are that custom duties, trade related advances and loans and the cost of purchase of any goods. There are zero restrictions for the withdrawal of funds from an EEFC account in rupees but such cannot be eligible for conversion of foreign currency and cannot be credited into the EEFC account.[22]

The second type of account according to the RBI guidelines are the Resident Foreign Currency Domestic account. This can be used for current and capital account transactions. It can be owned by individuals. It only permits single currency. No interest is payable for the deposited funds. The permitted credits in the account are as follows

- Foreign exchange received as a payment through any means while visiting abroad or from a non resident who visited India
- Unspent amount received while exchanging the foreign currency
- Earnings, gifts, insurance claims etc,.[23]

The third type of account as per the Reserve bank FEMA guidelines is the Resident Foreign Currency account. This can be used as current, saving and term deposit. The permitted credit for the account are as follows

- Gifts, inheritance, Foreign exchange received and other monetary benefits by his employer
- Foreign exchange realised on conversion of assets
- Any income arising from outside India, LIC Claims
- Balance in the Non resident External Account, Foreign Currency non Resident account.

This type of account has no restriction on its usage outside India.

Without the permission of the Reserve Bank of India, A Non- resident ordinary(NRO) Account, Non - Resident - External (NRE) Account and Foreign Currency Non

[21] Reserve Bank of India - Frequently Asked Questions, , https://m.rbi.org.in/Scripts/FAQView.aspx?Id=69 (last visited Mar 29, 2025).

[22] India Infoline News Service, *What is exchange earners' foreign currency account*, India Infoline, https://www.indiainfoline.com/article/news-sector-others/what-is-exchange-earners'-foreign-currency-account-113111500386_1.html (last visited Apr 11, 2025).

[23] Ibid

Resident(FCNR) Account can be opened. These account facilities can be availed by a Non-resident Indian and a Person of Indian Origin. [24]

NRO - Non Resident Ordinary Account can be opened by one or more non resident Indian or with another person resident in India. Indian rupees is the currency denomination in a NRO account. Money earned in India and also can be deposited in the NRO account. Accounts can be current, saving, fixed and recurring deposits. The banks are free to determine the interest rates. The principal in a NRO Account cannot be repatriated but only when it is current income such as rent, pension, dividend and remittances upto one million US dollar per financial year. The interest in the account is freely repatriable. The funds in a NRO account are taxable. The foreign currency risk the account holder is exposed to is the risk of fluctuations in the value of indian Rupee to the extent of the interest amount. Rupee loan in India is permitted against the security of the amount in the account to the account holder but foreign currency loans are not permitted. [25] At the change of the resident status, a NRO account can be changed into a resident account and vice versa.

A NRO account can also be opened by a tourist who is a foreign national. It can be used for inward remittance of funds. Such funds can be withdrawn when the foreign national leaves India. A NRO account opened by a foreign national should be maintained only for a period not exceeding six months. [26]

NRE - Non Resident External Account just like a NRO account can be opened by one or more non resident Indian but not with another person resident in India. Indian rupees is the currency denomination in a NRE account. The type of account is like the NRO account, it can be current, saving, fixed and recurring deposits. A nominee of the NRE account who is a resident in India can only access the account only on a survivor basis. The principal amount and the interest in the account is freely repatriable. A NRE account facilitates easy transfer of foreign earnings to India. The tax is exempted for the interest earned in the NRE account. Same as the NRO account holder, a NRE account holder is also exposed to the risk of the fluctuations in the value of the Indian Rupee. Foreign currency loans and Indian Rupee loans are permitted against the funds in the account. The banks are also permitted to determine the interest rates of the Loans. [27] The permissible debits from a NRE account is any remittance outside of India,

[24] NRI Definitions, https://www.icicibank.com/nri-banking/icici-finance/definition.html (last visited Mar 30, 2025).
[25] Reserve Bank of India - Frequently Asked Questions, https://www.rbi.org.in/scripts/FAQView.aspx?Id=23 (last visited Mar 30, 2025).
[26] Reserve Bank of India - Frequently Asked Questions, https://rbi.org.in/scripts/FAQView.aspx?Id=52 (last visited Apr 11, 2025).
[27] Mohan, Rakesh, NRI Deposits: A Source of External Finance for India, in India's External Sector: A

local disbursement of funds, investments and transactions to other NRE and FCNR accounts. Any individual or any entity incorporated with Bangladesh and Pakistan must obtain prior permission with the Reserve Bank of India to get the facility of the Non resident External Account. A Special series of cheque is issued to the NRE account holder. If there are changes in the resident status, a NRE account can be designated as a RFC account.

Foreign Currency Non resident Bank Account (FCNR)

Similar to NRE account, a FCNR account allows customers to hold a joint account with a NRI but not with any person resident in India. FCNR is a fixed deposit account. It can be used only as a term deposit account. It can be opened by a NRI from the place where they are resident. The principal and the interest in the account is freely repatriable. If the residency status of the person changes from non-resident to resident, they can still hold a FCNR till the maturity period. The account in which the FCNR account is denominated is Pound, Sterling, US dollar, Japan Yen, Hong Kong Dollar, Singapore Dollar, Swiss Franc, Canadian Dollar, Australian Dollar and Great Britain Pound. It can be opened for a tenure of 1 to 5 years without any limitations. A FCNR account holder is protected against any changes in value of the Indian Rupee since there is no conversion of the currency denomination of FCNR account to the Indian rupee. The entire principal and interest in a FCNR account is easily repatriable and tax exempted until the person holds the status of a Non-resident Indian status.[28]

Special Non Resident Rupee Account (SNRR)

A SNRR account can be opened by any non-resident. Such Non residents must have business interest in India. It is opened with an authorized dealer to only deal with bonafide transactions that is made in the Indian Rupee. The account holder must abide by the provisions of the enactments, rules and regulations regarding the SNRR transactions. The account transaction must be in the name of the business that is being carried out by the non-resident. The SNRR transaction must not result in any kind of forex operation with a Indian resident for a reimbursement in Indian rupees. No interest needs to be paid in an SNRR account and only current account transactions are carried out. All the transactions made must be related to the business of the account holder. This account should be only used concurrent to the business operation or contract. No transactions can be carried out after seven years of opening the SNRR account. The funds in an SNRR account are repatriable. On death of the account holder, the funds can be transferred to the NRO account of the Nominee. But no transactions are allowed from any NRO account to the SNRR account. All the transactions in this account

Framework for Policy Formulation 112 (Oxford Univ. Press 2003).

[28] Atul Raman, Financial Inclusion and Growth of Indian Banking System, 1 IOSR J. Bus. & Mgmt. 25 (2012).

are taxable and must be filed to the Reserve Bank as per the directions. If the account holder becomes a resident of India, this account can be easily converted to a resident Rupee account. Any individual or any entity incorporated with Pakistan and Bangladesh must request prior permission from the Reserve bank to open a SNRR Account. [29]

VI. CONCLUSION

The FERA legislation was a right move towards progress and development at that point of time in the Indian economy. Since it became outdated and irrelevant to the market environment being restricted for global trade, the Foreign Exchange Management Act was enacted in 1999. The stringent measures and the penal sanctions deterred many foreign and transnational companies inside the market to protect the local market. But such practice put the Indian economy in shambles. The FEMA also facilitated the Forex market. This made the Non-resident deposits easiest since no special authorization was needed by the Reserve Bank of India. The Reserve bank also brought many facilities for the Non resident and Persons of Indian Origin like the NRO, NRE and FCNR, SNRR, EEFC, RFCD, RFC accounts with added incentives like tax exemption to promote more non-resident deposits. I conclude that these facilities are for the convenience of a Non-resident Indian to access banking easier thereby benefiting both the economy and the Individual.

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[29] [FEMA Regulation 5(4), Schedule 4], , https://rbidocs.rbi.org.in/rdocs/content/pdfs/N5R08092016_SC4.pdf (last visited Apr 11, 2025).

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