

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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“FDI CORPORATE GOVERNANCE AND NATIONAL INTEREST”

AUTHORED BY - YUVRAJ CHOPRA

Second Year Student, 3 Year LL.B
Department of laws, Punjab University

CO-AUTHOR - MS. AISHWARYA JAGGA

Assistant Professor of Law,
Department of Laws, Panjab University

Abstract

Foreign Direct Investment (FDI) through mergers and acquisitions (M&A) has emerged as a dominant mode of cross-border investment, particularly in developing economies like India. While such investments bring much-needed capital, technology, and global integration, they also raise critical concerns regarding corporate governance, market control, and the safeguarding of national interests. This paper explores the dynamic tension between facilitating foreign investment for economic growth and protecting domestic autonomy in strategic sectors. It critically examines how regulatory frameworks such as the Competition Act, 2002, the Foreign Exchange Management Act (FEMA), 1999, and sectoral caps imposed by the Department for Promotion of Industry and Internal Trade (DPIIT) influence M&A transactions involving foreign investors. Through a comparative lens, it analyses global best practices to propose a balanced governance model that ensures transparency, accountability, and national security without discouraging legitimate foreign participation. The study underscores the importance of strengthening due diligence, board independence, and government oversight mechanisms in achieving a sustainable equilibrium between corporate governance imperatives and the broader national interest.

Keywords

FDI, Mergers and Acquisitions, Corporate Governance, National Interest, Regulatory Framework, FEMA, Competition Law, Economic Policy, Foreign Investment, India

Introduction

Foreign Direct Investment (FDI) has long been viewed as a catalyst for economic growth, industrial development, and global integration. In recent years, mergers and acquisitions (M&A) have emerged as one of the primary routes for FDI inflows, surpassing traditional greenfield investments in both scale and strategic importance. M&A transactions enable multinational corporations to gain instant access to established markets, local brands, and distribution networks, while domestic companies benefit from infusion of capital, advanced technology, and managerial expertise. However, the increasing scale and complexity of cross-border M&A deals have brought to the fore serious concerns about corporate governance, national security, and sovereign economic control.

In the Indian context, this debate is particularly relevant. India has liberalized its FDI regime significantly since the 1990s, allowing foreign investors to acquire stakes in a wide range of sectors. Yet, the liberalization process has been accompanied by regulatory caution to safeguard national interest, especially in strategic sectors such as defence, telecommunications, infrastructure, and financial services. The intersection of corporate governance norms which demand transparency, accountability, and shareholder protection and national policy objectives which prioritize economic sovereignty and social welfare creates an inherent tension that this paper seeks to address.

Several landmark cases, such as Walmart–Flipkart (2018) and Vedanta–Cairn India (2011), illustrate how M&A-driven FDI can trigger debates on competition, ownership concentration, and policy consistency. Furthermore, the COVID-19 pandemic prompted the Indian government to tighten its FDI policy to prevent “opportunistic takeovers” of domestic firms by foreign entities, highlighting how national interest considerations can override market liberalization.

This research attempts to evaluate whether India’s current legal and regulatory framework adequately balances these competing imperatives. It also explores whether enhanced corporate governance mechanisms such as stricter disclosure norms, independent board oversight, and ethical compliance can mitigate potential risks without deterring foreign capital inflows. By situating the discussion within both domestic and international perspectives, the paper aims to contribute to the evolving discourse on responsible globalization and strategic autonomy.

Research Methodology

The present study adopts a qualitative and doctrinal research methodology with a focus on analyzing legal frameworks, policy instruments, and judicial precedents that govern FDI through mergers and acquisitions (M&A) in India. The research seeks to understand how these mechanisms align or conflict with the twin objectives of corporate governance and protection of national interest.

1. Nature of the Study

This research is analytical and comparative in nature. It critically evaluates statutory provisions, government policies, and international best practices to assess whether India's current regulatory regime provides an effective balance between liberalization and national security concerns.

2. Sources of Data

- **Primary Sources** include:
 - Statutory provisions under the Foreign Exchange Management Act, 1999 (FEMA), Companies Act, 2013, and Competition Act, 2002.
 - Notifications, Press Notes, and circulars issued by the Department for Promotion of Industry and Internal Trade (DPIIT) and the Reserve Bank of India (RBI).
 - Judgments and orders of Indian courts, particularly those of the Supreme Court and High Courts, interpreting FDI and M&A laws.
 - Reports from parliamentary committees and expert bodies on FDI policy.
- **Secondary Sources** include:
 - Scholarly articles and research papers from academic journals.
 - Books and treatises on corporate law, international trade, and governance.
 - Reports by OECD, UNCTAD, and World Bank on global FDI trends.
 - Case studies of major M&A transactions in India and abroad.

3. Method of Analysis

The analysis relies on doctrinal interpretation of legal texts, supported by comparative assessment of foreign investment policies in jurisdictions such as the United States, China, and the European Union. The study also uses a policy evaluation approach to assess how India's regulatory decisions especially in sensitive sectors affect both investor confidence and national economic security.

4. Objectives of Methodology

- To identify the key governance issues that arise in FDI-led M&A transactions.
- To evaluate whether existing legal and institutional frameworks safeguard the national interest.
- To explore how improved corporate governance standards can coexist with policy safeguards for strategic sectors.

5. Limitations

The study is confined to India's regulatory and policy environment and does not involve empirical or econometric data analysis. However, it draws on comparative perspectives and theoretical insights to ensure a comprehensive understanding of the issue.

Hypothesis

This research proceeds on the assumption that a robust corporate governance framework can effectively reconcile the objectives of attracting FDI through mergers and acquisitions with the imperative of safeguarding national interest.

It hypothesizes that:

1. Strong governance mechanisms such as transparent disclosures, independent directorship, and ethical business conduct can minimize the risks of foreign dominance or exploitation of domestic resources.
2. Regulatory oversight through statutes like the Competition Act, 2002, Companies Act, 2013, and FEMA, 1999, when effectively enforced, provides sufficient safeguards to protect national security and public welfare without deterring genuine foreign investors.
3. However, excessive regulatory restrictions or ad hoc policy decisions framed in the name of "national interest" may discourage legitimate cross-border investments, thereby impeding economic growth and global competitiveness.
4. Therefore, the optimal balance lies not in overregulation but in ensuring accountability, transparency, and reciprocity so that India remains investor-friendly while preserving its economic sovereignty and policy autonomy.

Research Questions

The study seeks to address the following key research questions:

1. How does Foreign Direct Investment through mergers and acquisitions (M&A) influence India's economic growth, market competition, and corporate governance environment?
2. To what extent do India's existing legal frameworks including the FEMA, 1999, Companies Act, 2013, and Competition Act, 2002 adequately regulate FDI-driven M&A transactions to balance investor interests and national priorities?
3. What are the major risks to national interest arising from cross-border M&A, especially in strategic sectors such as defence, infrastructure, telecommunications, and finance?
4. How can corporate governance principles including transparency, accountability, and board independence serve as effective tools to mitigate threats to national sovereignty and economic control?
5. What lessons can India draw from global best practices in regulating FDI through M&A while maintaining its policy autonomy and developmental objectives?
6. Is there a need for a unified policy framework or specialized regulatory body to oversee foreign M&A transactions in India, similar to the Committee on Foreign Investment in the United States (CFIUS) model?

Literature Review

The relationship between Foreign Direct Investment (FDI) and national interest has been the subject of sustained scholarly inquiry across disciplines of international economics, corporate law, and political economy. Scholars have examined how cross-border mergers and acquisitions (M&A) have redefined the contours of global investment flows, raising concerns about governance, sovereignty, and market concentration.

1. Theoretical Foundations of FDI and M&A

According to John H. Dunning's Eclectic Paradigm (OLI Model), multinational enterprises undertake FDI when ownership, location, and internalisation advantages justify the move, thereby linking foreign investment with both market efficiency and host-country dependency.¹ Dunning's framework underscores that M&A-driven FDI often seeks not only new markets but also control over strategic assets such as technology or resources, which may challenge the host

¹ John H. Dunning, *Explaining International Production* (Unwin Hyman, London, 1988) 23.

nation's policy sovereignty.²

Similarly, Hymer's Market Imperfections Theory posits that foreign firms engage in direct investment to exploit monopolistic advantages, thereby potentially distorting local competition.³ These early economic models reveal the duality at the core of FDI—between developmental benefit and strategic vulnerability.

2. FDI Policy and Corporate Governance in India

Post-liberalisation, India's FDI policy evolved through a gradual process of deregulation under the Foreign Exchange Management Act, 1999 (FEMA) and subsequent Press Notes issued by the Department for Promotion of Industry and Internal Trade (DPIIT).⁴ Scholars such as P. Chakraborty argue that this policy shift has led to a surge in M&A transactions, but regulatory fragmentation continues to impede transparency and predictability.⁵

Corporate governance concerns in such transactions were explored by Umakanth Varottil, who emphasized that board accountability and minority shareholder protection are often undermined when control changes hands through foreign takeovers.⁶ Varottil notes that while India has adopted global governance standards under the Companies Act, 2013 and SEBI (LODR) Regulations, enforcement remains inconsistent.⁷

Furthermore, Bhattacharyya points out that foreign acquirers often impose global compliance models that may not align with Indian corporate culture, creating friction in ethical and disclosure standards.⁸ This highlights the need for convergence between domestic governance principles and international investment practices.

3. National Interest and Regulatory Oversight

The concept of "national interest" in FDI regulation extends beyond economic benefit to include security, competition, and public welfare.⁹ The Competition Commission of India (CCI) plays a crucial role in reviewing M&A transactions to prevent market dominance, as

² J.H. Dunning, 'Reappraising the Eclectic Paradigm in an Age of Alliance Capitalism' (1995) 26 *Journal of International Business Studies* 461.

³ Stephen Hymer, *The International Operations of National Firms: A Study of Direct Foreign Investment* (MIT Press, 1976) 67.

⁴ Foreign Exchange Management Act, 1999; Press Notes issued by DPIIT, Government of India.

⁵ P. Chakraborty, 'Reassessing India's FDI Policy: Trends, Challenges and the Way Forward' (2017) 59 *Economic and Political Weekly* 43.

⁶ Umakanth Varottil, 'The Evolution of Corporate Governance in India: Promoters, Independent Directors and Institutional Investors' (2015) *National Law School Journal* 24.

⁷ Companies Act, 2013; SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

⁸ S. Bhattacharyya, *Corporate Governance and Global Business Ethics* (Routledge, 2020) 134.

⁹ R. Jha, 'National Interest and Foreign Investment Policy' (2019) *Indian Journal of International Law* 78.

reflected in the CCI's review of the Walmart Flipkart acquisition, where data monopolization and small-retailer displacement were major concerns.¹⁰

Scholars such as Arpita Mukherjee and Tanu M. Goyal contend that India's sector-specific caps (e.g., in defence, insurance, and telecom) act as protective filters that balance openness with sovereignty.¹¹ However, others argue that such restrictions may discourage genuine foreign investors and slow innovation.¹²

The *Venture Global Engineering v. Satyam Computer Services Ltd.* case underscored the judiciary's cautious approach to foreign acquisitions, where the Supreme Court upheld the primacy of public policy in the enforcement of arbitral awards arising from international M&A disputes.¹³ This jurisprudence indicates that courts treat FDI not merely as a private contractual matter but as one implicating the nation's economic interests.

4. Comparative International Perspectives

The Committee on Foreign Investment in the United States (CFIUS) provides a model for screening foreign M&A deals that threaten national security.¹⁴ Similarly, the European Union's Regulation (EU) 2019/452 introduced a coordinated framework for FDI screening among member states.¹⁵

In contrast, China has implemented a Negative List approach coupled with the National Security Review Mechanism, balancing economic liberalization with strategic control. Comparative studies suggest that India lacks a unified FDI screening body with a clearly articulated mandate, leading to overlapping jurisdictions between the RBI, DPIIT, and CCI.¹⁶ This absence of coordination, as highlighted by Raghavan Committee Reports and subsequent policy reviews, often results in regulatory uncertainty and investor hesitation.¹⁷ A harmonized mechanism, therefore, could strengthen both national oversight and corporate transparency in FDI-driven M&A.

¹⁰ CCI, *In Re: Walmart Inc. and Flipkart India Pvt. Ltd.*, Combination Registration No. C-2018/05/571 (CCI Order dated 8 Aug 2018).

¹¹ A. Mukherjee & T.M. Goyal, 'FDI in India's Retail Sector: National Interest versus Market Liberalization' (2019) *ICRIER Policy Series* 12.

¹² S. Kumar, 'Protectionism and its Discontents: Revisiting India's FDI Barriers' (2020) 45 *Business and Law Review* 211.

¹³ *Venture Global Engineering v. Satyam Computer Services Ltd.*, (2008) 4 SCC 190.

¹⁴ CFIUS, *Annual Report to Congress 2022*, U.S. Department of Treasury.

¹⁵ Regulation (EU) 2019/452 of the European Parliament and of the Council, 19 March 2019.

¹⁶ Raghavan Committee Report on Competition Policy (2000).

¹⁷ R. Kaul, 'Balancing FDI and National Interest: Governance as the Middle Path' (2021) *Indian Journal of Corporate Law* 102.

5. Evolving Scholarship on Balancing Governance and Sovereignty

Recent scholarship emphasizes the need for a balanced regulatory ecosystem that encourages foreign capital while preserving autonomy. Amartya Sen and Jean Drèze, in their broader critique of economic reforms, argue that economic liberalization must be accompanied by institutional accountability to prevent resource capture by transnational entities.¹⁸

N. Balasubramanian asserts that the corporate governance–national interest nexus can be harmonized through better disclosure standards, board diversity, and independent regulatory oversight rather than through protectionist barriers.¹⁹

Similarly, UNCTAD’s World Investment Report (2023) observes that sustainable FDI inflows depend not merely on market liberalization but on predictable governance and policy coherence.²⁰ This supports the central premise of this paper: that robust corporate governance mechanisms can serve as a functional safeguard of national interest, reducing the need for restrictive FDI barriers.

The reviewed literature collectively highlights three consistent themes:

1. **Economic necessity** of FDI through M&A in developing economies.
2. **Governance vulnerability** due to asymmetry between multinational acquirers and domestic regulators.
3. **Policy challenge** of aligning economic openness with sovereignty protection.

However, there remains a research gap in evaluating whether corporate governance mechanisms themselves as opposed to external regulatory barriers can be designed to safeguard the national interest effectively. The present study addresses this lacuna by synthesizing legal, economic, and institutional perspectives to propose a governance-based equilibrium model for India’s FDI policy.

1. Understanding FDI through Mergers and Acquisitions: Conceptual and Legal Framework

Foreign Direct Investment (FDI) through mergers and acquisitions (M&A) represents a significant shift from traditional forms of investment, enabling foreign corporations to obtain ownership and management control of existing enterprises in the host country. Unlike greenfield investments, which involve the creation of new facilities or operations, M&A

¹⁸ Amartya Sen & Jean Drèze, *India: Economic Development and Social Opportunity* (Oxford University Press, 1999) 187.

¹⁹ N. Balasubramanian, *Corporate Governance and Stewardship: The Indian Context* (Springer, 2017) 202.

²⁰ UNCTAD, *World Investment Report 2023: Investing in Sustainable Energy for All* (United Nations, 2023) 56.

transactions are characterized by the transfer of ownership from domestic shareholders to foreign investors. This process not only influences the capital structure of Indian enterprises but also impacts national regulatory and corporate governance systems.

India's legal framework for regulating FDI through M&A is structured across multiple statutes. The Foreign Exchange Management Act, 1999 (FEMA) forms the foundation, empowering the Reserve Bank of India (RBI) to monitor cross-border capital transactions. Complementing FEMA, the Companies Act, 2013 provides procedural guidance on mergers, including shareholder approvals, disclosures, and NCLT sanctions. Additionally, the Competition Act, 2002 ensures that no merger creates an appreciable adverse effect on competition (AAEC). The Department for Promotion of Industry and Internal Trade (DPIIT) further regulates sectoral caps, ownership limits, and entry routes through periodic Press Notes.

India's FDI policy distinguishes between three principal entry routes:

1. Automatic Route, where no prior approval is required;
2. Government Route, which mandates prior permission, particularly in sensitive sectors such as defence, telecom, and media; and
3. Conditional or Hybrid Route, which allows foreign participation subject to specific operational restrictions or performance conditions.

This multilayered regulatory design reflects India's effort to balance economic liberalization with national sovereignty. The policy objective is not merely to attract capital but to ensure that such inflows align with the broader developmental and security interests of the nation.

2. Corporate Governance Challenges in Cross-Border Mergers and Acquisitions

Corporate governance plays a crucial role in ensuring that FDI inflows through mergers and acquisitions contribute positively to a nation's economic growth while preserving ethical, transparent, and responsible business conduct. In cross-border M&A transactions, governance challenges become more complex because the merging entities often operate under divergent regulatory systems, ownership structures, accounting standards, and cultural expectations.

When a foreign acquirer gains control of an Indian enterprise, the alignment of governance practices is not merely procedural it determines the trust of minority shareholders, the protection of domestic managerial autonomy, and the safeguarding of national assets. Differences in board composition norms, disclosure practices, and fiduciary duties often

generate tension between the global investor's strategic goals and the domestic company's long-term social and economic responsibilities.

A primary challenge arises from board independence and accountability. While Indian law mandates at least one-third of the board to comprise independent directors in listed entities under Section 149 of the Companies Act, 2013, foreign acquirers frequently attempt to restructure boards to reflect their global hierarchy. This may dilute local oversight and create a perception of external dominance, particularly when key decisions such as capital restructuring, dividend policy, or data sharing are made in offshore boardrooms.

Another governance dilemma relates to transparency and disclosure standards. Foreign firms, particularly those listed in multiple jurisdictions, may follow international accounting norms such as IFRS, which sometimes differ from Indian GAAP. The resulting mismatch can obscure the true valuation of assets or liabilities transferred in a merger, creating potential for information asymmetry and minority shareholder exploitation. Furthermore, regulatory arbitrage becomes possible when firms exploit loopholes between domestic and international regimes to avoid stricter compliance obligations.

The role of institutional investors adds another layer of complexity. Many global funds prioritize short-term financial performance, often pressuring Indian subsidiaries to pursue aggressive profit-maximizing strategies that may conflict with environmental, labour, or community welfare standards embedded in Indian corporate governance philosophy. Consequently, the Environmental, Social, and Governance (ESG) dimension has emerged as a key evaluative framework to reconcile investor intent with local accountability.

India's experience with high-profile cross-border acquisitions such as Vodafone-Hutchison, Tata-Corus, and Holcim-Ambuja illustrates that inadequate governance harmonization can result in protracted litigation, tax disputes, and regulatory interventions. These cases underline the necessity of harmonized governance codes that integrate Indian regulatory expectations with international best practices.

Ultimately, effective corporate governance in cross-border M&A requires a triadic coordination among regulators (SEBI, RBI, and CCI), corporate boards, and shareholders. Transparent reporting, culturally sensitive management practices, and ethical due diligence

must form the backbone of India's M&A regime to ensure that foreign investments enhance not erode the integrity of the domestic corporate system.

3. National Interest and Regulatory Sovereignty in FDI through M&A

The concept of national interest occupies a central position in the debate over Foreign Direct Investment (FDI) via mergers and acquisitions. While FDI inflows are instrumental for economic development, technological transfer, and employment generation, they may simultaneously trigger concerns related to national security, economic sovereignty, and control over strategic sectors. Consequently, the State must reconcile two competing imperatives: maintaining an open, liberal investment climate and exercising sovereign control to prevent any potential compromise of public welfare or security.

In India, the articulation of "national interest" is neither statutorily defined nor uniformly applied. Instead, it emerges contextually through executive discretion, sectoral regulations, and judicial interpretation. The Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 empower the Government of India to scrutinize foreign investment proposals that may have implications for national security or public order. This became particularly significant after Press Note 3 of 2020, which mandated prior government approval for investments from countries sharing land borders with India primarily aimed at curbing opportunistic acquisitions during the pandemic-induced economic slowdown.

The notion of national interest is also invoked in the Competition Act, 2002, where mergers likely to create an *Appreciable Adverse Effect on Competition* (AAEC) can be restricted or modified by the Competition Commission of India (CCI). Similarly, the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ensures that minority shareholders' interests are not jeopardized by foreign takeovers. Together, these frameworks illustrate how national interest is operationalized through regulatory checks rather than blanket prohibitions.

However, the absence of a clear legislative definition leaves room for policy inconsistency and administrative subjectivity. For instance, while India has liberalized FDI norms in the defence and insurance sectors, it has simultaneously imposed restrictive caps and screening mechanisms in media and telecommunications reflecting a sectoral, rather than principle-based, approach. Such unpredictability can deter genuine investors who seek regulatory

certainty.

The balance between national interest and economic openness is further complicated by geopolitical considerations. The rising trend of state-backed foreign investors, especially sovereign wealth funds and government-controlled enterprises, raises apprehensions about strategic influence over domestic infrastructure, technology, and data systems. The 2017 Hindustan Zinc disinvestment controversy and the Adani–Wilmar joint venture debates underscore the delicate interplay between economic expediency and strategic prudence.

To maintain credibility as a global investment destination while upholding sovereign integrity, India must evolve a transparent, principle-based framework to assess foreign M&A transactions. This could include national security review mechanisms similar to the Committee on Foreign Investment in the United States (CFIUS), which operates on predefined parameters rather than executive discretion. Such institutionalization would enhance predictability, investor confidence, and alignment with international best practices without compromising India's regulatory autonomy.

4. Economic and Strategic Implications of Foreign M&A in India

Foreign Direct Investment (FDI) through mergers and acquisitions (M&A) exerts a profound impact on India's economic and strategic landscape. On one hand, it contributes to capital formation, enhances productivity, and facilitates the transfer of advanced technologies and managerial expertise. On the other, it raises concerns about economic dependency, erosion of domestic control, and vulnerability to external shocks. Understanding these implications requires a nuanced evaluation that goes beyond traditional metrics of investment inflow to assess the qualitative dimensions of ownership, control, and strategic influence.

From an economic standpoint, cross-border M&A has been a major driver of India's integration into global value chains. Transactions such as Walmart's acquisition of Flipkart and BP's investment in Reliance's energy ventures have injected not only financial capital but also technological know-how, logistics efficiency, and global best practices. These mergers often improve corporate governance standards by introducing stricter compliance mechanisms, ESG-oriented reporting, and professional management practices. However, critics argue that these benefits are often concentrated within elite sectors, with limited trickle-down effects on employment or indigenous entrepreneurship.

Strategically, the nature of the acquiring entity and the sector involved determine whether an M&A deal serves or undermines the national interest. Acquisitions in critical infrastructure, telecommunications, and natural resources can expose the host nation to undue foreign influence. For instance, foreign ownership of data-driven enterprises raises legitimate concerns about data sovereignty and cybersecurity, especially given India's evolving digital ecosystem. Similar apprehensions have been expressed in the defence and energy sectors, where foreign control could potentially compromise strategic autonomy.

The Competition Commission of India (CCI) plays a crucial role in this context by evaluating mergers that may result in monopolistic structures or distort market competition. However, its scrutiny often focuses on economic parameters such as market share and pricing, leaving out broader strategic considerations like supply-chain security or national resilience. This indicates a regulatory gap India lacks a unified mechanism that holistically assesses both economic efficiency and strategic vulnerability in foreign M&A transactions.

Moreover, the macroeconomic implications of large-scale foreign takeovers are multifaceted. While inflows strengthen foreign exchange reserves and improve India's balance of payments, excessive foreign control may reduce domestic innovation incentives and create dependency on imported technologies. The repatriation of profits by multinational corporations can also lead to capital outflows, offsetting the benefits of initial inflows. Hence, the policy challenge lies in designing a system that promotes foreign participation while preserving domestic value creation.

The experience of other emerging economies offers important insights. Countries like China and South Korea have maintained stringent screening of foreign M&A in strategic sectors while simultaneously offering incentives in non-sensitive industries. India can emulate this model by establishing a National Investment Screening Authority (NISA) to evaluate deals from both economic and security perspectives, ensuring that foreign participation complements national developmental goals rather than replacing them.

Ultimately, the economic and strategic implications of foreign M&A in India underscore the need for a balanced, sector-specific, and principle-based approach—one that recognizes foreign investment as a catalyst for growth, yet guards against its potential to undermine economic sovereignty and long-term policy independence.

5. Regulatory responses and institutional framework governing FDI through M&A

The regulation of Foreign Direct Investment (FDI) through mergers and acquisitions (M&A) in India is neither centralized nor codified under a single enactment. Instead, it functions through a network of overlapping statutes, regulatory bodies, and policy instruments, each addressing a distinct facet of cross-border corporate transactions. This fragmented architecture reflects India's evolving attempt to balance liberalization with prudential safeguards, aligning economic growth with the preservation of sovereign interests.

At the core lies the Foreign Exchange Management Act, 1999 (FEMA), administered by the Reserve Bank of India (RBI). FEMA, and its subordinate rules and notifications, govern capital account transactions, cross-border share transfers, and the pricing guidelines for inbound and outbound investments. The Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 further classify investment routes into *automatic* and *government approval* categories, delineating sectoral limits and ownership thresholds. FEMA thus functions as the legal conduit through which India monitors and channels FDI inflows, ensuring compliance with its macroeconomic objectives.

Complementing FEMA is the Companies Act, 2013, which provides procedural clarity on mergers and reconstructions involving foreign entities. Sections 230 to 234 of the Act, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, enable cross-border mergers subject to the sanction of the National Company Law Tribunal (NCLT). Notably, Rule 25A allows mergers between Indian and foreign companies located in jurisdictions notified by the government currently including the United Kingdom, Singapore, Japan, and others provided such mergers are compliant with Indian accounting and valuation norms. This framework seeks to institutionalize transparency and judicial oversight in the M&A process.

In the competition domain, the Competition Act, 2002 empowers the Competition Commission of India (CCI) to examine mergers likely to have an *Appreciable Adverse Effect on Competition (AAEC)* in the Indian market. Sections 5 and 6 of the Act require notification of combinations crossing specified thresholds in assets or turnover. The CCI's analysis based on market concentration, entry barriers, and consumer welfare ensures that FDI-led M&A does not distort competitive dynamics or lead to monopolistic outcomes. However, the Act's economic lens

does not extend to national security or public interest considerations, which remain under executive purview.

The Securities and Exchange Board of India (SEBI) plays a pivotal role in protecting minority shareholders in listed companies undergoing foreign acquisitions. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations) mandate open offers when an acquirer's shareholding crosses prescribed thresholds, ensuring equitable exit opportunities for existing shareholders. Furthermore, SEBI enforces disclosure obligations, insider trading prohibitions, and corporate governance standards consistent with international norms, thereby maintaining market integrity amid foreign takeovers.

Parallel to these statutory frameworks, policy instruments such as the Consolidated FDI Policy, issued by the Department for Promotion of Industry and Internal Trade (DPIIT), serve as the government's dynamic instrument for liberalization. These policies, updated annually, specify sectoral caps, conditions for foreign ownership, and restrictions on sensitive industries such as defence, media, and insurance. The FDI policy is closely linked with India's trade and security objectives, reflecting the government's discretion to revise norms in response to geopolitical or economic developments.

Despite these multilayered mechanisms, the absence of a centralized coordinating authority has led to jurisdictional overlaps and procedural ambiguities. For example, a foreign acquisition may simultaneously require scrutiny from the RBI under FEMA, clearance from the CCI under the Competition Act, and approval from SEBI under takeover regulations. This fragmented process increases compliance costs and deters smaller foreign investors. To address this, policy experts have proposed the establishment of a National Investment Screening Mechanism (NISM)—an inter-ministerial body empowered to evaluate foreign M&A proposals through an integrated lens of economic, strategic, and security concerns. Such a mechanism would bring India in line with international models such as the Committee on Foreign Investment in the United States (CFIUS) and the UK National Security and Investment Act, 2021.

Furthermore, India's regulatory responses must adapt to emerging challenges such as digital economy mergers, data-driven acquisitions, and cross-border fintech collaborations, where conventional valuation and control tests may prove inadequate. As the boundaries between technology, finance, and security blur, India's regulatory architecture must evolve from a

compliance-based to a *risk-based* approach prioritizing long-term national resilience alongside investor confidence.

Conclusion

The evolution of India's FDI regime through mergers and acquisitions reflects an ongoing struggle between the imperatives of economic globalization and the preservation of national sovereignty. While foreign investment via M&A has undeniably contributed to capital formation, technological advancement, and integration with global markets, it has simultaneously exposed vulnerabilities in corporate governance, regulatory consistency, and national control over strategic assets.

The study demonstrates that corporate governance and national interest are not inherently antagonistic concepts; rather, their reconciliation depends on the robustness and coherence of the institutional framework that governs foreign investment. When corporate governance mechanisms such as transparent disclosures, board independence, and ethical accountability are firmly embedded in law and practice, they can serve as a buffer against potential misuse of foreign control and safeguard stakeholder interests without resorting to protectionism.

Conversely, when the national interest is invoked without a clearly defined statutory basis, it risks becoming a tool of administrative discretion, leading to uncertainty and deterring legitimate investors. Hence, the future of India's FDI policy lies in achieving institutional equilibrium, liberal in approach, yet strategic in vigilance.

Comparative analysis with jurisdictions such as the United States, United Kingdom, and the European Union reveals that institutionalized screening mechanisms rooted in law rather than ad hoc executive actions, offer the best model for balancing openness and security. India must, therefore, consider creating a National Foreign Investment Review Authority (NFIRA) or similar body to harmonize inter-agency coordination among the RBI, SEBI, CCI, and DPIIT. Such an authority could adopt risk-based screening, focusing on the sensitivity of sectors, the nature of investors, and potential national implications, rather than imposing blanket restrictions. At the same time, corporate governance norms under the Companies Act, 2013, and SEBI regulations should be further strengthened to ensure transparency, minority shareholder protection, and ethical oversight in cross-border mergers.

Ultimately, FDI through M&A will continue to shape India's economic trajectory in the 21st century. The challenge is not to resist globalization but to govern it wisely by ensuring that every dollar of foreign capital entering Indian markets strengthens, rather than compromises, the nation's long-term developmental and strategic interests.

Bibliography

1. *Varottil, Umakanth, "Corporate Governance Implications of Cross-Border Mergers: The Indian Experience," Indian Journal of Corporate Law, Vol. 7 (2021), pp. 45–68.*
2. *Sengupta, Arghya and Shrivastava, Shreya, "National Interest and Foreign Investment: Navigating the Sovereignty Dilemma," Indian Journal of International Economic Law, Vol. 13 (2022), pp. 122–148.*
3. *Subramanian, Ramesh, "Economic Sovereignty and Strategic Vulnerabilities: Evaluating Foreign Acquisitions in India," Journal of Business Law and Policy Studies, Vol. 9 (2023), pp. 56–82.*
4. *Chatterjee, Ananya, "Reassessing India's FDI Regulatory Architecture: The Case for a Unified Investment Screening Mechanism," Indian Journal of Public and Economic Law, Vol. 11 (2023), pp. 91–119.*
5. *Menon, Priyanka, "Global Screening Mechanisms and India's Policy Gaps: A Comparative Analysis of FDI Regulation," Indian Yearbook of International Law and Policy, Vol. 14 (2023), pp. 201–233.*
6. *Department for Promotion of Industry and Internal Trade (DPIIT), Consolidated FDI Policy, Ministry of Commerce & Industry, Government of India (2023).*
7. *Reserve Bank of India, Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.*
8. *The Companies Act, 2013, Government of India.*
9. *The Competition Act, 2002, Government of India.*
10. *Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.*
11. *FIRRMA, 2018 (United States).*
12. *National Security and Investment Act, 2021 (United Kingdom).*
13. *EU Regulation (EU) 2019/452 establishing a framework for screening of foreign direct investments into the Union.*
14. *OECD, Foreign Direct Investment and National Security: Balancing Openness and Protection (Paris, 2022).*
15. *World Bank, Global Investment Competitiveness Report (Washington D.C., 2023).*