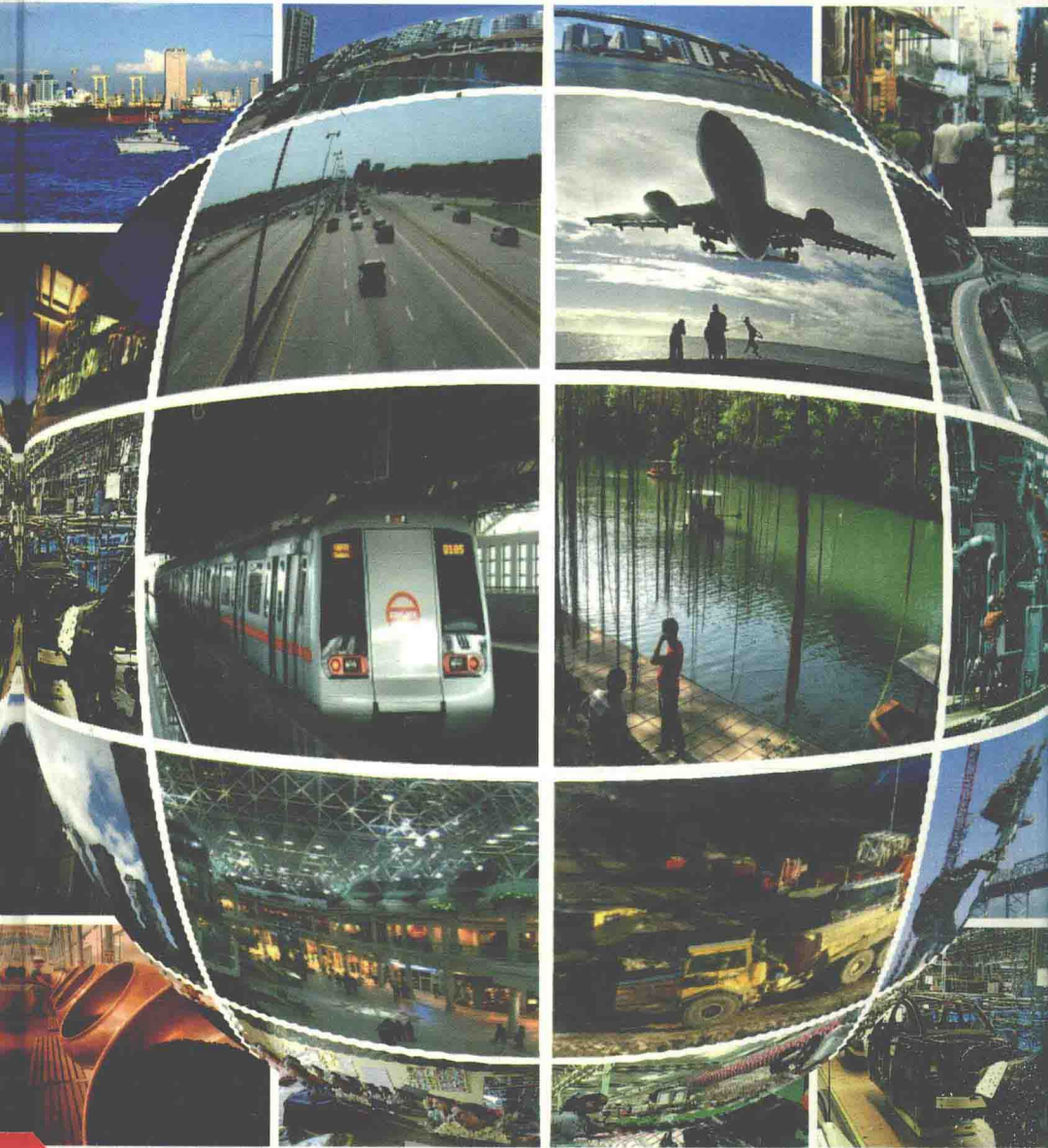


2nd Edition

THINK BUSINESS THINK INDIA



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2nd Edition



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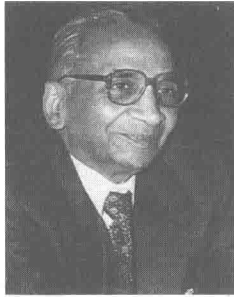
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Foreword

O P VAISH

Senior Advocate



I am glad to see the transcript of the comprehensively updated second edition of the book '**Think Business Think India**', a result of the collective efforts of the different practice groups within Vaish Associates Advocates.

India's growth story remains unfettered and the investment outlook about India continues to be optimistic. Business in India has been gradually progressing from 'good' to 'better'. Of late, India has also signed bilateral trade agreements with Korea, Japan and Malaysia. These initiatives, I am sure, will further augment India's trade partnership with these important neighboring economies.

The growth in India is largely driven by domestic demand and not by exports, as in the case of China. Government of India and the Reserve Bank of India (RBI) have taken measures to further pep up the demand and to take the economic growth rate to 9% and above.

Rising inflation however remains to be a matter of concern. RBI has indeed a difficult choice of either taming inflation or compromising on the pace of economic growth. The stock markets are responding positively and will help generate greater resources for investments/expansions. Companies in India and overseas should take advantage of the emerging opportunities.

The book, Think Business Think India, is intended to give entrepreneurs and executives all necessary information about the relevant laws and procedures for setting up and doing business in India. I am sure this edition will be a welcome edition in the law libraries and on the shelves of investors, entrepreneurs and professional advisors.



O P Vaish

Preface

This second edition of **Think Business Think India** is a compendium of laws, rules and regulations that govern Indian businesses, which are updated as on April 1, 2011 (unless otherwise specified) and presented in a reader-friendly manner. This publication, prepared after a detailed research and wide consultations among experts, attempts to give discerning investors, both domestic and international, a kaleidoscopic idea of establishing presence in India and, importantly, doing business in India.

“Focus India” is a growing mantra in boardrooms across the world. India’s continental market, sustained high growth, large-scale capacity building, particularly in the manufacturing and service sectors, addition of millions of high net worth individuals every year, propensity to absorb investments, especially in the frontier areas of technology, unprecedented blossoming of entrepreneurship, etc, are well known and documented. A combination of all these factors makes India one of the most-happening business destinations in the world. The thematic sequencing of the book is crafted in a way so as to unravel the “India Advantage” factor to the myriad business corporations, investors, analysts and the swelling ranks of entrepreneurs. A practical approach to forming joint ventures, technology transfer, formation of companies, intellectual property rights, investment opportunities in important sectors, etc, has been adopted. The book also dwells upon subjects like investment framework, governance including corporate governance framework, trade and competition policies, overview of various key enactments governing businesses, issues concerning expatriates working in India, etc. It also provides links to important government, business and other relevant websites.

The Government of India has embarked upon economic reform process with the twin objective of opening up of the Indian economy to attract foreign investment and to accelerate its process of global integration. Against this backdrop, it has been the endeavour of the Government to benchmark the country’s laws and regulations vis-à-vis the best global practices. This has led to quick and progressive adjustments in the economic and commercial laws of India. It is, therefore, important to keep pace with the changing dynamics of the legal landscape.

The publication captures the changes taking place in the legal and policy framework and the abounding business opportunities emerging on account of progressive policy flexibility. Yet, the book, in no way, seeks to substitute the expert advice and guidance that must be sought on specific projects and issues that an investor or entrepreneur may be confronted with. Tips, leads and bare facts contained in the publication are designed as value-added information, which are concise and crisp but not exhaustive. It serves as a valuable guide to your “*India strategy*”.

Think Business Think India is a consolidation of the body of experience and incisive knowledge accumulated over the years at **Vaish Associates, Advocates**. The seminal contributions of the team of professionals and their penchant for looking at every conceivable aspect of enactments governing businesses are commendable. *Think Business Think India* is an outcome of the seminal contributions by different

practice groups at Vaish Associates, Advocates. The Editors, **Mr Vinay Vaish** and **Mr Hitender Mehta**, Partners, Vaish Associates, Advocates, deserve a special mention for accomplishing this edition of Think Business Think India.

We at Vaish Associates, Advocates shall be happy to respond to your requests for further information and guidance. As a partner in progress, we are committed to building India and building your business.

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Abbreviations

AAI	Airports Authority of India
AAR	Authority for Advance Rulings
AD	Authorised Dealer
ADR	Alternate Dispute Resolution
ADRs	American Depository Receipts
AGM	Annual General Meeting
AMT	Alternate Minimum Tax
AOA	Articles of Association
AOP	Association of Persons
ARC	Asset Reconstruction Company
ASEAN	Association of South-East Asian Nations
BCAS	Bureau of Civil Aviation Security
BCD	Basic Customs Duty
BIPA	Bilateral Investment Promotion and Protection Agreement
BO	Branch Office
BOA	Board of Approval
BPO	Business Process Outsourcing
BSE	Bombay Stock Exchange Limited
BSNL	Bharat Sanchar Nigam Limited
BTPs	Biotechnology Parks
CARO	Companies (Auditor's Report) Order
CBDT	Central Board of Direct Taxes
CBEC	Central Board of Excise & Customs
CBS	Capacity Building for Service Providers
CCI	Competition Commission of India
CCR	CENVAT Credit Rules
CENVAT	Central Value Added Tax
CETA	Central Excise Tariff Act
CIC	Credit Information Company
CIT	Commissioner of Income Tax
CIT(A)	Commissioner of Income Tax (Appeals)
CPCB	Central Pollution Control Board
CST	Central Sales Tax
CVD	Countervailing Duty
DBOD	Department of Banking Operations and Development
DCA	Department of Company Affairs
DDT	Dividend Distribution Tax
DEA	Department of Economic Affairs
DGCA	Directorate General of Civil Aviation
DIC	District Industries Centre
DIN	Director Identification Number

DIPP	Department of Industrial Policy & Promotion
DP	Designated Partners
DPIN	Designated Partner Identification Number
DRP	Dispute Resolution Panel
DTA	Domestic Tariff Area
DTAA	Double Taxation Avoidance Agreement
ECB	External Commercial Borrowing
EHTP	Electronics Hardware Technology Park
EMRs	Exclusive Marketing Rights
EOUs	Export Oriented Units
EPFS	Employees' Provident Fund Scheme
EPS	Employees Pension Scheme
ESIC	Employees' State Insurance Corporation
ESOP	Employees' Stock Option Plan (Scheme)
FBT	Fringe Benefit Tax
FCCBs	Foreign Currency Convertible Bonds
FCNR	Foreign Currency Non-resident (bank account)
FCRA	Foreign Contribution Regulation Act, 1976
FDI	Foreign Direct Investment
FEMA	Foreign Exchange Management Act, 1999
FII	Foreign Institutional Investor
FIPB	Foreign Investment Promotion Board
FIR	First Information Report
FMCG	Fast-moving Consumer Goods
FRO	Foreigners' Registration Officer
FRRO	Foreigners' Regional Registration Office
FTAs	Free Trade Agreements
FVCI	Foreign Venture Capital Investor
GATT	General Agreement on Trade and Tariffs
GDP	Gross Domestic Product
GDRs	Global Depository Receipts
GMPCS	Global Mobile Personal Communications Services
GST	Goods and Services Tax
HSD	High Speed Diesel
HUF	Hindu Undivided Family
I.T.	Income Tax
ICA	Indian Council of Arbitration
ICADR	International Centre for Alternate Dispute Resolution
ICAI	Institute of Chartered Accountants of India
ICB	International Competitive Bidding
ICs	Integrated Circuits
IDA	International Depository Authority
IDBI	Industrial Development Bank of India
IDR	Indian Depository Receipts
IEM	Industrial Entrepreneurs' Memorandum

IFCI	Industrial Financial Corporation of India
IMR	Infant Mortality Rate
IMTECH	Institute of Microbial Technology
IP	Intellectual Property
IPAB	Intellectual Property Appellate Board
IRDA	Insurance Regulatory and Development Authority
IT	Information Technology
ITAT	Income Tax Appellate Tribunal
ITeS	IT-enabled Services
IVCU	Indian Venture Capital Undertaking
IWAI	Inland Waterways Authority of India
KPO	Knowledge Process Outsourcing
KYC	Know Your Customer
LIBOR	London Interbank Offered Rate
LIM	Lawful Interception Monitoring
LIS	Lawful Interception System
LLP	Limited Liability Partnership
LO	Liaison Office
MAT	Minimum Alternative Tax
MCA	Ministry of Corporate Affairs
MOA	Memorandum of Association
MoCI	Ministry of Commerce and Industry
MoEF	Ministry of Environment and Forests
MRP	Maximum Retail Price
MSE	Micro and Small Enterprises
NASSCOM	National Association of Software and Service Companies
NBFC	Non-banking Finance Companies
NCCD	National Calamity Contingency Duty
NCLT	National Company Law Tribunal
NCMP	National Common Minimum Programme
NCTE	National Council for Teachers Education
NFE	Net Foreign Exchange
NIAPC	National Initiative Against Piracy and Counterfeiting
NIC	National Industrial Classification
NOC	No Objection Certificate
NRI	Non-resident Indian
NSE	National Stock Exchange of India Limited
NTP	New Telecom Policy
OCB	Overseas Corporate Body
OECD	Organisation for Economic Cooperation and Development
OSP	Other Service Provider
PAB	Project Approval Board
PAN	Permanent Account Number
PCT	Patent Cooperative Treaty
PIO	Person of Indian Origin

PIS	Portfolio Investment Scheme
PMRTS	Public Mobile Radio Trunked Services
PO	Project Office
PPP	Purchasing Power Parity
PSU	Public Sector Undertaking
R&D	Research & Development
RA	Remote Access
RBI	Reserve Bank of India
REITs	Real Estate Investment Trusts
ROC	Registrar of Companies
ROW	Right of Way
SCBs	Scheduled Commercial Banks
SEBI	Securities and Exchange Board of India
SEBs	State Electricity Boards
SEZs	Special Economic Zones
SIA	Secretariat for Industrial Assistance
SICI	Shastri Indo-Canadian Institute
SPCBs	State Pollution Control Boards
SRs	Security Receipts
SSI	Small Scale Industry
STPI	Software Technology Park of India
STPs	Software Technology Parks
TDRs	Transferable Development Rights
TRAI	Telecom Regulatory Authority of India
TRIPS	Trade Related Aspects of Intellectual Property Rights (agreement on)
UAC	Unit Approval Committee
UEE	Universalisation of Elementary Education
UNCITRAL	United Nations Commission on International Trade Law
UNESCO	United Nations Educational, Scientific and Cultural Organization
USEFI	United States Educational Foundation in India
VAT	Value Added Tax
VCF	Venture Capital Fund
VTM	Vigilance Technical Monitoring
WIPO	World Intellectual Property Organization
WT	Wholesale Trading
WTO	World Trade Organization

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Chapter 1 Introduction

India is the seventh-largest country in the world, spread over a total area of 3,287,263 sq kms, including the territorial seas. Located in South Asia in the tropical belt just north of the equator, it is separated from mainland Asia by the Himalayas, a mountain range that umbrellas the entire northern region stretching to a distance of 2,400 kms to the east. India is home to some of the world's highest peaks shielding the country's 28 States and 7 Union Territories. Several important rivers originate from this mountain range. To the south of the mountain range are the Indo-Gangetic Plains. To the west of this plain and cut off from it by the Aravali range is the Thar Desert. Further south, geologically, the oldest part of India is the Deccan Plateau flanked on the left and the right by coastal ranges, the Eastern and Western Ghats. Peninsular India is bordered by the Bay of Bengal in the east and the Arabian Sea in the west. The Indian Ocean forms a pedestal to the country.

India is surrounded by Afghanistan and Pakistan in the north-west, China, Bhutan and Nepal in the north, Myanmar in the east, and Bangladesh to the east of West Bengal. Sri Lanka is separated from India by a narrow channel of sea, formed by Palk Strait and the Gulf of Mannar.

India's history dates back to 2500 BC when the first known civilisation settled along the Indus river. India is a secular country where Hinduism coexists with Islam, Christianity, Buddhism, Jainism, Sikhism, Judaism and Zoroastrianism. India has 22 official languages and great ethnic diversity. As a consequence of India's continental size, the history of the country has seldom been the same for two adjoining territories. The picturesque land is dotted with palaces, temples and monuments. One of the fascinations of India is a creative fusion of old and new, centuries of history rubbing shoulders with the computer age, Bengaluru's (formerly Bangalore) "Silicon Valley" is as much a part of the world's largest democracy as its remotest villages.

Exciting topographical variations, cultural diversity, and the colourful local traditions lend India harmony in variety. The second most-populous country in the world after China, India has over one billion people, accounting for one-sixth of the world's population.

The Constitution of India came into force on January 26, 1950. The preamble to the Constitution defines India as a Sovereign Socialist Secular Democratic Republic with a parliamentary form of Government. India has a bicameral Parliament operating under a Westminster-style Parliamentary system which consists of the Upper House, called the Rajya Sabha (Council of States) and the Lower House, called the Lok Sabha (House of People). India's governance is based on a federal structure, consisting of the Central Government or the Union Government and federal units, known as the States. The power to govern issues relating to national security, defence, national waterways and airways, international treaties, foreign trade, foreign exchange, customs duties, income tax, etc (matters referred to in the "Union List" of the Constitution) vests within the Union Government. The State

Governments have a mandate over law and order, sales tax, land revenue, tolls, agriculture, mines and minerals, etc, in the respective States, (matters referred to in the “State List” of the Constitution). Certain areas (matters referred to in the “Concurrent List” of the Constitution) may be governed or legislated upon by both the Union Government and the State Governments. In case of any conflict of laws, the Union/Federal law prevails. India has a unitary three-tier judiciary consisting of the Supreme Court, High Courts and Trial Courts.

The President of India is the Head of State, while the Prime Minister is the Head of the Government. The Prime Minister runs the Government with the support of the Council of Ministers, who form the [Union] Cabinet.

Ever since India emerged from the shackles of closed economy in the early 1990s, its economy has steadily grown and today it is one of the fastest-growing economies in the world, with a growth rate higher than in many developed countries. Over the last decade, India has undergone a transformation and climbed to a high-growth path as macroeconomic and structural reforms reduced regulations significantly, improved the business environment, and opened the economy to greater competition. India’s GDP has already crossed the US\$1-trillion mark, making the country the twelfth-largest economy in the world and the fourth-largest economy by purchasing power. In 2010, the Indian economy rebounded robustly from the global financial crisis and recorded a growth rate of approx 8.3% in terms of GDP.

India is fast becoming a leading international business and financial hub. In the era of globalisation, India offers a cost-effective environment for establishing and doing business for the burgeoning domestic and export markets.

Foreign investors are looking at India as an attractive investment destination owing to the prospects of high returns. A number of corporate and multinational companies from all over the world have established businesses in India and have expanded over the years.

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Market Place

¶2-010 India versus the World

India is the world's largest democracy and is the fourth-largest¹ economy in the world. It has the third-highest Gross Domestic Product (GDP) in Asia. India is also the second-

1 "The World's Largest Economies", Economy Watch, <http://www.economywatch.com/economies-in-top/>, accessed on April 9, 2011.

largest among emerging nations in terms of Purchasing Power Parity (PPP). India offers high prospects for potential growth and return on investment in all areas of businesses. Other salient features of the economy are:

- Large and growing domestic market with a huge middle class
- Large pool of young skilled labour force, which is, by and large, educated and fluent in English
- Competitive wages
- Cost-effective production facilities
- Expanding industrial base and intellectual capital
- Capacity upgradation in infrastructure
- Continuous liberalisation in the foreign investment framework
- Acceleration of the privatisation process
- Investor-friendly policies, etc

The Indian market is widely diverse, thus, tastes and preferences differ greatly among sections of consumers, creating a largely diverse and vast market for all areas of businesses.

India has been ranked at the second place in global foreign direct investments in 2010 and will continue to remain among the top five attractive destinations for international investors during 2010–2012 period, according to United Nations Conference on Trade and Development (UNCTAD) in a report on world investment prospects titled, 'World Investment Prospects Survey 2009–2012'.²

Sectors receiving highest FDI equity inflows are Services Sector (financial & non-financial) followed by Computer Software and Hardware and Telecommunication Sector (radio paging, cellular mobile, basic telephone services). As per statistics from the Department of Industrial Policy & Promotion (DIPP) under the Ministry of Commerce and Industry, cumulative amount of FDI flows into India (from April 2000 to May 2010) are US\$1,68,943 million and cumulative amount of FDI equity in flows (from August 1991 to May 2010) are at US\$1,36,855 million. .

Manufacturing and Service Sectors

¶2-020 Manufacturing

Manufacturing is the backbone of the Indian economy which has emerged as a premier global manufacturing hub with the entry of a number of transnational corporations. India offers tremendous opportunity for automobiles, textiles, steel, metals, and engineering and petroleum products for the world market. There has been significant improvement in the performance of different sectors, namely beverages, tobacco, cotton textiles, textile products, basic metals and alloy industries, non-metallic mineral products, transport equipment and other manufacturing industries. Indian manufacturing companies are expected to benefit from global innovation and investments. India expects large investments into both capital spending and Research & Development in the years to come.

2 "Foreign Direct Investment", India Brand Equity Foundation website, <http://www.ibef.org/economy/fdi.aspx>, accessed on April 9, 2011.

¶2-030 Services

The service sector continues to be the largest contributor to India's GDP. In fact, more than half of the GDP is contributed by the service sector. Trade, hotels, transport and communication services continue to be amongst the major sub-sectors of the service sector, which are growing at double-digit rates. The service sector growth continues to be broad based. Services that currently contribute significantly to India's GDP include railway passengers, railway freight, franchising, tourism, housing finance, entertainment and media industry, information technology (IT)/software/software services, education and training services, etc. Impressive progress in the railway passenger network and production, rapid addition to the existing stock of telephone connections, particularly mobiles, growth in the financial services (banking, insurance and real estate) and the construction boom have been some of the key driving segments of the service sector in India.

Information, Communication, Technology

¶2-040 Developments in the Field

India is now well integrated with the rest of the world and is linked to most parts of the world through the Internet. Within India, digital IT and telecommunications have seeped into the day-to-day activities of business houses and corporations. IT has made it possible for the large population of India to have global access. State-of-the-art IT-enabled voice and data services are readily available for conducting and executing business in the country.

Across the globe, countries have recognised IT as an effective tool in catalysing the economic activity for efficient governance and in developing human resources. In India, there is a growing recognition of the wider possibilities of technology. Information Technology, together with communication technologies, has brought about unprecedented changes in the way people communicate and conduct business. There is even a greater realisation that instead of a single-track technology, lateral integration of technologies can deliver startling results and the world seems to be moving towards such converged systems.

In India, the new technology trends are evident in the development of electronic communication systems. Emerging digital techniques such as new network alternatives (intelligent networks), high-bandwidth communication technology and state-of-the-art software for network functions and services have come a long way. Telemedicine applications make it possible to deliver healthcare to people in isolated and far-flung locations. Broadcasters and TV manufacturers are enhancing the interactive capabilities of their services and equipment. India is adapting to the cutting-edge inventions in science and technology.

Besides establishing indigenous R&D in digital technology, both the Government and private players in the Information Communication Technology sector have established manufacturing and value-added servicing capabilities. Perhaps, the most important feature of this technological breakthrough is India's capability to build and successfully launch its own multi-purpose communications' satellites under public-private partnership initiative.

With the emergence of IT on the national agenda and the announcement of IT policies by various State Governments, people-centric projects on governance, sustainable development

economy and social empowerment is being pushed to the centre-stage.

Low Cost and Skilled Manpower

¶2-050 Emphasis on Education and Skill Development

India has made significant progress in the field of elementary education. India's average literacy rate is pegged at 65.84%³. Concerted efforts towards Universalisation of Elementary Education (UEE) have resulted in manifold increase in schools, teachers and students. The Government has attached highest priority for completing this unfinished task in this decade and recently a sizeable plan allocation has been made for elementary education. The main thrust of the higher education sector has been in the following areas:

- Organic growth of higher education system,
- Academically strengthening universities and colleges,
- Evolving socially relevant programmes,
- Programmes for enhancing accessibility to technical education in an equitable manner,
- Promotion of quality and excellence in every aspect of education,
- Enhancing accuracy of physically challenged persons, and
- Strengthening of R&D.

The technical education system in the country covers courses and programmes in engineering, technology, management, architecture, town planning, pharmacy, applied arts and crafts. A large number of institutes at the Central as well as at the State level are engaged in providing quality technical education and training. Higher education and technical education have usually been the prerogative of the Government, but recently initiatives taken by private players are also being encouraged. They are allowed to make valuable and significant contribution. Many engineering and other technical colleges and institutes have been established by private players after due approval and accreditation by the Government. The focus is on overall development and networking of institutions. Thrust is on postgraduate education and research, particularly in IT. Keeping in view the emerging trends, efforts are under way to IT enable the entire engineering and technology education system in the country and to leverage new advances in Information and Communication Technologies to enhance learning effectiveness in the entire technical education system in the country.

All these efforts have ensured that India has, and will continue to have an abundant resource base of well-educated, highly proficient and skilled technical manpower, including IT professionals.

Technical Expertise

As a result of the successful economic liberalisation process and the quality of higher and technical education, India has achieved self-reliance in diverse fields. Indian economic and technical assistance is eagerly sought by a number of developing countries in Asia, Africa and West Asia. India provides expertise in projects ranging from construction of cement plants to airports and railway networks to many countries in these regions. A number of Indian firms have been active in this regard in South-East Asia, Africa and West Asia.

3 "Literacy at a Glance", <http://www.nlm.nic.in/lsi.htm>, Accessed on April 9, 2011.