A Critical Assessment of India's FDI Policy in E-commerce Sector: Advantageous or Deleterious?

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Abstract:

The Indian government has followed a protectionist measure while devising FDI policies for the e-commerce sector. The recently launched Draft National E-commerce Policy, 2019, is another step in the same direction. The Research article attempts to lay down arguments for and against the question whether an unqualified national treatment commitment by India in the FDI in e-commerce sector is necessary? It attempts to analyses whether the current FDI regime on e-commerce acts as a non-tariff trade barrier, which, according to the WTO, should not be imposed unreasonably or arbitrarily. It also attempts to scrutinize the effects such protectionist measures would cause on the growth of the e-commerce sector of India. It also attempts to explore whether such policy hampers the process of Globalization.

The literature currently available on the topic does not analyze all or any of the above-mentioned questions in detail. The conclusions drawn from the research are that though India is not legally bound by WTO to remove such discriminatory policies, and though India is at liberty to not treat foreign investments and domestic investors in e-commerce sector on the same line, it would be beneficial for the national growth, GDP, Indian consumers and for the process of globalization if India gets rid of such non-tariff trade barriers.

Keywords: FDI, E-commerce Sector, Non-tariff Trade Barriers, Globalization, WTO, Trade Principles, national treatment.

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I. INTRODUCTION:

Technological advancements in today's world are said to be at the peak of human civilization. The internet has made geography a history and enabled us to create a new trade environment in cyberspace which is popularly known as e-commerce[1]. These technological advances have granted greater market access to foreign players and attracted them to invest heavily in the domestic market.

This massive inflow of Foreign Direct Investment, especially in an e-commerce sector, poses a greater responsibility on national and international agencies to remain neutral towards foreign and domestic fundings. Otherwise, there is a threat to the core structure of globalization. Globalization cannot be explained as a distinct concept; instead, it is a sum process of all the efforts taken by the various entities to facilitate trade all over the world. Thus, the internet, e-commerce, and FDI are catalysts that boost globalization's overall process.

The Indian government has followed a protectionist measure by bringing policies that discourage FDI in the e-commerce sector, ostensibly protecting the domestic players. WTO defines these obstructions as trade barriers that should not be imposed unreasonably or arbitrarily. This article shows how the current FDI policies of the Indian government in the e-commerce sector violate the international trade principles and eventually hamper globalization.

This article is divided into four parts. The first part provides an outline of all the FDI policies of the Indian government related to the e-commerce sector. In the second part, the FDI policy upheld by the Indian government through the Draft National E-commerce Policy is explained in detail. The third part of the article describes how the current approach of the Indian government towards FDI in the e-commerce sector violates international trade principles. Given all this, the fourth part of the article describes how restricting FDI in the e-commerce sector would ultimately create obstacles on the path of globalization and what its consequences can be.

[1] Pawan Duggal, *Textbook on Cyber Law* 54 (Universal LexisNexis, Gurgaon, 2nd edn., 2019).

II. India's FDI Policy for E-commerce:

Foreign Direct Investment is an investment by a firm or an individual[2] of one country into an entity or "business interest"[3] situated in another country. This kind of investment is not merely a capital investment. It provides the investors with influence over the decision-making process and the management of the business in which the investment is made. Thus, investors can participate in the firm's activities and contribute to it with knowledge and skills as well.

In general, FDI in India is regulated by the Consolidated FDI Policies, that get renewed every few years, and the Foreign Exchange Management Act, 1999.[4] Other than that, it is primarily regulated through the issuing of Press Notes by the Department of Promotion of Industry and Internal Trade (DPIIT) (earlier known as Department of Industrial Policy and Promotion (DIPP)), under the Ministry of Commerce and Industry).

FDI in India's e-commerce sector was never specifically regulated before the release of Press Note 2 in February 2000. This press note issued "sector-specific guidelines"[5] in which e-commerce was mentioned under the information technology sector. It said that 100% FDI is permitted in business-to-business (B2B) e-commerce only, which can also be called wholesale trading. However, it also laid down a condition that such companies will have to "divest 26% of their equity to the Indian public in five years"[6] if they receive FDI, and "if these companies are listed on other parts of the world."[7] In 2006, Press Note 4 was released, which removed the 26%-equity clauses. In 2010,

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[2] United Nations Conference On Trade And Development, *World Investment Report 2007: Transnational Corporations, Extractive Industries and* Development 245, UNCTAD/WIR/2007 (October 16, 2007), *available at:*https://unctad.org/system/files/official-document/wir2007p4_en.pdf (last visited on September 07, 2021).
[3] "Foreign Direct Investment (FDI)", *available at:* https://www.investopedia.com/terms/f/fdi.asp (last visited on September 07, 2021).
[4] Ketan Kothari, "PN3 brings clarity, confidence to e-commerce investment", *available at:* https://law.asia/press-note-3-brings-clarity-confidence-to-e-commerce-investment/ (last visited on September 07, 2021).
[5] Press Note No. 2(2000 series), Department of Industrial Policy and Promotion, *available at:* https://dipp.gov.in/investors/investor-guidance/press-note-no2-2000-series (last visited on September 08, 2021).
[6] Ibid.
[7] Ibid.

when a consolidated FDI policy was released, e-commerce was defined for the first time as "buying and selling by a company through the e-commerce platform."[8]

Through the Press Note 4 of 2012, companies with FDI were barred from performing retail trading on e-commerce in single-brand retailing. Through Press Note 5 of 2012, it was announced that companies with FDI were barred from performing retail trading on e-commerce in multi-brand retail trading. However, for the brick-and-mortar stores, retailing was permitted for companies with FDI in single-brand retail trading (100%)[9] , and multi-brand retail trading (51%) through the same Press notes 4 and 5, respectively.

Throughout all this, we can see that the Indian government was never in favor of allowing FDI in the Business-to-consumer sector or the e-retail industry in India. A reason for this, given by the government, was that if FDI is allowed in the retail industry, then many goods would be imported from outside the country, and thus, small Indian retailers would not be able to compete. It was also said that this would also reduce the pace of the 'Make in India' campaign.[10]

Finally, in 2015, the rules were relaxed a little, and via Press Note 12, FDI was permitted in retail e-commerce in the single-brand retail trading type only.[11]

The market was still strictly regulated. Thus, foreign retail e-commerce companies like Amazon found other ways to circumvent the law through complex business structures. Retailers Association of India, an association of brick-and-mortar stores in India, filed a petition in the Delhi HC alleging that they were violating the FDI rules.[12] This created pressure on the Indian government to tighten the rules in the sector.

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[8] Press Note No. 4(2012 series), Department of Industrial Policy and Promotion, *available at:* https://dipp.gov.in/sites/default/files/pn4_2012_2.pdf (last visited on September 08, 2021).

[9] Press Note No. 5(2012 series), Department of Industrial Policy and Promotion, *available at:* https://dipp.gov.in/sites/default/files/pn5_2012_2.pdf (last visited on September 08, 2021).

[10] Nayanima Basu, "Govt turns down FDI in retail e-commerce", *Business Standard,* June 10, 2015, *available at:* https://www.business-standard.com/article/economy-policy/govt-turns-down-fdi-in-retail-e-commerce-115061000053_1.html (last visited on September 08, 2021).

[11] Ketan Kothari, "PN3 brings clarity, confidence to e-commerce investment", *available at:* https://law.asia/press-note-3-brings-clarity-confidence-to-e-commerce-investment/ (last visited on September 08, 2021).

[12] Gayathri Gupta, "Development of the FDI policy for the e-commerce sector", *available at:* https://www.ikigailaw.com/development-of-the-fdi-policy-for-the-e-commerce-sector/ (last visited on September 08, 2021).

After this, Press Note 3. of 2016 was released, which redefined the term e-commerce as "buying and selling of goods and services including digital products over digital and electronic networks"[13]. For the first time, the government differentiated two models of e-commerce as the marketplace model and the inventory-based model. The former is a model in which the company was a mere facilitator between the sellers and the buyers; however, the latter is a model in which the company acts as a facilitator and is also a seller. The Press Note banned the inventory model of e-commerce and allowed 100% FDI under the automatic route in the marketplace model of e-commerce.

It also prohibited e-commerce entities with FDI from procuring more than 25% sales from a single seller. It was also said that the entities in the marketplace model could not influence the price of the goods or services.[14] Thus, the companies could no longer give the deep discounts that they used to lure the customers with. However, no such rules were laid down for domestic e-commerce companies. Thus, there was **discrimination between domestic and foreign entities**.

In 2018, another change was made through Press Note 2[15] , which said that the e-commerce entities could not sell goods from a vendor in which it held "an equity stake"[16]. It also barred the entities from making an exclusivity pact with the vendors whose goods would be sold only on their platform. For instance, earlier, One Plus products were launched only on Amazon.

These changes put Amazon and Walmart into muddy waters as they had to make many changes to adjust to the new rules and regulations.[17] Amazon and Walmart are among the biggest online shopping platforms globally, which use the inventory-based model of e-commerce in the United States since their main profit comes from these models only. However, the Indian FDI rules did not permit them to do the same here. So, they developed complex ownership structures through which they did not precisely own the inventory but had a certain level of control through the equity

[13] Press Note No. 3 (2016 series), Department of Industrial Policy and Promotion, *available at:* https://dipp.gov.in/sites/default/files/pn3_2016_0.pdf (last visited on September 08, 2021).
[14] Press Note No. 3 (2016 series), Department of Industrial Policy and Promotion, *available at:* https://dipp.gov.in/sites/default/files/pn3_2016_0.pdf (last visited on September 08, 2021).
[15] Press Note No. 2 (2018 series), Department of Industrial Policy and Promotion, *available at:* https://dipp.gov.in/sites/default/files/pn2_2018.pdf (last visited on September 08, 2021).
[16] Gayathri Gupta, "Development of the FDI policy for the e-commerce sector", *available at:* https://www.ikigailaw.com/development-of-the-fdi-policy-for-the-e-commerce-sector/ (last visited on September 08, 2021).
[17] Kritika Suneja, "E-commerce policy to have new FDI norms", *The Economic Times,* February 04, 2019, *available at:*https://economictimes.indiatimes.com/industry/services/retail/e-commerce-policy-to-have-new-fdi-norms/articleshow/67825661.cms (last visited on September 08, 2021).

stakes. Thus, they had to make significant changes in their ownership structures to comply with the new regulation.[18]

Though all the policy changes were said to protect the country's small and medium enterprises, the policies were highly criticized because although they made life difficult for the Companies with FDI, they did not do anything to prevent the big *domestic* firms from harming the small and medium enterprises through their powerplay.[19]

In 2019, a proposal presented for the review of FDI policy was approved by the central government. Earlier, single-brand retail trading entities had to be in brick-and-mortar stores before appearing on the e-commerce platform, an artificial restriction and not in agreement with the actual market practices.[20] The FDI policy review removed this restriction allowed such single-brand retail trading entitites to start trading through online platforms before opening the brick-and-mortar stores. However, it was made mandatory to open the brick-and-mortar stored within two years of online retail.[21]

A Consolidated FDI policy, which was effective from October 15, 2020, was released very recently.[22] The policy essentially reiterated the earlier laid down rules. Additionally, it laid down that the e-commerce entities with FDI will have to "obtain and maintain a statutory auditor report by September 30 every year for the preceding financial year"[23]. This requirement was also already in place since December 2019.[24]

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[18] Sankalp Phartiyal, "Explainer: What are India's new foreign direct investment rules for e-commerce?", *available at:* https://in.reuters.com/article/india-ecommerce-explainer/explainer-what-are-indias-new-foreign-direct-investment-rules-for-e-commerce-idINKCN1PP1XS (last visited on September 08, 2021).

[19] Sandeep Soni, "Revised e-commerce FDI policy favours likes of Ambani, Biyani, Birla, says VC funds", *Financial Express,* January 29, 2019, *available at:* https://www.financialexpress.com/industry/sme/revised-e-commerce-fdi-policy-favours-likes-of-ambani-biyani-birla-says-vc-funds/1458648/ (last visited on September 11, 2021).

[20] "Cabinet approves proposal for Review of FDI policy on various sectors", Press Information Bureau, August 28, 2019, *available at:* https://pib.gov.in/PressReleseDetail.aspx?PRID=1583295 (last visited on September 10, 2021).

[21] Ibid.

[22] Consolidated FDI policy, 2020, Department of Promotion of Industry and Internal Trade, *available at:* https://dipp.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020_0.pdf (last visited on September 11, 2021).

[23] Ibid.

[24] "Govt asks e-commerce firms to file FDI compliance report annually", *The Economic Times,* December 06, 2019, available at: https://economictimes.indiatimes.com/industry/services/retail/govt-asks-e-commerce-firms-to-file-fdi-compliance-report-annually/articleshow/72399742.cms?from=mdr (last visited on September 11, 2021).

III. Rules on FDI in the Draft National E-commerce Policy, 2019:

The e-commerce industry in India was estimated to be worth 38.5 billion in the year 2017[25]. With the advent of cheap smartphones and cheap data tariffs, it is estimated to grow up to 200 billion dollars by 2026.[26] Looking at the pace of its growth, the government decided to bring a policy that would exclusively deal with the country's national e-commerce sector's holistic growth. Therefore, a Draft National E-commerce Policy (NEP) was released by the Department of Promotion of Industry and Internal Trade (DPIIT) on February 23, 2019.

While many guidelines and rules have been suggested for various sectors like data, infrastructure, anti-piracy, anti-counterfeiting measures, taxation issues, and many more, the present article is restricted to the study of FDI policy changes suggested in the current draft.

The draft NEP has primarily reiterated the already prevailing FDI policies and has promised to create a "level playing field to all participants." It laid that the door to foreign investment in the marketplace model would remain open, but no investment is allowed in the inventory model business. Further, if foreign investment is made in an e-commerce entity, then it cannot exercise any form of "ownership or control over the inventory sold on its platform"[27]. It also laid that the e-commerce entities on their platforms should not favour any specific vendor.

The draft policy also says that foreign businesses should not dominate the market through price control of inventory control or capital dumping. It states that such measures are necessary to uplift the domestic traders and micro, small and medium enterprises (MSMEs) and bring them to the same level as others to compete with foreign investments. Though these rules do exist even before the implementation of the policy, they are only in letter and not in spirit.

It can be seen that the Indian government's approach is based on the protectionist model. The government wants to protect the domestic traders by not giving foreign investors full access to the market. If India's FDI policy in e-commerce is analyzed, it can be seen that the government has

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[25] "Draft National e-Commerce Policy", Department of Industrial Policy and Promotion, *available at:* https://dipp.gov.in/sites/default/files/DraftNational_e-commerce_Policy_23February2019.pdf (last visited on September 11, 2021).
[26] Ibid.
[27] Ibid.

followed the same approach right from the beginning. It does not want to liberalize the e-commerce sector for foreign enterprises. This has led to the establishment of a **discriminatory environment against foreign players**.[28]

It has also negatively impacted the Indian markets as it has reduced the competition and hence reduced the choices of the consumers. Moreover, there are also big domestic players in the Indian market than can engage in the same practices and hamper the growth of small traders. Nevertheless, no restrictions have been placed on these players, which further highlights the discrimination done by the Indian government.

IV. Violation of International Trade Principles:

India is one of the founding members of WTO. Thus, it holds a greater responsibility to respect and be bound by its principles. Belonging to the category of developing countries, it has got many concessions under WTO. For instance, it has been provided a time-period to implement the WTO's policies or, to the extent, those provisions are hampering its national growth. However, the massive inflow of FDI into the domestic market of India is protected by the WTO principles and contributes much to national development.

A. WTO and Free Trade:

WTO has been made with an objective of free trade, and that is why several trading principles need to be recognized by both developed and developing nations, with some concessions to the latter. The promotion of Free trade is one of the core ideas behind the formation of WTO. Free trade can be encouraged in multiple ways like bilateral treaties, formations of FTAs, negotiations, and talks that ultimately aim to eliminate or lower trade barriers. Although subsisting obstructions to trade harm free trade policy, WTO allows countries to introduce changes through "progressive liberalization gradually."[29] Imposing trade barriers are traditional methods to restrict free trade. Trade barriers could be imposed in many ways in which tariff and non-tariff barriers are the most

[28] "Comments for Department for Promotion of Industry and Internal Trade on the Draft National E-Commerce Policy", *available at:* https://cuts-ccier.org/pdf/Submission_of_comments_to_DPIIT_on_draft_National_E-commerce_Policy.pdf (last visited on September 12, 2021).
[29] World Trade Organization, "Progressive Liberalization"*, available at:* https://www.wto.org/english/tratop_e/serv_e/4-prolib_e.htm#:~:text=The%20process%20of%20progressive%20liberalization,by%20Members%20under%20this%20Agreement (last visited on September 12, 2021).

common ones. Whereas tariff barriers are transparent and usually implemented as customs duties and taxes, non-tariff trade barriers are administrative actions or non-tax measures, which hinder international trade.[30] The scope of the non-tariff barrier is much broader, which gives it an ample space for irregularity.

B. NEP, 2019: Non-Tariff Trade Barrier in disguise?

The non-tariff barriers can be in the form of laws, policies, practices, conditions, requirements, etc., specified by the government to restrict import.[31] In the present case Government of India has drafted an e-commerce policy that would become law once passed. The form in which these restrictions are being imposed makes it a non-tariff barrier. Though the policy had been made to protect the domestic sector, it seems to be extra harsh towards foreign investments. The provisions mentioned in the formulated draft are objected due to their discriminatory provisions related to FDI.[32] Although the government is sovereign to make laws imposing non-tariff barriers, it should respect WTO's basic principle of national treatment.

Other than this, Predictability is also a basic principle of the WTO trading system. The Indian Government needs to ensure foreign companies and investors that trade barriers will not be raised arbitrarily. However, the direction in which the Indian Government is moving regarding the FDI policy in e-commerce sector, is far from predictability,

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[30] "Difference Between Tariff and Non-tariff Barriers", *available at:* https://keydifferences.com/difference-between-tariff-and-non-tariff-barriers.html#:~:text=Tariff%20barriers%20are%20the%20tax,are%20traded%20to%2Ffrom%20abroad.&text=Trade%20barriers%20often%20protect%20domestic,movement%20of%20goods%20amidst%20nations (last visited on September 12, 2021).

[31] "Difference Between Tariff and Non-tariff Barriers", *available at:* https://keydifferences.com/difference-between-tariff-and-non-tariff-barriers.html#:~:text=Tariff%20barriers%20are%20the%20tax,are%20traded%20to%2Ffrom%20abroad.&text=Trade%20barriers%20often%20protect%20domestic,movement%20of%20goods%20amidst%20nations (last visited on September 12, 2021).

[32] "Draft National e-Commerce Policy", Department of Industrial Policy and Promotion, *available at:* https://dipp.gov.in/sites/default/files/DraftNational_e-commerce_Policy_23February2019.pdf (last visited on September 12, 2021).

C. National treatment:

WTO agreements, i.e., GATT (Article 3), GATS (Article 17), TRIPS (Article 3), and TRIMS (which is negotiated under GATT itself), define national treatment separately. As the term suggests, "National Treatment" refers to favouring domestic products over foreign goods.

The contention that National treatment only applies once a product, service, or item of intellectual property has entered the market does not bar the e-commerce entities receiving FDI from claiming national treatment as such entities have already entered the Indian market. This means that they are providing services in the market-based model. However, they have been unfairly restricted from switching to an inventory-based model while there is no such restriction on the domestic e-commerce entities from doing so.

D. Application of GATT/ TRIMS and GATS:

There has been widespread confusion about the categorization of e-commerce into GATT or GATS. Initially, it was unclear whether e-commerce falls into GATT, which is for goods, or GATS, for services. Although products on e-commerce are traded via the internet, which makes it look like a service sector, there is also a physical part of the transaction. The goods being traded on the internet are meant to be delivered physically. Thus, it will be feasible to consider that GATT will affect the extent to which goods are being delivered physically, while GATS will apply to virtually deliverable products.[33]

However, a third approach that seems most feasible regarding e-commerce is considering it as a conglomeration of both goods and services. This approach's rationale is simple: e-commerce is performed over the internet, but the goods are delivered in a physical world. Thus, when e-commerce services start trading in goods, it automatically invokes national treatment provisions under both WTO agreements, i.e., GATT (Article 3), GATS (Article 17).

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[33] Arvind Panagariya, "E-Commerce, Wto And Developing Countries", Policy Issues In International Trade And Commodities Study Series No. 2, United Nations Conference on Trade And Development.

As far as TRIMS is concerned, it dictates what governments can and cannot do in FDI.[34] It restricts the preference given to the domestic firms and urges to create a level playing field for both of the entities, i.e., both domestic and global. Trade distorting policies that were earlier used to benefit local producers are now prohibited under TRIMS. It also approves the application of measures taken under Article 3 of GATT, i.e., National Treatment.

NEP draft 2019, which is drafted to regulate the treatment of goods trading by an e-service, clearly demarcates between the FDI and domestic investment. The e-commerce platforms receiving FDI are not allowed to participate in trade based on inventory-based model, whereas platforms receiving domestic investment are allowed to do so.

V. Unqualified National Treatment Commitment: Necessary or Unnecessary?

For GATS to be applicable in a particular sector and for making the country to be bound by the principles of GATS in a specific sector, it is a pre-condition that the country should have made a commitment on access to their domestic markets in that specific sector. India has made no such commitments regarding FDIs in e-commerce sector. Therefore, India is free to raise whatever trade barriers it wants to raise against the foreign investments. However, the question at hand is whether such a commitment is necessary?

One argument is that when such policies are launched, which discourage FDIs in a specific sector, it leads to harms caused to the development of the country itself. Liberalised markets lead to faster innovation and better development opportunities. FDIs always bring new skills and technologies to the destination country. Domestic firms and employees learn new skills and techniques and get the chance to adopt more efficient and time saving ways. Liberalised markets also lead to better choices and low prices, thus benefiting the consumers also.

The other argument is that regulatory constraints on FDIs result in benefitting the country. China levies a lot of constraints on its market but still remains the largest recipient of FDI among the

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[34] Ishita Chatterjee, *International Trade Law* 105 (Central Law Publications, Allahabad, 2nd edn., 2018)

developing nations of the world. Another such example is Malaysia which also controls its market rather stringently and yet receives a high amount of FDIs.

VI. Ramifications on Globalisation and Liberalisation:

The rapid advancements in technology have led to the world's shrinking into a global village regarding communication, travel, information, and trade. Even the world's nations have started leaning towards creating a borderless global economy where trade could be made without barriers. This gave birth to the idea of globalization. Globalization means the increase in interdependence of different economies due to goods, capital, and services across borders. It supports the notion of free trade. The WTO agreements have favoured globalization as they led to different economies' opening up by reducing trade barriers. During the 1920s, many countries had erected trade barriers as they feared that opening the financial market would hamper domestic industries. However, later on, in the 1980s, developed economies like the USA, Japan, and Germany allowed international capital flow. In 1991, India also had to liberalize its economy to cater to more resources and employment.

Globalization is now rooted in societies. Many of the cars that we see on the Indian roads are foreign companies. Japan's Maruti Suzuki is topping in the automotive sector[35], whereas Jaguar, owned by India's Tata group, is a major car producer in the European market. Besides this, many Indian start-ups in different sectors, like Ola, Oyo, and Byju, are getting global attention[36], while domestic players like Bajaj mobikes are doing well in more than 50 countries.[37] This Presence of foreign brands and companies in the domestic market gives the consumers a variety of choices because the market is open for goods and services abroad. It leads to higher competition in the market due to which the quality standards of the products rise, and the prices fall.

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[35] Mainak Das," Japanese continue to dominate India car market as Chinese invasion has just begun", *The Economic Times,* February 22, 2020, *available at:* https://auto.economictimes.indiatimes.com/news/passenger-vehicle/cars/japs-continue-to-dominate-india-car-market-as-chinese-invasion-has-just-begun/74218400 (last visited on September 12, 2021).

[36] Ananya Bhattacharya, "2018 was the year India's startups decided to go global", *Quartz India,* December 20, 2018, *available at:* https://qz.com/india/1490980/ola-oyo-byjus-swiggy-made-2018-indian-startups-global-year/ (last visited on September 12, 2021).

[37] "How Indian companies are making a mark in the global arena", *available at:* https://brandequity.economictimes.indiatimes.com/news/business-of-brands/how-indian-companies-are-making-a-mark-in-the-global-arena/70661375 (last visited on September 12, 2021).

Trade could also be reciprocal, and that is why while the foreign companies perform well in the Indian market, the Indian domestic companies are also spreading worldwide. Lakme, Jaguar, Café Coffee Day, Infosys, and Louis Phillipe are some of the major Indian companies that have invested heavily in foreign markets and are getting good returns.[38] This increase in interdependence of different economies due to the movement of goods, capital, and services across borders made globalization an existing reality.

The concerned FDI policies in India's e-commerce sector have barred the entry of FDI in the inventory-based model altogether. Since India's small traders and brick-and-mortar stores are not capable enough to compete with the foreign e-commerce entities, India's approach is **to disable the foreign entities rather than enable the domestic retailers**. Thus, India's present FDI policies and its confirmation in the Draft NEP show that India is creating obstacles on the road to globalization. This is so because FDI acts as a catalyst in the process of globalization and economic growth.

Foreign Direct Investment plays a significant role in globalization because they lead to capital transfer across borders. However, it is not limited to the capital. It brings technology, skills, management, ideas, and even production facilities across borders. FDI helps in the economic development of the host countries (countries in which the investment is made). It immensely helps the under-developed countries through the transfer of capital because they are generally capital deficient. FDI allows them to level up with global competitors as massive capital investment is required for the same. It helps in the creation of jobs and also contributes to the GDP. Thus, blocking the inflow of FDI in half of the e-commerce sector (inventory-based models) by the Indian government is like removing the catalyst from the process.

By hampering globalization, the FDI policies have also affected the customers. If FDI in the inventory-based model were available in India, the consumers would have had many more choices due to both foreign and Indian sellers. Since the coming of the new laws, a significant chunk of products was removed by the foreign entities from their e-commerce platforms. For instance, Amazon was left with only 40,000 products from around 50 lakhs.[39] Thus, the choices of the

[38] "Make in India: 10 Indian brands at par with foreign brands", *India Today,* February 20, 2015, *available at:* https://www.indiatoday.in/education-today/gk-current-affairs/story/make-in-india-10-indian-brands-at-par-with-foreign-brands-241281-2015-02-20 (last visited on September 12, 2021).

[39] Vedant Kashyap and Siddharth Kothari, "FDI Policy in E-Commerce", *available at:*

customers have been significantly reduced. Earlier, the entities offered deep discounts, which no more can be done, so the prices online and offline are almost the same[40].

VII. The Way Froward: Suggestions and Conclusions

The Indian government should not create different policies for e-commerce platforms and brick-and-mortar stores. Instead, it should try and look for a way so **that both the sectors can join together as retail sectors a**nd go hand in hand. To an extent, this has already begun in the Indian market, as Amazon has announced their technology **to digitize the *Kirana* stores** by empowering them to sell the products online through a program called "Local Store on Amazon".[41] Flipkart, by investing in Shadowfax and Reliance by launching JioMart, have taken a direction in the same step.[42]

The **FDI laws for the online and offline platforms should be the same**.[43] The government can **put entry restrictions in the multi-brand retailing** but **not on the basis of foreign or domestic funding; instead, the same would be based on factors like annual turnover**.[44] Furthermore, allowing domestic companies to take over the market would not solve the government's objectives as there is **no surety that the "big Indian investment" would not drive the small sellers out of the market.** So, as has already been discussed, these measures will only decrease consumer choices and the competition in the market. *This policy may have many more loopholes, which could not be traced by this research article but as a vigilant citizen and an intelligent consumer, it is our responsibility to tell the government what more could be done to make it a balanced law.*

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https://rsrr.in/2019/04/02/fdi-policy-in-e-commerce/ (last visited on September 12, 2021).

[40] "New FDI e-commerce rules in India: What it means for online shoppers", *India Today,* February 06, 2019, *available at:* https://www.indiatoday.in/business/story/new-fdi-e-commerce-rules-in-india-what-it-means-for-online-shoppers-1449783-2019-02-06 (last visited on September 12, 2021).

[41] Praveen Sudevan, "How e-commerce startups are queuing up to digitise India's 10 million-plus kirana shops", The Hindu, July 06, 2020, available at: https://www.thehindu.com/sci-tech/technology/how-e-commerce-startups-are-queuing-up-to-digitise-indias-10-million-plus-kirana-shops/article32002651.ece (last visited on September 12, 2021).

[42] Pooja Patel & Siddharth Anand, "India's Foreign Investment Policy on E-commerce Retail: Is the time ripe for a reworking?", *available at:* https://corporate.cyrilamarchandblogs.com/2020/02/indias-foreign-investment-policy-on-e-commerce-retail/#:~:text=The%20FDI%20Policy%20permits%2051,invested%20in%20backend%20infrastructure%20(including (last visited on September 09, 2021).

[43] Ibid.

[44] Ibid.