Nagpur Branch

Of

WIRC of ICAI

Paper on FEMA

1st December, 2012.

By Rashmin C. Sanghvi,
Chartered Accountant
Mumbai

1. FEMA Paper by Rashmin

Main emphasis will be on this 1st paper.
Then time permitting, we can discuss the following:

2. Representations to RBI on LRS & Returning NRIs.

3. Rupee Depreciation

I. FEMA Paper

Contents Page

I. Structure of FEMA

As per the preamble to the law:

The **purpose of FERA** was to conserve foreign exchange and regulate its use in the interest of Indian economy.

It is NOT the **purpose of FEMA** to conserve foreign exchange (Fx). The purpose is to promote & maintain foreign exchange market in India. RBI states that it is not its purpose to maintain any **target value of Rupee** in the Fx market. RBI will try to minimise wide swings in FX market. Otherwise the value is to be determined in the open market.

FEMA is a very small Act. Main operating sections are only 1 to 9. Rest of the sections are procedural, administrative or enforcement provisions. In this paper I am focusing on sections 1 to 9.

Section 1 provides for the **Scope** of the application of the act

Section 2 provides for **definitions.**

Sections 3 to 9 provide for the main restrictions under FEMA. Then different notifications and circulars provide reliefs / permissions.

Some important definitions are dealt with at different paragraphs in this paper. Instead of trying to provide legal interpretation of the clauses, I have tried to explain the concept behind the law.

Section 3 (it replaces section 9 of FERA) provides for all the major prohibitions under the Law. This particular section is discussed at length below. Hawala is covered by Section 3 (c) & (d).

Section 4 provides that no Indian resident shall hold any **assets outside India**.

Section 5 provides that a person may deal in foreign exchange (this is an exception / relief from the provisions of section 3) on **current account**. India has adopted chapter VIII status under IMF. Hence Rupee is now convertible on current account. I have discussed at length the meaning of "Current Account". This is the jurisdiction of Central Government of India (GOI). Hence notifications under Section 5 are issued by the GOI.

Section 6 provides for restrictions under **Capital account**. Capital account means foreign investment into the country and Indian investment out of the country. Foreign investment is further sub-divided. **NRI**

investment is administered by RBI. Foreign Direct Investment (**FDI**) is administered by FIPB and DIPP. FDI policy is declared by GOI. But certain administration like issue & transfer of shares is in RBI jurisdiction. FIPB & RBI do have differences of opinion in some cases. Foreign Institutional Investment (**FII**) is governed by SEBI & RBI. Overseas investment by Indian residents is governed by RBI.

Section 7 deals with **export** of goods and services. The exporter is duty bound to bring back the sale proceeds at the earliest. To ensure that he does bring back the funds, there is an elaborate procedure where RBI, Customs department and the Bank work together.

Section 8 provides that if an Indian resident is entitled to any assets outside India, he must dispose of the asset and **bring the sale proceeds back into India.**

Section 9 provides for certain **exemptions** from the provisions of section 4 to 8.

Compounding:

RBI has issued rules for compounding of violations under FEMA. Under FERA, RBI was permitted to give post-facto permissions, and to regularise innocent mistakes. However, RBI had no power to impose penalties. So where RBI considered a violation to be fit for penalty, there was no choice except to refer the matter to Enforcement directorate (ED). Under FEMA RBI has the power to compound an offence by imposing penalty.

This is a **brief summary** of the important provisions of FEMA. Sections 1 to 9 are completed in 7 pages of a book. Thereafter there are several **notifications and circulars** which govern the actual transactions. FEMA is **a law in transit**. In other words, from the extremely strict FERA we are moving towards full convertibility. At present we are some where in between. Hence liberalisations are announced periodically. If the foreign exchange situation worsens, RBI liberalises ECB & foreign investment etc. If the situation improves, GOI liberalises current account expenditure abroad & RBI restricts ECB. For a person not practising FEMA, (including RBI managers who are transferred from other departments to FEMA), this whole situation is chaotic.

The chaos in exacerbated by the fact that RBI keeps transferring managers every two to three years. Transfers are not new for us. Even Income-tax commissioners are transferred every three years. However, where ever they go, they still administer Income-tax Act. In RBI, the managers from different disciplines come into FEMA section.

Brief Introduction of the structure of FEMA completed.

Now let us see different provisions & concepts etc. in depth.

FEMA has certain concepts which are totally different from Income-tax Act or Company Law. We try to apply those tax concepts to FEMA and we get confused. In this paper, let us understand some concepts.

Apart from different concepts, there are some other reasons that cause confusion. Constantly changing law, bad drafting of law and constantly changing RBI managers. We will see some illustrations.

II. Specific FEMA Provision – Section 3

Let us start with the main provision: Section 3.

II.1 Text of Section 3. (In a simplified language.)

No person shall –

(a) **deal** in any foreign exchange or foreign security;

(b) **make any payment** to or for the credit of any Non-Resident in any manner;

(c) **receive** any money from a Non-Resident except through **bank.**

Explanation: Following transactions are not allowed:

Where a person in India receives any payment from a NR directly or through a middle man – including a bank - and there was no corresponding inward remittance from outside India.

(d) settle consideration in India for a transaction or asset outside India. In simple words, “No person shall indulge in **hawala**”.

Now given below are two sets of illustrations:

II.2 **First set -**the transactions which are **intended to be prohibited**. This part of the paper is to explain the purpose of each clause.

Second set - the **unintended transactions** which get caught. This explains unintended difficulties.

@@@@@@@

First Set: Transactions **intended** to be **prohibited.**

Section 3 (a) We Indian residents are prohibited from using, holding or dealing in foreign exchange and foreign securities

Purpose is: Indian wealth should remain in India. We should hold only Indian rupee. We cannot hold any foreign currency, nor can we buy foreign shares and securities. Outward flow of funds not allowed.

There is a **duopoly of GOI & RBI on foreign exchange**. We are not allowed to hold foreign exchange (Fx). Even if we earn Fx by export of goods or services, we have to surrender the Fx to our bank. We can hold only Indian rupee.

Section 3 (b) If a Non-Resident has to make payment to any Indian resident, let him make the payment. Let the funds come in. If an Indian resident makes payment – which otherwise would have been made by a Non-Resident – that much inward flow would not happen. Any obstruction in Inward flow of funds not allowed.

Section 3 (c) All inward receipts must be made through bank only. When flow of money is restricted through banks, manipulation in exchange rate can be curtailed. Direct flows of money are prohibited. This is a provision to support GOI monopoly over our income and wealth.

Section 3 (d) You shall not indulge in hawala. Looks fine.

Now look at Hawala first.

Indian Government does not perform its duty of maintaining the value of Rupee. In fact acts contrary to its duty. Hence rupee keeps depreciating for ever. Any man who understands that he is losing his hard earned money, would like to change rupee for a better currency. Any currency issued by a Government which performs its duty to its citizens.

Most convenient mode of getting foreign exchange would be to remit funds through bank. Under FEMA restrictions, banks will not remit your funds abroad. So you carry the money abroad in brief case. Or go to a dealer to send money abroad. All these are termed as hawala and declared illegal. Section 3 is the instrument by which the guilty (GOI) is turning us the victims into guilty.

****

II.3 Second Set: Unintended transactions that get caught:

Section 3 (a) Let us say, Bills Gates paid $ 5 (or $ 5 million. Size of the payment makes no difference.) to Belinda Gates. Bill Gates is a "person". Belinda Gates is a " Non-Resident of India".

Now read section 3 (b) again. "No person shall make any payment to a Non-Resident."

There is no mistake in my article. Don't get surprised. Mistake is in drafting the law. How can one draft a law with such open worded prohibition?

Compare FEMA with Income-tax to see the mistake in drafting the law in more details. Under Income-tax Act – section 5 determines the scope of income taxable in India. Section 6 defines who is a "Resident of India". Then detailed provisions are made for the income which is covered in the scope. Where ever tax commissioners have tried to tax any income which is beyond the scope of taxable income, Courts have struck down such attempts.

But FEMA is absolutely open–ended. Of course, Government of India and all the Indian authorities have no jurisdiction to catch Bill Gates. So he is not worried.

Ask RBI – "Why do you draft & administer such a law?"
Answer will be: "It is not our intention to catch hold of non-residents. We will never ask a Non-Resident – why he made certain payments." So the promice is: "We will implement the law according to its intent and purpose."

Now consider another illustration. An Indian resident brother gives loan/ gift to his non-resident brother. It is a violation of FEMA. Will RBI say that under FEMA we have no intention of preventing family transactions?

And if someone is caught in a FEMA violation which - for a common man is pure innocent transaction – will Enforcement Directorate let go the man because it is not the intent and purpose of FEMA?

II.4 When a Commercial Law is contrary to basic commercial sense, it is bound to fail.

In the **Jain Hawala Case,** a hawala dealer's diary was seized by the Enforcement Directorate. With this kind of evidence, an ordinary citizen of India would be completely in the net of Enforcement Directorate. But Jain was no ordinary man. His clients were top political bosses.

So even when the Honourable Supreme Court tried its best, it could not punish any one listed by Jain as his clients. Even those few who had admitted the fact that they had resorted to hawala, were let off.

But truth is relentless & persistent.
Law may fail. Truth will keep shouting from the rooftop.

Hasan Ali Khan's case has told everyone who wants to listen – how much respect the law makers have for the laws they make.

Can you imagine the frustration of Enforcement Directors! There are some finest officers in E.D. They would be knowing who is behind Khan. They can't do anything. Supreme Court keeps asking them to come out with full information. But the officers can't do anything. Then they vent their frustration on the common man.

II.5 Devi Maya knows that we, the human beings are weaklings. We can't fight the establishment.

Human society is so built that –

Some people make laws.
Ordinary people are expected to abide by the law.
The law makers violate the law and become rich.
Whole establishment is there to protect the law makers.

So Kali (Another name for Devi Maya) keeps exposing the big wigs.
If people have forgotten Jain hawala case, there is the **HSBC list**.

The finance minister vowed in the Parliament (December, 2011) that he will not expose the HSBC list. People have watched him on television news channel. Only those names will be published who will be prosecuted. Who will be prosecuted? Certainly not the bigwigs.

II.6 **Section 3 (b)** Many years back we had made representations against the equivalent provision under FERA. No one would listen.

The then Finance Minister (during 1984 to 1987) **Mr. V. P. Singh** made a public statement: "If I go with my non-resident friend to a restaurant; and if I pay Rs. 5 for his cup of tea; I would be violating FERA". All the newspapers in the country printed this news item boldly on the first page. Since Finance Minister said this, RBI came out with a circular providing that **hospitality expenses** are permitted subject to some conditions.

There were more restrictions than liberalisation.

If in the year 2012 Mr. V. P. Singh (an Indian resident) makes payment in India in Indian rupee (legal tender) to the Indian restaurant (an Indian resident) – he would still be violating the law if that payment is for a non-resident. After twenty years of liberalisation, section 3 (b) of FEMA is still the same.

Of course there are several liberalisations. My submission is: If a law is patently wrong, it has to be scrapped. Why first prohibit everything; then issue circulars with several conditions – and claim that you have liberalised the law!

Section 3 (c) & (d) are already covered above.

Hypothesis – Big bosses do not respect FEMA
RBI & SC can't do anything.

Let us now move to understanding FEMA in a different perspective. Even if FEMA & MAYA are Mithya, we have to work within four corners of Maya.

III. Capital Vs. Current Account

In this part let us distinguish the two different kinds of convertibilities and their distinction from tax and accountancy concepts.

III.1 Under Income-tax and Accountancy, capital account has a different connotation. Under FEMA the concept is totally different. One must appreciate the difference to be able to interpret FEMA provisions.

Under FEMA, the concept derives its roots from **International Monetary Fund.** The IMF requires the Central Banks of all member countries to make regular and periodical reporting of their "Balance of Payments" (BOP) position. RBI makes regular reporting to IMF. In turn, RBI requires all banks (authorised dealers) to make periodical reporting to RBI about their BOP position. The IMF is concerned with the exchange liability which a country might have vis-à-vis the rest of the world. IMF is not concerned with domestic tax liabilities or depreciation and other charges under accountancy. Any transaction that can create or alter or modify a country's assets and liabilities with the rest of the world, affects that country's BOP position. IMF is interested in knowing this position.

III.2 Illustration – India Manufacturing Limited imports machinery worth Rs. 1 crore. From accountancy point of view, this is a capital account transaction. The machinery will be reflected on the assets side of the company's balance sheet. The asset will be written off over next few years by providing regular depreciation.

Under Income-tax also, this is a capital account transaction. It affects, the company's claim for depreciation and hence the tax liability.

IMF is not at all concerned with these issues. Hence, RBI is also not concerned. If the company makes full payment for the imported machinery immediately, there is no outstanding asset or liability. India does not remain liable to the outside world. The transaction of import has been completed. Hence, this is a revenue transaction.

III.3 Variation 1

Now, if the India Manufacturing Limited imports machinery on credit terms, the nature of the transaction changes. Let us assume, that the import price will be paid in installments in next five years. This affects the company's liabilities. Hence, it is a capital account transaction.

III.4 Variation 2

India Manufacturing Limited makes an advance payment for the import of the machinery. The advance payment would create an asset in the name of the company. It affects India's BOP position. Hence, it is a capital account transaction.

Once we have understood the difference between the concept under FEMA and under other laws, we have reached a stage of understanding. IMF reporting requirements are at the root. However, having reached this stage, IMF looses its significance. The concept is now defined under FEMA. Since it is a clearly demarcated definition, while interpreting one has to look only at the law. Whatever might be provided in the different provisions of IMF have no importance except for explaining the underlying purpose.

IV. Retention of FX assets – Returning NRIs. (Circular 51 of 1993.)

IV.1 Pre-liberalisation time (before 1993), FERA provision was that if a non-resident becomes Indian resident; he had to bring all his foreign assets into India. So people placed all the assets in a **discretionary trust** with a reputed bank in an offshore centre & come to India. RBI issued a press statement that such discretionary trust is illegal However, my clear opinion is that under FERA or FEMA, there was no power with the Government to prevent transfer of funds to such discretionary trusts while the person was still a non-resident.

IV.2 In 1992, RBI realised the facts on the ground. It issued a series of circulars providing that a returning NRI could freely keep all his funds & assets abroad. Now there was no need under FERA for returning NRIs to transfer the assets to a discretionary trust abroad. He could continue to hold assets in his own name instead of taking a risk by holding assets in the name of a bank.

IV.3 Then FEREA was replaced by FEMA. Six notifications & one circular have been reduced to one sentence in section 6(4). In the process of **précis** making there have been serious omissions. Consider:

Section 6(4) permits as NR becoming R to continue holding foreign assets which he held on the **date of coming to India**. What happens when he **converts** one asset into another? The new asset was not held on the date of his coming to India. He had shares in Co. A, which he sold. Then he bought shares of Co. B. Can he really hold shares of Co. B? The section does not permit it.

What happens to the **income** earned on assets held abroad? Naturally, the income has been acquired after returning to India. Under section 8 of FEMA, he has to bring the amount back into India.

IV.4 This was pointed out to RBI in the year 2000 itself. RBI had two responses:

4.1 This is an unintended anomaly. The Act has to be amended. That is for the Parliament to do. We can't do anything about it.

4.2 The new law is brief. Wherever a provision is not made under FEMA; and a circular or notification under FERA in 1999; covered that subject; then such notification or circular will still prevail. This clarification came in newspaper in the year 2000.

Some time back I was talking to the then CGM of ECD, RBI. He said, he was not aware of any such declaration made by RBI.

V. Non-Residents buying Immovable Property in India.

Prima facie, a non-resident is not allowed to buy Immovable Properties (IP) in India. However, an NRI or a PIO can purchase IP in India. [FEMA 21(4)]

V.1 A non-resident who has set up a branch or liaison office in India as per provisions under FEMA; can acquire IP necessary for such activities [FEMA 21(5)]. The following is an extract from our book published by Taxmann in the year 2000. A representation was also given to RBI. No action has been taken on the same.

V.2 *Section 31 of FERA provided for control over transactions pertaining to immovable property in India. The control was based on citizenship rather than on residential status.*

A citizen of India, could acquire or transfer Immovable property in India without any approval. (Residential status was immaterial). The concept of "Sons of Soil" was the guiding principle.

Under FEMA, the control will depend on residential status. If a person is a non-resident, he will require approval of RBI to do any transaction pertaining to Immovable Property in India.

V.3 *This removal of restriction based on citizenship suggests a change in the policy of the Government. It can however cause a serious implication.*

Say, a foreign citizen comes to India for employment and becomes a resident. He can buy immovable property in India. As the person is a resident & is acquiring an Indian asset, it is not a capital account transaction u/s. 2(e). As it is not a capital account transaction, no controls under FEMA can be imposed. Sections 6(1) and 6(3) also do not apply.

After acquiring the property, the person can leave India & become a NR. Under S. 6(5), such person can hold the property. No approval is required.

He can also sell it. No approval is required U/s. 6(5).

V.4 *He can remit out of these funds, amounts for living expenses, etc. as these are current account transactions.*

Thus an outright foreigner (say an Arab Sheikh) can acquire an immovable property in India as above. This can have important implications. It may be necessary for the government to clarify whether there is a change in the policy."

V.5 When a loop hole is allowed to remain on the statute books for ten years, one can trust people –Indians & foreigners-to take advantage of the loop hole. Several foreigners have purchased IP in India. In Goa, the phenomenon has acquired serious proportions. While it happens with the knowledge of RBI & enforcement directorate, they cannot do anything until the Parliament amends the law.

VI. Liberalised Remittance Scheme: (LRS):

VI.1 GOI & RBI have issued notifications & circulars permitting Indian residents to remit funds abroad. Initially there were different circulars for medical expenses, for foreign travel, for education and so on. Then all these expenses were covered by **Current Account Rules**. Except for few prohibited purposes, Indian resident can remit funds abroad for all current account expenses. There are certain limits in some cases.

VI.2 **Liberalised Remittance Scheme** (LRS) is in a way different from current account expenses. Under LRS, a person can remit funds abroad and even invest abroad. Thus it covers Capital as well as Current Account transactions. Initially when the scheme was declared in the year 2004 RBI had clarified that under LRS, a person can remit funds abroad and then open bank accounts, give gifts or loans, even purchase shares, securities and immovable properties. Under the scheme at present every individual resident in India is permitted to remit abroad every year (April to March) $ 2,00,000. Illustration: A family of five persons can even remit $ 1 million and purchase immovable property abroad worth $ 1 million.

VI.3 However, many people have made many errors in utilisation of LRS. Let us see a **few errors** in this paragraph.

3.1 Under the LRS, the Indian resident has to file relevant form with his bank and the remittance has to be made **from his Indian bank account**. Some people when they go abroad have made following error. Out of their foreign travel allowance, they have opened bank accounts, paid fees to the professionals abroad and made investments. The **foreign travel allowance** under current account remittance scheme cannot be mixed up with LRS. That allowance has to be used up for travel expenses. One cannot create an asset out of an allowance permitted for expenses.

It should be noted that, as seen in the summary provisions above, under section 4 no Indian resident can hold assets abroad. Under section 8 if any Indian resident is entitled to any foreign assets, he has to bring the foreign exchange into India. Relief granted from these strict provisions are very specific. A relief is subject to the conditions and procedures prescribed. If a person does not follow the procedure prescribed, it becomes a violation of FEMA.

3.2 Some people have **booked flats under construction outside India**. In India, it is very common to book flats under construction. Under FEMA, we are not permitted to incur liabilities abroad. Let us say, a person wants to book a house worth $ 5,00,000. He remits $ 2,00,000 in the first year and books a flat under construction. He plans to pay the balance amount spread over next 2 years. This amounts to his incurring liability of $ 3,00,000 abroad. This is prohibited under FEMA and would be a violation of FEMA.

3.3 When you book a property in Dubai, be cautious.

3.4 Initially, in the year **2004** RBI clarified that under LRS, a person can even purchase shares and securities abroad. Hence many individuals started incorporating companies abroad. Through the company they would acquire immovable property outside Indian or even start businesses outside India. In the year **2007** RBI reviewed the position. It considered that individuals should not be allowed to do business abroad. This was a **change of view**. However, instead of making any specific announcement, or amending the circulars, RBI said in an FAQ that under LRS, a person cannot make investment which is prohibited under FEMA. This had no meaning. Under section 3 dealing in foreign exchange is prohibited. Under section 4 keeping any assets abroad is prohibited. Under section 8 any foreign assets have to be brought into India. If correct meaning was to be given to this FAQ, the LRS would be redundant. Hence people ignored the FAQ and continued to incorporate companies abroad. It was in the year 2010, that in a conference organised at Mumbai, RBI managers made it clear that LRS should not be utilised for incorporating companies abroad.

VI.4 Present view in RBI is that if anyone has incorporated companies abroad under LRS, he should wind up the company and bring back the funds. He should apply to RBI for **compounding** of violation under FEMA.

VI.5 **In my submission**, RBI's view that while companies should be allowed to do business abroad, Individuals should not be allowed is incorrect. Secondly, assuming without accepting that RBI has a correct view, it can issue a circular or notification. But announcing the same through FAQ has no meaning. Now insisting that the investor should go for compounding is like punishing the investor for RBI's mistakes. But one avoids fighting a legal battle with RBI.

Hypothesis – Understanding FEMA & MAYA – both are difficult.
If you understand FEMA, you probably understand Maya.

VII. A Conceptual look at FEMA

VII.1 I am presenting following hypotheses for your consideration in this paper:

A: FEMA is an unjust law.

B: Big bosses do not respect FEMA. RBI & SC can't do anything. Only the SMEs are caught & punished under FEMA.

C: If you understand FEMA in full depth, you will understand the Indian Philosophy of "**Maya**".

What is the English word for Maya? Nearest word is "illusion". But Maya is more than an illusion. When we know that some scene or belief is an illusion, we immediately lose our interest in it. But even when we know that Maya is all Mithya – it still has a strong influence on us. In fact we just can't get out of Maya.

So how is FEMA a Maya? Let us see in this presentation.

VII.2 We have all (almost all) learned Economics in our college time. Let us remember some of it.

What is the value of a **Currency Note**? By itself, absolutely NIL. Whether the note is of one rupee or of a thousand rupees; its intrinsic value is NIL. Why do we accept rupee as reward for all our services that we provide or products that we sell?

Two Reasons:

(A) Rupee is the **legal tender**. It is the law of the land. Rupee is an official medium of exchange, currency in India. And we have to accept it. Hence it is called a FIAT currency. Government wants us to accept it by a FIAT, an order.

(B) It has become a **habit.** We do not ask some fundamental questions. Just do what everyone else is doing and has been doing for many years.

VII.3 Fundamental Issue.

Money has three functions: (i) Medium of Exchange, (ii) Measure of Value, (iii) Store of Value. Any authority that issues currency notes has to ensure that the value of its currency is maintained, that it is easily exchangeable and it is a good measure for value of all commodities, assets & services.

VII.4 What is the performance by Government of India?

Government of India (GOI) passed FERA and placed an absolute prohibition on taking money out of India, bringing in foreign money or dealing in any foreign currencies. Even if you may prefer a foreign currency as more stable than the Indian rupee, you are prevented from exchanging rupee for foreign currency.

So the "**Exchange Function**" of money goes for a toss.

VII.5 GOI has to maintain the **Value of Rupee**. However, GOI keeps resorting to deficit financing. Every year for more than 60 years. Every deficit reduces the value of rupee. All the wizards in the Finance Ministry and Planning Commission fully know that they themselves are resorting to deficit financing and depreciating the value of rupee. They are breaking the Solemn Promice made by GOI.

What is the result of inflation/ depreciation in value of rupee? Let us see just one issue. For last 3 years, the rate of inflation at Consumer Price level has been …say 15%, 17% and 10%. (We know that the whole sale price index – which GOI uses – shows less inflation than what we suffer as consumers.) Now let us say a person had placed a bank fixed deposit of Rs. 1,00,000 at the beginning of the 3 year period. Its value is going down as:

	Loss of	**Net Value**
Beginning of 1st Year		1,00,000
End of 1st Year	15%	85,000
End of 2nd Year	17%	70,550
End of 3rd Year	10%	63,500

You are losing the value of your bank fixed deposit every year. Government is ensuring this deliberately and with full knowledge (Knowledge and Intent are established. Fit case for penalty under the law.) But the depositor does not realise that he is losing value every year. Deposit receipt is for Rs. 1,00,000. And bank will still return him Rs. 1,00,000. The Depositor has only a vague idea that in "real" terms he has lost out. Anyone who has any bank fixed deposit, provident fund or pension accumulations; or even black money stored in cash is a loser.

VII.6 'The icing on the cake' (to use the most inappropriate phrase) is that banks give – you a small interest (always smaller than the rate of inflation). GOI says "You have earned money. So pay tax on it." RBI ensures that the rate of interest stays low. Net of tax, your interest is always negative.

VII.7 Smart fellows are those who save in gold, in properties or in those currencies where the issuing Government protects the value of its currency. But if you invest in other currencies, you are held guilty under FEMA.

What the Government is expected to do; it refuses to do – by passing a law called FERA/ FEMA. And then if you make a correct business decision, **YOU** are guilty. Classic illustration of the "guilty punishing the victim".

The beauty of this Maya is – RBI – the most decent and honest institution has been placed in charge of enforcing a Mithya Law.

VII.8 Conclusion:

GOI does not perform the functions it is supposed to perform as an issuer of currency. Hence Rupee keeps going down. Left to themselves, people would sell Rupee and buy other currencies. To maintain GOI monopoly on our income & wealth, FEMA is imposed on us. FEMA legalises GOI failure. Then if we act in our best commercial interest, we are held guilty under FEMA. And RBI, the honest institution will punish – us, the citizens of India for a violation committed by GOI.

What better illustration can be there for Maya?

Conclusions: FEMA is an Unjust Law

FEMA is a small Act and a vast subject. One can discuss so many issues under FEMA. However, in this presentation, my objective is to introduce the culture of FEMA and few concepts under FEMA. If I have achieved this, my purpose would be fulfilled.

Thank you,

Rashmin Sanghvi.