

FOREIGN INSTITUTIONAL INVESTORS IN INDIA

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FORUM OF FREE ENTERPRISE

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"Free Enterprise was born with man
and shall survive as long as man
survives".

-A.D. Shroff

1899-1965

Founder-President

Forum of Free Enterprise

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By

G.R. PARRIKAR & R.G. KATOTI*

One of the distinguishing features of the on-going transition of the Indian economy towards market-driven economic system has been the metamorphic changes in our capital markets. Not only has there been a spurt in the volume of capital raising activity, but in terms of depth and composition, there has been a sea-change. Indeed, opening-up of the capital markets to the exotic world of foreign institutional investors (FIIs) has given a new remarkable dimension.

It may be recalled that in his budget speech for 1992-93, the Finance Minister Dr Manmohan Singh announced that "..... We will also consider ways of allowing reputable foreign investors, such as pension funds, to invest in our capital markets with suitable mechanisms to ensure that this does not threaten loss of management control." Thereafter, the Finance Ministry issued a set of guidelines in September 1992 for determining the operations of FIIs in India.

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After the initial hesitation, there has been an encouraging response from FII's in the latter half of 1993-94. Undoubtedly, India offers a promising emerging market to FII's, thanks to the network of 22 stock exchanges with 7500 listed companies (although only about 2000 of them are actually traded and only 200 traded with sufficient volumes) and with an aggregate market capitalisation of about \$ 158 billion. Amongst the emerging markets of the world, India enjoys a pride of place with its rank in terms of market capitalisation being seventh in the group of 22 countries. The cumulative net inflows from FII's so far has been of the order of \$ 2.7 bn. (or Rs. 8,470 crores), which though quite significant in relation to the volume of annual flow of funds in the Indian primary markets, is just a miniscule in relation to the financial power being wielded by FII's in the global capital markets.

At present, it is understood that more than 225 FII's have been registered with the SEBI, but there are many more seeking registration. The entry of FII's into Indian capital markets has not been an unmixed blessing. Indeed, there are two divergent view points. While the Government and the SEBI are pleased with their policy initiatives and success achieved in securing funds through FII's, quite a few experts have expressed scepticism on their role. The RBI Governor in one of his recent speeches observed that "international capital flows are fair

weather friends". In a similar vein, Mr N.A. Palkhivala, while welcoming FIIIs for bringing in foreign exchange and boosting Indian stock markets, has raised a very pertinent issue about "the desirability of a cap on investments by FIIIs".

In this article an attempt is made to evaluate different aspects pertaining to the growth of FIIIs and their present status by

- (i) Outlining briefly the contribution of FIIIs in a global perspective;
- (ii) highlighting the principal features of India's policy framework; and
- (iii) examining some of the critical issues and outlook for FIIIs in India.

I. Global FIIIs Scenario

Background and Growth

It needs to be mentioned that 'FII' is not a recent phenomenon. Way back in 1868, 'Foreign Colonial' was floated as a close-ended investment trust in Britain and by 1914, the British investors owned 27% of the equity in the US market, which was then an emerging market. Alongwith their economic progress, developed countries like UK, France, Italy, Germany, USA and Japan have over the years matured from the status of emerging to developed markets.

Till the late eighties, the FII's investments at the global level was restricted to only the developed markets of these industrial countries. The third world countries, however, were not only not attractive, but were of no significance to them. Hence, FIIs were nowhere in the picture in a big way in the third world countries because their capital markets were (i) offering lower rate of returns; and (ii) more importantly, there was a lack of liquidity, transparency, depth and stability.

During the span of sixteen years from 1976 to 1992, the movement of portfolio capital among the industrial countries was as follows :

Trends in Portfolio Capital Movements in Industrial Countries*

(Annual Averages)

Period	Inflows	Outflows	(Billion \$)
			Net Flow
1976-80	32	15	17
1981-85	78	61	17
1986-90	185	185	---
1990	155	153	2
1991	375	274	101
1992	309	238	71
(Estimates)			

* Includes the USA, UK, Japan and the European Community.

(Source : IMF Balance of Payment Statistics & National Data.)

The USA topped the list of industrial countries in 1992, with its share of around 20% both in outflows and inflows of Portfolio capital markets, and was followed by the UK (19% outflows and 10% inflows) and Japan (14% and 3% respectively).

Emergence of New Markets

Since the late eighties, there has been a noticeable change in the direction of foreign institutional investment at the global level. The flow of investible funds into the traditional investment centres of the developed countries became sluggish owing to the slowdown in their economies on the one hand, and the yields in these markets as compared to high rates of returns in some of the developing countries on the other. This inspired surplus savings in the countries like the USA, Japan and European community to find better outlets into the emerging markets of some of the other European, Asian and Latin American countries. The availability of cheap domestic labour, and inflow of foreign capital together with the transfer of technology, enhanced the prospects of rapid economic growth of these countries, thereby turning them into attractive emerging markets. This process also coincided with an opening up of their economies specially in China, Indonesia, Taiwan, South Korea, Hongkong, Singapore, Thailand, India, Poland, Portugal, Brazil etc.

On the basis of the well-known economic maxim 'money goes where money is', the investible funds have started moving from the low-yielding to high-yielding markets, as other factors were relegated to secondary importance. It is true that most of these emerging markets are relatively small in size and not as sophisticated as their counterparts in the developed countries. The total market capitalisation of the emerging markets is estimated around \$ 1300 bn., as compared to the staggering figure moving into trillions of dollars in the developed markets. But the higher rates of returns have prompted American and Japanese investors to become active buyers in the emerging equity markets, and securing better growth than that available at present in their own sluggish domestic economies.

Thus, the net result of changes in the global economy has been a shift in the direction of investment flows from the developing markets of the West to the emerging markets of the East and the South-East. In 1993, as much as \$ 160 bn. were invested in the equities of emerging markets by the international investors. As per the Economist's Emerging Market Indicators, the shares traded on the emerging stock markets in 1993 accounted for about 12% of the value of all the shares traded world wide, up from 4% in 1983. Further, according to the US Securities Industry Association, the US investors

of all kinds have directed nearly 15% of equity outflows into the emerging markets in the 1990s, as against 4% of a much smaller total value in the 1980s.

In substance, while hitherto the investments by FIIs were growing in developed countries, the trends all over the world at present indicate that their inflows are now more towards developing countries that are promising to be fast growing economies. Moreover, the modern communication techniques have also helped in reducing the distance between the world markets, thereby promoting speedier flow of investment. It, however, needs to be stressed that such flows of foreign portfolio investment have been a major factor responsible for the wide fluctuations in the exchange rates of many countries. The FIIs have, thus, come to assume a very significant role, and are attracting the attention of international financial markets, specially in the developing countries.

It may be interesting to quote the following observation from the latest Annual Reports (1993) of the Bank for International Settlements : "one consequence of the increased cross-border investment in securities and of the often high turnover in securities transactions is that portfolio-related transactions now exceed trade-related transactions -- and sometimes by a large multiple".

What is the mechanism for promoting such a vast flow of funds? The FII's channelise their funds into the new markets generally via their Mutual Funds, which float Specialised Emerging Market Funds for investments in the specific markets. In India, after the market was thrown open to FII's, many such funds have been registered by the SEBI.

We may, however, point out that the rules and regulations governing FII's in respect of investment limits, repatriation of capital and profits, tax concessions etc. vary from country to country. For instance, there are no limits put on their investments in Pakistan, but such limits range from 10% in South Korea and Taiwan to 24% in India, 30% in Malaysia and 49% in Indonesia.

Similarly, the tax rates on the incomes/gains of FII's vary from country to country. For example, Brazil, Philippines, Pakistan, Sri Lanka, etc. do not levy any tax on capital gains, whereas, in the case of Chile it is 10% tax. In Brazil, there is a with-holding tax of 15% on dividend, while in Malaysia this rate is 20%. Likewise, repatriation is done without any restrictions in Pakistan and Sri Lanka, whereas Chile prohibits it for one year.

II. Policy Framework for FII's In India

In accordance with the budgetary pronouncement mentioned earlier, the Finance Ministry issued a

press note indicating certain guidelines for operationalising the working of FIs.

(i) Registration :

Under the guidelines, FIs whether pension funds, mutual funds, investment trusts, asset management companies, nominee companies or incorporated institutional portfolio managers are welcome to make investments.

For this purpose, FIs are required to obtain an initial registration with SEBI before making any investment in the securities of companies listed on the Indian Stock Exchanges. The nominee companies, affiliating and subsidiary companies of a FI will be treated as a separate FI for registration and will have to seek separate registration with SEBI.

FIs are also required to file separate application with the RBI for seeking various permissions under the FERA. Under a single window approach, before granting initial registration, SEBI ensures that FIs have obtained RBI's general permission.

While granting the registration, SEBI takes into account the track record of FIs, their professional competence, financial soundness etc. Further, FIs are required to hold a valid registration from the regulatory authorities of the respective countries of their domicile.

(ii) Investment Limit :

Portfolio investments in both primary and secondary markets are subject to a ceiling. Accordingly, (i) FII's together cannot hold more than 24% of the issued share capital in any one company; and (ii) a single FII cannot hold more than 5% of the issued share capital in any one company. For this purpose, the holdings of separate entities within a specific FII Group is treated as a holding of a single FII.

This limit of 24% is inclusive of the investments by the registered FIIs and also the investments by the NRIs' corporate and non-corporate bodies. This however, does not include :

- (i) foreign investments under financial collaborations (foreign direct investments) which are permitted upto 51% in all priority areas (namely, 35 industries); and
- (ii) Investment by FIIs through the alternative routes (a) offshores single/regional funds (b) global depository receipts and (c) Euro-convertibles.

In respect of preferential offers of shares to FIIs, the RBI had earlier imposed a cap of 10% in contrast with SEBI's limit of 24%. Perhaps, the RBI was of the view that FIIs should buy the remaining 14% of shares in the secondary market. This creates a

controversy affecting the operations of FIIIs in the primary market. Since then, at the instance of the Government, the RBI has revised the provision by relaxing the limit upto 15% for preferential allotment to FIIIs. This new stipulation is in respect of the applications received by the RBI with effect from April 1994. But for those received before this date, the overall ceiling of 24% prescribed by SEBI remains valid.

Many Indian companies like Nicholas Piramal, Hero Honda, Bajaj Auto, Saw Pipes etc. have either finalised or are in the process of finalising their private placement of shares with the FIIIs, but the RBI's cap of 10% was found to be restrictive. With the revised RBI cap of 15% as mentioned above, the move for private placement of shares by Indian companies may gather momentum.

The scope for FII activities has also been extended by the Government to the purchase of equity shares in the latest round of PSU disinvestment programme as well as to new private sector banks, which are under formation.

(iii) Repatriation :

With the general permission of the RBI and SEBI, FIIIs can repatriate capital, capital gains and income received by way dividends and interests, etc. through the designated branch of a bank or an authorised custodian.

(iv) Tax Treatment :

FIIIs are subject to the following special tax treatment:

- (i) dividend and interest income 20%
- (ii) short-term capital gains 30%
- (iii) long-term capital gains 10%

However, FIIIs are not entitled to the benefits available to NRIs under the recently modified guidelines of section 115 AD of the Income Tax Act. Thus, FIIIs are not eligible for a concessional tax rate by way of protection from the fluctuation of the rupee against foreign currency, while computing capital gains arising from transfer of shares or debentures of Indian companies. Like-wise, the benefit of cost inflation indexation, while calculating the long-term capital gains, is also not made available to FIIIs.

(v) Other Provisions :

The following are the other important provisions governing the operations of FIIIs :

- (a) There is no restriction on the volume of investments (minimum or maximum) for the purpose of entry of FIIIs and also there is no lock-in period for their investments;
- (b) The SEBI's initial registration and RBI's general permission under FERA is valid for a period of five years to be renewable for a further period of five years;

- (c) All the secondary market operations have to be done through recognised intermediaries in the Indian stock exchanges including OTCEI (Over The Counter Exchange of India);
- (d) FIs can not undertake short-selling in securities i.e. they can buy/sell strictly on cash and delivery basis;
- (e) A registered FI can appoint an agency recognised by SEBI to act as custodian of securities and for other custodial services;
- (f) Disinvestments are allowed only through stock exchanges in India, including the OTCEI, except in certain cases with the permission of SEBI.

Response :

There has been an overwhelming response from FIs to the new policy initiatives of the Government of India. Within a short span of less than one and half years, the number of FIs registered with SEBI and their investments have shown a remarkable growth. As against a dozen FIs registered in March 1993, their present number is more than 225, managing more than 270 funds. Similarly, against the initial estimates of about \$ 20 mn. worth of investments, the total FIs inflows now stand at \$ 2.7 bn. There are a few experts who project that by the end of the current financial year, FIs investments would be in the range of \$ 8 bn.

FII OPERATIONS :

The FIIs have been permitted to operate in both primary and secondary markets, but on the whole, their preference so far is to operate in the secondary markets. Further, since the sentiments in the stock markets for quite some months (particularly during November 1993 to February 1994) were also encouraging, which in no small measure were triggered off by FIIs themselves, their secondary market operations also increased considerably. Thus, their investments in the stock markets increased from Rs. 150 crores in June 1993 to Rs. 4455 crores in February 1994, that is, by as much as 29 times. Since then, however, there seemed to be some waning of their interest, which might be attributed to the protracted dispute between the broking community and SEBI on the badla system of trading, in turn leading to uncertainty on the market for quite some time. The Govt. remained very firm in Badla system discontinuation and the market got subsequently adjusted to the new situation.

FIIs have also been showing enthusiasm to enter the primary markets, but their operations have been interrupted due to the controversy, as mentioned earlier, over the shareholding limit imposed by the RBI and also by stipulation relating to the lock-in period by SEBI on private placements with FIIs. In view of the protests made by FIIs, requests by domestic companies for the removal of restriction

of the lock-in period conditions and at the instance of the Finance Ministry the SEBI removed this restriction.

The level of response from FII's clearly indicates their confidence in India's future growth prospects. Initially, many experts from within and outside the country believed that FII's would be hesitant due to political uncertainties as well as high P/E (Price/Earnings) multiples, ranging between 35 and 45 times. In many other developing countries, P/E ratios have been comparatively lower. In spite of this, FII's have started testing the water of the Indian stock markets, thus, belying the earlier predictions.

The structure of FII's' portfolio investment is not known, being a matter of trade secret. However, it has been reported that \$ 2.7 bn. worth investments of FII's are distributed amongst 500 listed companies on the various stock exchanges in the country. It is worth mentioning that their portfolio includes not only high value sensitive scrips but also high performing yet low priced little-known scrips. Such a broad based investments have resulted in institutionalisation of the Indian capital market. Reportedly their favourite scrips under specified category include HDFC, Gujarat Ambuja Cement, BSES, SCICI, Jaiprakash Industries, Bajaj Auto, Reliance Industries, Tata Tea, Tata Chemicals, Larsen and Toubro, etc., in the cash shares, 20th Century Finance, ITC Agrotech, EID Parry, SKF

Pharma, DCL Polyester, MTNL, Ranbaxy etc. The promising sun-rise industries like automobiles, agro-industries, electronics, steel, telecommunication and financial services, seem to be attracting FII's interests.

FII's have been doing their business through both Indian and foreign brokers. SEBI has recently granted permission to a few foreign brokers including James Capel, Kleinwort Benson, Credit Lyonnaise, Marlin Partners, etc. to operate on their behalf.

FII's have been relying on the custodial services provided by the four recognised custodians/depositories, namely, Hongkong Bank, Citibank, Standard Chartered Bank and State Bank of India. However, the custodial infrastructure was found to be inadequate particularly for handling huge deals, which, indeed, has slowed down their purchases for quite some time. However, some remedial action was initiated to improve the custodial services which helped to bring in necessary improvements.

Impact :

The operations of FII's have now certainly become one of the major determinants influencing the trends in share prices. Apart from their growing investments, their very presence causes a bullish trend! For instance, the BSE sensx averaged 2282 in June 1993 when FII's made a modest beginning

with investments of around Rs. 150 crores. Thereafter, the average index rose rapidly to reach 2708 in September 1993 and further to 3302 in December 1993 and crossed the 4000 mark by January 28, 1994. During this period, FII investment in the secondary market doubled from Rs. 500 crores to Rs. 1000 crores. By the end of February 1994, the cumulative sums brought in by FIIs soared to Rs. 4455 crores and the index touched the post-scam high of 4286. Further, between February and September 1994, net purchases of FIIs in Indian market rose by 91% to reach Rs. 8470 crores while the average sensex surged ahead by 12% from 4028 to 4511 in the same period.

However, after the 1994-95 budget, FIIs' operations in the Indian Markets have declined substantially mainly on account of inadequate custodial facilities, burdensome paper work, uncertainties about the RBI cap on the private placement of shares, unresolved dispute about the badla system of trading, etc. As already mentioned, some of these issues were sorted out so as to smoothen the flow of FII funds.

Quite apart from the contribution of FIIs to the behaviour of stock markets, they have been a major source in the remarkable growth in foreign exchange reserves of the country in 1993-94. It may be mentioned that Euro Issues (\$3.0 bn.), Foreign Direct Investment (\$1.6 bn) and Foreign Institutional Investments (\$ 2.7 bn.) together contributed as much

as \$ 8.2 bn. to the foreign exchange kitty. Presently, FII investments account for about 14% of the total foreign exchange reserves (\$ 19 bn.)

Indirectly, by virtue of the increased capital inflows FIIs have also been responsible for the growth of money supply and through it in creating inflationary potential. The entry of FIIs together with other foreign investors also seems to be resulting into "globalisation" of the salary structure of the selected top level financial centres like Bombay.

FIIs have also been contributing to some qualitative changes in the Indian capital market. After their entry, the market is believed to be adopting some modern methods of operations, leaving behind earlier cumbersome practices. To induce FIIs to participate in their issues, many companies are being driven towards greater efficiency and transparency in their operations. Further, reputed firms are vying with each other to establish proper infrastructure to promote 'equity research' based investment decisions. Such a systematic response from the Indian side is expected to further augment FIIs' activities.

III. Some Critical Issues

As "every coin has two sides", FII investments too have both favourable and unfavourable implications on the economy in general, and the capital markets in particular. We would like to highlight some of the

critical issues arising out of growing importance of FII, but refrain from indicating solutions because of their obvious complexities.

* First, just as FIIs have made a valuable contribution to India's forex reserves, there is a lurking fear of their destabilising impact in case they decide to flow out the capital. Mr N.A. Palkhivala has already cautioned us by stating that, "the FIIs have not come to India out of philanthropic motives and they will go back if the going is not good". Fortunately, at present, even granting that 25% of India's forex reserves is vulnerable which includes incidentally the NRI foreign currency deposits, India is in a comfortable position to ward off any such threat. It can be said with some degree of confidence that not more than \$ 3.5 bn. to \$ 4 bn. of forex reserves (\$ 19 bn.) can be considered to be "risk-prone" but fortunately forex reserves today stands at \$ 19 bn. which gives India import covering of 9 months which is comfortable.

* Secondly, if there is going to be acceleration of FIIs inflows in the coming year, as is being projected by some experts, one wonders what would be its implications in maintaining the stability of the rupee-dollar exchange rate. In 1993-94, the RBI had to actively intervene in the forex market to support the exchange rate

of \$ 1 = Rs. 31.37 for maintaining our export competitiveness. In the process, so far it has mopped up gross amount of about \$ 14 bn. from the market, and to mitigate its adverse impact on the money supply growth and consequential inflationary presences, the RBI has been forced to undertake 'sterilisation of the increased flow of forex reserves, and hence the operations of FII's in the coming years would have to be monitored carefully.

* Thirdly, there are apprehensions that FII's would become a vehicle of hostile take-overs of Indian companies. It is true that under the existing guidelines the holding of a single FII in any company is subject to a ceiling of 5%, and all FII's together can acquire 24% of the issued shares capital in any one company. But this ceiling does not include certain exemptions mentioned earlier. Consequently, it may be possible to manipulate the overall ceiling of 24%.

* Further, FII's are believed to be using group inter connections to get round the SEBI cap on their holdings, Quite a few FII's have several fund management agencies in different names. While each can buy upto 5% of an Indian company's equity within the limit of 24% for all FII's put together, some also seem to be investing through their associate asset management firms. Investments through these

associates, which are technically Indian entities, appear to be outside the purview of SEBI's code for FII's. Also reportedly the FII's are buying large stakes in unlisted companies who do not fall within the purview of SEBI's regulations. This is likely to create some problems later on when these companies go in for listing in view of coverage of SEBI regulations.

* Fourthly, there is a bias in the tax treatment applicable to FII's vis-a-vis Indian company with the avowed objective of promoting the flow of foreign exchange in the country. Thus, while domestic company has to pay a long term capital gains tax at the rate of 34.5% (including 15% surcharge), FII's have to pay the tax at the rate of 10%. Of course, there is the other side of this argument for level playing fields. Thus, FII's on their part argue that they are liable to short-term capital gains tax of 30%, while the Indian mutual funds are exempt from any such tax. Also, under the new guidelines, FII's are deprived of the benefit of concessional income tax and cost inflation indexation offered to NRIs. Further, among the FII's themselves, those who are domiciled in Mauritius, Netherland and Bermuda escape double taxation thanks to double taxation treaties entered into by India with these countries. But FII's domiciled in many other countries with whom such treaties have not been signed suffer from double taxation.

* Fifthly, a curious outcome of the large capital inflows in certain segments of the Indian corporate sector, in which FII's have also played their part through contribution to GDR issues and in private placement of equities, has been the sudden flush of funds. This is a welcome phenomenon in as much as the cost of corporate funds has come down, but in the process it has created an uncomfortable situation for banks, who are left with large surplus liquidity awaiting deployment in profitable and productive activities.

* Sixthly, while FII's provide a vital source of forex resources, and also offer several gains to the Indian capital markets, there is a more important issue between promoting FDI's Vs promoting FII's. Both are keen on India's continuing pursuit of liberalisation of economic policy to this country. Of course, from India's development point of view FDI's are perhaps more useful than FII's. But that aside, an interesting aspect in the determination of the flow of forex resources is the divergent perceptions of FII's and FDI's. While FII's would look upon high interest rate in India as a positive feature and a source of incentive, FDI's would be more concerned about the progress of economic reforms and its success in reducing the rate of interest. It is difficult at this stage to anticipate the implications of such divergent perception of these two different set of players on the capital inflows.

* Lastly, regulatory system involves number of authorities which have their separate guidelines or regulations causing a lot of confusion amongst the FII's and the lack of proper clarifying and co-ordinating machinery have hampered FII investments.

In summing up, the year 1993-94 marked something of a watershed in the flow of foreign investments in India. Together with foreign direct investments and Euro-issues, FIIs are spearheading the process of globalisation of the Indian economy in general and stock markets in particular. There are obvious vexatious issues relating to the extent of safe investment limits, tax treatment, level-playing fields, and so on. But inspite of these, FIIs have come to stay, and will become increasingly more important because India offers a very promising emerging market amongst the developing countries. According to a recent study, the Indian markets have outperformed the other Asian emerging markets. The study highlighted that in the first 9 months (January-September) of 1994, stocks have appreciated by 22% on Indian markets while in the other Asian markets the growth in stock prices has been comparatively lower or even negative. For instance, in Taiwan the shares appreciated by 16% and in South Korea by 8%. There was, however, fall in the index in Hong-Kong market to the extent of 21% and Indonesia 14%. According to the study, India thus, proves to be an attractive market for FIIs despite certain weaknesses. Even with our new-

found concept of "middle-path", the pursuit of economic reforms is irreversible and this would build up a further confidence of FII's in India.

Simultaneously, we must recognise that with a growing role of FII's, there would be corresponding transmission of the economic events taking place in other parts of the world. We cannot have FII's and ignore dynamics of their response to the international markets. Thus, a slight variation in interest rates and fluctuations in exchange rates can bring about transformation in the perceptions of FII's with respect to Indian stock markets vis-a-vis other competing emerging markets.

Therefore, while there are rewards of increased role of FII's, there are compulsions of exercising strategic vigilance on the impact of their operations. This becomes all the more crucial given the peculiarities of the ownership of Indian corporate sector, wherein, on an average, a large part of the equity is held between the promoters and financial institutions, leaving only a limited floating stocks in the market.

In the global financial canvas of FII's, India would just occupy a tiny spot, but for the size of our stock market operations their flush of capital flows can create major waves!

The views expressed in this booklet are not necessarily those of the Forum of Free Enterprise.

"People must come to accept private enterprise not as a necessary evil, but as an affirmative good".

-Eugene Black

FORUM OF FREE ENTERPRISE

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Published by M.R. Pai for the Forum of Free Enterprise, "Piramal Mansion", 235, Dr. D.N. Road, Bombay 400 001.

Laser Typesetting by GRAPHTECH, Tel.: 261 7479

and printed at Vijay Printing Press,

9-10, 3rd Floor, Mahalaxmi Industrial Estate,
Gandhi Nagar, Lower Parel, Bombay 400 013.