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Economic Development through Foreign Direct Investment (FDI): A Regulatory Mechanism in Retail Sector Perspective in India

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ABSTRACT

India and its Foreign Direct Investment policy are crucial in accelerating the country's retail sector unit for balanced economic growth in all circumstances. India's economic scenario has undergone notable changes over the last decades with foreign trade and investment regulations playing a significant role in the country's self-sufficiency strategy. While foreign enterprise participation was not discouraged in the Indian market, stringent controls and regulations were in place to safeguard national interests. In the process of growing foreign investment, there are some sectors under the retail industry where FDI is restricted to a certain level to protect the interests of indigenous small retailers and farmers. The Reserve Bank of India's Foreign Exchange Management Act, 1999 (FEMA), replaced the earlier Foreign Exchange Regulation Act (FERA) that aimed to facilitate external trade and maintain a stable foreign exchange market in India for wider economic diversification with proper legal compliance. This research paper delves into the intricate landscape of Foreign Direct Investment (FDI) within India's retail sector by examining the retail industry's evolution throughout the period. The paper covers a range of crucial aspects of legal mechanisms with their historical significance, segmentation of the retail industry, and FDI policies specific to retail in India with technological innovations required in the legal system to facilitate a better flow of retail trade in the domestic market.

Keywords: *Foreign investment, legal machinery, economic development, Arbitration, and innovative market.*

I. INTRODUCTION

Foreign Direct Investment is not only prevalent in India. Still, it is all over the world and therefore, it is considered to be of the utmost importance for all developed and developing nations. The retail industry in India is an intermediary between producers and individual consumers, facilitating the exchange of goods for personal consumption and there is only two-

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way entry to the Indian market one from an automatic route and another with government approval. This interaction excludes direct engagements between manufacturers and institutional buyers such as governmental bodies and bulk purchasers. The retail sector in India, comprising both organized and unorganized segments, plays a dynamic role in the country's economic landscape as a large portion of the population does not have a proper systematic organization for maintaining their domestic businesses. FDI policy in Single Brand Retail Trade has been in operation from 2006 till 201, During this period investors had to take government approvals for entry into the market but in 2018 press note 1 govt. allowed 100% SBRT through an automated route.[2] Later in 2012 government announced its policy to open up for Multi Brand Retail Trade with a 51% market cap only through government routes[3], and the provisions of the Foreign Exchange Management Act (FEMA) 1999 as this is managed by RBI and every foreign investor must get their approval before investing as without it these investments cannot proceed further.[4] The retail sector serves as a cornerstone of economic growth and consumer engagement, especially single-brand retailing covering 97% of India's retail unorganized section throughout India's rural and semi-urban areas, making it a subject of critical importance for developing economies. proposing essential reforms for India's domestic retailing, aiming to contribute to a more resilient and vibrant retail landscape. India's decision to permit FDI in retail marks a vital stride toward economic advancement and global integration as India holds the biggest retail consumer market.

II. SCOPE OF FDI FOR PROSPECTS OF INDIA'S RETAIL SECTOR

The advancements in technology as follows the Indian economy have led to a shift in power balance, giving retailers increased influence and capabilities. Retailers have established in-store brands and made them potential competitors to large manufacturers. As retailers' importance grows, collaboration with them becomes essential for businesses seeking full visibility to the typical customer based on needs. FDI in the retail sector can offer a strategic opportunity for foreign companies to leverage the growing influence and capabilities of retailers in India's evolving market and FDI allows foreign companies to invest in India and establish a presence in the Indian retail market. Retailers with advanced technologies and marketing strategies can provide valuable exposure and wide product distribution for foreign manufacturers.[5]

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[2] PIB gov. <https://pib.gov.in/newsite/PrintRelease.aspx?relid=192173 >
[3] PIB gov. <https://pib.gov.in/newsite/PrintRelease.aspx?relid=191486 >
[4] <https://www.fdi.finance/blog/role-of-rbi-in-fdi/>
[5] Dr. Sachin Kumar Srivastava and Arun Bhadauri, foreign direct investment (fdi) in retail in India: raison detre of Growth, May 2016, International Journal of Research in Education Methodology 7(2):1088-1100

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Federation of Indian Chambers of Commerce & Industry (FICCI) and Indian Council of Arbitration's contribution to FDI regulation to make India's market so vibrant and transparent with suitable destination for Foreign Investors.[6]

III. Legal historical context and political considerations in the retail sector

The history of foreign direct investment (FDI) in India's retail sector can be traced back to the establishment of the British East India Company during the colonial era in the 17th century. British traders approached the Mughal Emperor to set up factories in Surat for export trading of indigo and other India-rooted harvesting products, marking the beginning of FDI in India. The British introduced industrialization, transportation systems (such as railways and roadways), and communication networks for their benefit.[7] The FDI policy underwent changes based on economic and political factors. The Industrial Policy of 1965 allowed multinational corporations (MNCs) to enter India through technical cooperation.[8] The government gradually adopted a more liberal approach and allowed more frequent equity participation. The attitudes of policymakers towards foreign companies investing in India changed based on the country's economic conditions and the perspective of the ruling government at the time. FDI was officially introduced in 1991 under the Foreign Exchange Management Act (FEMA), Back in the 1980s, the decline in India's economic growth prompted the government to introduce macroeconomic stabilization and structural adjustment programs, with support from the World Bank and IMF. As a result, significant amendments were made to liberalize various Indian industries. In this context, several measures were taken by the government to facilitate foreign direct investment (FDI) inflow. Existing companies were allowed to raise foreign equity to 51% for expansion, and previously restricted sectors such as mining, telecommunications, banking, and highway construction were opened to foreign companies. Notably, this liberalization also paved the way for FDI in the Indian retail sector. Foreign Direct Investment (FDI) in retail remained prohibited in India until 2006. It was in the 2006 year that the government approved 51% FDI in single-brand retailing. Subsequently, the government increased the FDI limits to 100% in single-brand retailing in 2018 and 51% in multi-brand retailing in 2012.[9]

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[6] former CJI n v ramana at the conference on arbitrating indo -uk commercial disputes' mansion house, London 05 July 2022

[7] Dr. Priyanka Banerji, Impact of Make in India launch on FDI, IOSR Journal of Business and Management (IOSR-JBM) e-ISSN: 2278-487X, p-ISSN: 2319-7668. Volume 19, Issue 7. Ver. III (July 2017), PP 25-35

[8] Amrut Bairagra, 'RBI as a regulator to FEMA' 13 Jul 2021 <https://taxguru.in/rbi/rbi-regulator-fema.html>

[9] <https://m.rbi.org.in/scripts/Bs_viewcontent.aspx?Id=3623>

A plethora of literature exists on the impact of Foreign Direct Investment (FDI) on the economic growth of host countries. FDI has the potential to contribute to host country growth through technology transfer, research and development, and employment generation. In the retail sector, FDI is expected to positively impact employment opportunities in India.[10] The role of foreign investment which acts as a crucial channel for technology transfer, plays a more substantial role in growth than domestic investment. Furthermore, the positive influence of FDI on economic growth depends on the level of human capital available in the host countries.[11]

Since the pre-liberalization era, India's retailing sector has grown at a high rate of volumes when the government at that time introduced the Public Distribution System (PDS) in the country. Current scenario where the system is regarded as India's largest single retail system, which provides essential commodities, that we use in daily life like rice, wheat, and sugar to the people at standard rates through a network of Fair Price Shops (FPS) known as ration shops. After 1991, i.e., the post-liberalization era, the Indian government, took the crucial step regarding the opening of the economy to increase productivity and develop the infrastructure for transforming the organized and unorganized sectors to adopt modern retailing in India to compete India internationally and as it follows with time a transparent legal mechanism required in the market to regulate a fair practice for every investor.[12]

The present scenario of growing startup culture in India, primarily the tech and innovation sector, is booming with a high level of foreign Investment. The more simplified single window clearance and Goods and Service Tax enactment in the regulatory system reduces many hurdles in bureaucratic foreign investment governance. The government restricts investment in certain sectors such as Gambling, real estate, Railway operations, etc. to prioritize more self-reliant India promotion and security reasons for the nation.[13]

IV. ADR MECHANISMS IN RESOLVING FOREIGN INVESTMENT DISPUTES

Arbitration and mediation are the most crucial mediums to solve any disputes arising at the present growing international trade, and balancing the interests of foreign investors and domestic players from any kind of unethical means by offering an impartial mechanism to address disputes appropriately. These processes provide a structured and neutral environment

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[10] Abdur Chowdhury and George Mavrotas, FDI and growth: What causes what? February 2006, World Economy 29(1):9-19

[11] Foreign direct investment and economic growth: Exploring the transmission channels, Author links open overlay panelKamil Makiela [a], Bazoumana Ouattara

[12] Sankalp Shanker Srivastav, The Impact Of Foreign Direct Investment In The Retail Sector, November 17, 2015 < https://www.lawctopus.com/academike/impact-foreign-direct-investment-retail-sector/>

[13] By Forbes India, Nov 9, 2023, Foreign Direct Investment (FDI) in India: Inflows in 2023 and last 10 years

where complex cases involving foreign investors and state entities can be resolved. Ensuring fair treatment, and protection of investment value, along with addressing grievances through established legal frameworks such as in India- Arbitration Conciliation Act 1996. Offering an alternative to traditional litigation. arbitration and mediation enhance legal predictability, safeguard investor confidence, and give more centralized choice to parties to decide any dispute clauses with appropriate conditions over controlled in the company while buying and selling any assets which may have been controlled by any stakeholder, which consent must be there while transferring any part of it, which discussed in One of the supreme court cases where the dispute resolution mechanism got a shape for the emergency arbitrator's order in an India seated arbitration under SIAC rules.[14]

Amazon vs. Future Retail Case

Supreme Court (Justices RF Nariman and BR Gavai on Friday, 6 August 2021)

Background:

In this case, the shareholders agreement among Amazon, Future Coupons Private Limited (FCPL), and All others having shares in the company, all are entered in a subscription agreement dated 2019. Amazon's investment in NCPL showed that it would flow down to FRL, where it has been confirmed that FRL could not transfer its retail assets mentioned in the agreement without the consent of Amazon. In the shareholder's agreements, Amazon specifically expressed restricted persons/investors to whom FRL could not transfer any retail-related assets and it includes the name of Mukesh Dhirubhai Ambani (MDA) but FRL executed an agreement of rupees 28000 Crore with MDA without informing the Amazon and it leads the main Disputed transaction.[15]

The Amazon-Future Retail dispute revolves around Amazon NV Investment Holdings acquiring a 49% equity stake in Future Coupons Limited, indirectly granting Amazon a 3.5% ownership in Future Retail. The deal included a clause restricting Future Retail's business associations, with Reliance Retail being among the prohibited entities. Singapore International Arbitration Centre (SIAC) granted an interim injunction, halting the deal for 90 days, later extended.

Delhi High Court's single judge upheld the SIAC's decision, recognizing the emergency arbitrator's authority under the Arbitration and Conciliation Act. A Division Bench, however,

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[14] Lalatendu Mishra, Experts seek tribunal to settle FDI-related disputes several transactions, the Indian parties have taken recourse to initiate criminal action against the foreign companies, July 04, 2014, 11:04 pm

[15] Paragraphs 2.3 and 2.4, of the Judgment of Supreme Court

overturned this, allowing Future Retail to proceed with the deal, as it wasn't part of the arbitration agreement. The Supreme Court's interim order halted NCLT's approval for the deal, permitting investigation.

Later on, the Supreme Court ruled in Amazon's favour, deeming SIAC's emergency award enforceable in India. The Court framed two essential issues: the validity of the emergency arbitrator's award under Section 17(1) of the Arbitration Act, and the appealability of the single judge's order supporting SIAC's ruling. The dispute underscores the importance of arbitration in cross-border transactions and the evolving landscape of international commercial arbitration in India.[16]

In the light of this case, there is a need to reform the dispute framework, arbitration clauses hold profound significance as they offer expedited, cost-efficient dispute resolution, sidestepping protracted litigation. The autonomy conferred by arbitration laws empowers contract parties to tailor proceedings to their needs. Major changes are imperative for an enhanced and expeditious dispute resolution mechanism. It is suggested that there should be strong contracts that must impeccably define the jurisdiction and governing laws. The pivotal evolution of emergency arbitration gains prominence in the scenario of international cross-border transactions. Divergent from court appeals, emergency arbitration accelerates case deliberation, frequently culminating in amicable settlements while safeguarding confidentiality. This prevents the risk of interim relief misappropriation to fostering a robust and efficient dispute resolution paradigm.[17]

In the findings, two things highlighted mainly that India's retail sector is currently in its fragile state as there is no open market for every foreign investor because we have seen enforcement of shareholder's agreements through litigation still shows complexities without any clarity in provisions under the Act, other hand Emergency Arbitrators power not define clearly while dealing with any state laws applicability or matter in concern.[18]

V. CURRENT STATISTICS OF RETAIL EMPLOYMENT IN INDIA

Retail employment in India is subject to a dual regulatory framework, reflecting the country's quasi-federal governance structure. The Ministry of Labour and Employment at the central level oversees labour matters, while state governments also exert control with their labour-

[16] Amazon.Com Nv Investment ... vs Future Retail Limited on 6 August 2021, AIR 2021 SUPREME COURT 3723, AIRONLINE 2021 SC 443

[17] Vivek Sanghi, November 15, 2021, <https://blog.ipleaders.in/analyse-the-approach-of-indian-courts-to-emergency-arbitrations-in-the-light-of-the-judgment-in-amazon-v-future/#Future_Implications >

[18] ELP-Amazon.Com-NV-Investment-Holdings-LLC-V.-Future-Retail-Limited-Ors.pdf

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specific regulations. Retail employment falls within state jurisdiction due to its sectoral classification. State-level Shops and Establishment Acts govern working conditions. Various central and state Labor Acts, like the Minimum Wages Act and Employees State Insurance Act, apply primarily to organized retail sector employees, on the other hand, Unorganized distributors are discount chains, Kirana markets, and convenience shops, these come under single-brand retailing and to operating without taxation and public acknowledgment, also this sector is so vulnerable at present as it covers 97% of India's unorganized retail sector. illustrating the distinct and shared roles of central and state authorities in regulating retail employment.

India's workforce, dominated by the 15-59 age group, is set to increase from 58% (2001) to over 64% by 2021. Central and state governments prioritize job creation, particularly quality employment. The Ministry of Labour and Employment aims to enhance organized sector jobs while upgrading unorganized sector conditions. Employment quality factors in job security, earnings, and worker well-being. The retail sector, vital for livelihoods, emphasizes decent work, minimum wages, safety, and social security. Notably, policies aim to harmonize quality jobs in organized retail with safeguarding employment for unorganized sector workers. This holistic approach envisions a balanced domestic retail landscape with improved labour and employment regulations for sustainable growth.[19]

In Multi Brand Retailing Trade (MBRT) foreign investment in India should not be limited to tier 1 or 2 cities, it is suggested to include the unorganized sector to provide them a space where they can upgrade their practices as well to flourish the business tactics because of domestic growth. In this manner, it could generate a fruitful amount of youth employment from the rural sector. In India, there is no fixed policy regarding domestic employment size for working big multi-brand retail businesses. It is recommended that the entry of foreign players must be in specific numbers such as 10 in a month, to safeguard or prevent a large number of labour displacements. On the other hand, to maintain the stable objective of the Code of Social Security, 2020 that in the growing start-up culture or business world social security benefits all employees and workers regardless of whether they are in the organized or unorganized or any other sector in the territory.[20]

[19] Arpita Mukherjee, Tanu M. Goyal, Employment Conditions in Organised and Unorganised Retail: Implications for FDI Policy in India

[20] Mohammed Nizamuddin, FDI in Multi Brand Retail and Employment Generation in India, Center for Studies in Economics & Planning, School of Social Science, Central University of Gujarat, 20. April 2013

VI. COMPETITION POLICY AND ITS SIGNIFICANCE FOR RETAIL FDI REGULATION

The Competition Act is a legislative framework aimed at promoting fair competition and preventing anti-competitive practices in the market. It addresses issues related to dominance, abuse of dominance, anti-competitive agreements, and regulation of mergers and acquisitions. The statement points out that, as of March 2008, no research studies had been initiated by the Competition Commission of India (CCI) specifically focusing on the retail sector. This might indicate a gap in understanding the dynamics and challenges within the retail industry in the context of competition law. Section 4 of the Competition Act, 2002 as amended, regulates abuse of dominance. The statement highlights that proving dominance in the case of corporate retailers, especially multiproduct retailers, can be intricate, such retailers might have dominance in one market that enables them to enter new markets using tactics like predatory pricing and promotional expenditure, it is means fixing price which is unrealistically low to eliminate the competition. The Competition Act (Section 3(4)) addresses vertical agreements, which are not presumed to be anti-competitive but require a degree of proof.[21]

India can draw valuable insights from the experiences of Southeast Asian countries and advanced retailing economies like Germany.[22] They have shown success in enhancing regulatory frameworks to preserve competition and promote a diverse product range. Notably, Germany's competition policies prioritize the preservation of small and medium-sized competitors within the retail sector, which helps the retail segment to grow collectively, offering a potential blueprint for India to make unorganized retailing like an organized one with a balanced push to achieve the desire economic as well as fair market competition.

VII. TECHNOLOGICAL INNOVATIONS SHAPING THE FUTURE OF RETAIL FDI IN INDIA:

i. The future in retail and its measures aim to strike a balance between attracting FDI in the retail sector and protecting the interests of domestic players and stakeholders in growing India's market. Gradual liberalization, social safeguards, and attention to various aspects of the retail ecosystem including single-brand retailing and e-commerce are emphasized to ensure a win-win situation for domestic retailers. There are some key points we need to consider and adapt while developing the retail sector for healthy

[21] (http:// www.cci.gov.in, Approach Paper, Competition Advocacy)
[22] Anuradha Kalhan, Martin Franz, Regulation of Retail: Comparative Experience

economic growth and less legal complexities in India's upcoming 5 trillion-dollar economy.[23]

ii. In recent times e-commerce industry has evolved with its vibrant footprint in the Indian market following the government of India promoting digital India initiative where the e-commerce space getting revolutionary. Market accessibility through online platforms has become crucial for buyers around the globe. India like a market where dominance in the competition become more concerning and political as a clear pattern of concentration, where some giants hold control over a large part of the market but constantly regulatory mechanisms getting affected as crimes take place a list every day primarily deep discounting, unfair usage of data of customers, digital exclusions of MSME, IP infringement, procedural issues in logistics etc. these become more critical to tackle and challenging in growing Artificial Technology in business formation.[24]

iii. Modernization in loan schemes by Banks and state governments with concessional rates for small unorganized Kirana stores but before that, the Kirana stores should have proper business ideas to formulate a longer vision to enjoy loan schemes and subsidies, such schemes are- PMMY- Pradhan Mantri Mudra Yojana, Udyogini Funding Scheme, SMILE launched by SIDBI.[25]

iv. In India, Farmers can bolster India's retail sector by collaborating with significant foreign direct investors (FDIs) to modernize agricultural supply chains, for long decades agricultural sector has been playing a pivotal aspect in the retail segment. Current fragmentation and middlemen involvement lead to price disparities. Direct engagement with small farmers through collectives can bridge the gap between wholesale and retail prices, ensuring equitable profits. Big retailers like Big Basket exemplify this approach, sourcing directly from farmers. As FDIs expand farmer's direct participation could surge, fostering efficient supply chains, fair profits, and a mutually beneficial relationship that strengthens India's retail landscape in the future.[26]

v. The initial support backed by foreign investors to the Indian farmers may raise their income from the agricultural sector but the fears of elimination of the middleman can

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[23] Rajib Bhattacharyya, The Opportunities and Challenges of FDI in Retail in India, IOSR Journal of Humanities and Social Science (JHSS) ISSN: 2279-0837, ISBN: 2279-0845.Volume 5, Issue 5 (Nov. - Dec. 2012), PP 99-109

[24] DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON COMMERCE Rajya Sabha Secretariat, New Delhi July, 2022/ Ashadha, 1944 (Saka) REPORT NO. 172 ONE HUNDRED AND SEVENTY SECOND REPORT Promotion and Regulation of E-Commerce in India

[25] Saarah Fatima, top 5 Government Loan Schemes for Small Businesses In India [2023] August 12, 2023.

[26] https://www.livemint.com/Opinion/xQmunAF6TpRpNaTrqGCcFK/When-big-retail-meets-small-farmers.htm

cause future damage to the farmers as majority control would be enjoyed by the big investor companies because without proper legal structure as such which type of investors really can contribute in the agricultural sector and what can be their stake? And, without that, they will not only evict the small retailers but also dictate their terms. It is suggested that technological development through investors more preferable to directly putted clauses on specific sectors regarding FDI would become consequential harm.[27]

vi. India's UPI system now has grown to a new level but still in some specified areas of the rural sector unable to connect digitization of updated technology and hence it's become a gap between foreign advance retailers and unorganized retailers in India. To boost the exceptional growth local regulatory bodies, need to proceed with an awareness campaign to promote mass digitization and easy securing transactions to all retail traders. It will play a major role shortly as 70% of customers in India use digital modes of payment, but it become concerning with people and their personal data protection breaches. The Digital Personal Data Protection Bill, of 2023 states combined with the National Cyber Security Policy 2013 grants citizens to store their data in a specific way as history and it can't be used without proper authority.[28]

vii. The requirement of reconstruction and surrender of export proceeds is in line with conventional practices, exploring mechanisms to streamline these processes could encourage a more efficient capital flow, which regulatory bodies have followed through referring to monetary policy 2011-2012, it needs to be modified and Simplification of procedures with reducing associated cost could incentivize foreign investors to participate more readily in India's retail market through proper approval, as because compare to the last decade India escalate its political interest with high economic growth projection of the upcoming year 2030.[29]

viii. India's future projection aims to create a more conducive environment for investors by authorized dealers to facilitate foreign exchange transactions for underlying current account activities, making it easier for them to navigate the financial landscape which needs to be updated in some points like Influencing the amount of foreign reserves for India's steady growth in economic even in recession period, Exchange rate impact,

[27] Deep Ray, Impact of FDI in Retail on Indian Agriculture, https://ssrn.com/abstract=2417205
[28] King Stubb & Kasiva, on March 2, 2023, < https://ksandk.com/banking/digital-payments-in-india-regulatory-framework/#strong-trends-and-future-outlook-strong>
[29] https://corporatelawreporter.com/rbi-sets-committee-streamlining-foreign-exchange/

Costs and benefits so that it can be beneficial through ease of foreign exchange transactions.[30]

ix. In the year 2022-2023, banks and financials have done very well and the index is up by 25-30%, whereas the pharma index is up by around 10-11% and IT is up only 3%, Despite the positive outlook of the economy, Moody's emphasizes the risks posed by reform and policy barriers to the pace of investment in India especially in manufacturing and infrastructure sector which include retail segments as well. At the same time, many fund managers underperform due to the selection of the wrong sector mix, which FEMA may focus on regulating by upgrading the provisions to pump more financial regulatory assistance.[31]

VIII. CONCLUSIONS

India has witnessed a significant surge in inward Foreign Direct Investment almost all sectoral economic reforms. The nature and type of FDI have undergone considerable changes over time, impacting the Indian economy both positively and negatively. To keep pace with the forecasted Indian GDP growth, the government should continue to encourage foreign investment. To mitigate any adverse effects on local players, there is a need for a redesigned regulatory framework. Encouraging FDI in a gradual manner, similar to the current approach for single-brand retailing, can be a prudent strategy. While India's retail sector has remained off-limits to large international chains in multi-brand retailing, there is still ongoing debate about opening it up to FDI. India's experiences between 1990-2010, particularly in the telecommunications and IT industries, demonstrate the various advantages of embracing large-scale foreign investments in specific sectors. Now, the focus may shift to the retail sector to leverage FDI's potential and drive growth. The legal system for FDI in India has indeed played a revolutionary role in attracting foreign investors and fostering economic development, but, Laws such as the Competition Act 2002, Labour laws, Companies Act 2013, and other specified state laws, including municipal rules and land laws, form the foundation of this legal framework. By striking a balance between encouraging foreign investment and protecting domestic players, India can harness the transformative power of FDI and bolster its domestic economy in the retail sector and beyond.

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[30] Ramon Moreno, Motives for intervention, < https://ideas.repec.org/h/bis/bisbpc/24-02.html>

[31] By Vidya Sreedhar, ET Markets Fund Manager Talk-Banks among sectors offering passive investment opportunities to investors: AUM Capital