

Labour Law and Special Economic Zones in India

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INTRODUCTION

While it has been acknowledged that the Chinese endeavour to manufacture for exports in *Special Economic Zones* (SEZs) has resulted in the expansion of employment and wages (Ge 1999), it has also been widely reported that basic labour standards are upheld rather poorly in China (Amnesty International 2002). To the extent that poor labour standards/conditions characterise the SEZ system in China—it is important to investigate whether the Indian version of the SEZ is subject to similar hazards. The Indian State undoubtedly aspires to imitate the Chinese experience¹ and success in expanding manufactured exports and employment by setting up SEZs—Indian policy documents often celebrate Chinese economic ascendancy, though rarely if ever acknowledging the concomitant controversy over labour rights. Thus, this paper aims at two tasks—First, to analytically describe the legal regime concerning labour in SEZs in India, and second, to point towards critical normative tensions, generated by the legal regime.

¹ It needs to be clarified at the outset that this discussion does not attempt a comparative exercise between Chinese and Indian SEZs—instead China is invoked here merely as an initial point of reference because the Chinese SEZs have inspired the Indian imagination to seek imitation.

It is important to minimally acknowledge these tensions in so much so as SEZs are central to the contemporary rhetoric of growth and development in India.

The first section of the paper attempts to isolate the content pertaining to labour from the overall law applicable to SEZs. Upon an initial reading of the law it is found that there is no apparent difference between the regime affecting labour within and outside the SEZs; however, upon a closer inspection it becomes evident that the regulation of labour inside SEZs is indeed subject to a new and modified regime. To appreciate the significance and nature of these changes, certain salient features of Indian labour law are sketched out to ensure that the context within which the changes can be understood is lucid. The next section lists a set of normative concerns engendered by the emerging legal regime within SEZs. These concerns range from the social costs associated with concentrating power in the executive office of the Development Commissioner (the office is expected to attract investment as well as look after labour interests simultaneously)—to social costs generated by instituting a system where, *de facto* implementation of labour standards is, at the best, very weak. It needs to be emphasised that this paper should not be read as an attempt at an overall cost-benefit analysis² of the Indian SEZ venture, but rather as an exercise that points to a set of costs faced by labour as a group, that *need to/should* be acknowledged in the act of instituting SEZs.

SEZ ASPIRATIONS

The first official mention of SEZs in India was in 2000, when the right wing National Democratic Alliance (NDA) government

² An overall evaluation of the SEZ endeavor is a complicated exercise involving the balancing of costs associated with problems such as land acquisition and displacement against the potential generation of wealth and employment. The extensive protest against SEZs in many parts of India further complicates the analysis.

announced a SEZ Policy which hoped to not only establish Special Economic Zones all over the country but also aimed to refurbish the existing Export Processing Zones³ with a view to providing an internationally competitive and ‘bother free’ environment for the manufacture of exports. The subsequent UPA government set about making this operative by ensuring that the policy was supported by an enabling law—the *Special Economic Zone Act, 2005*. The Act

³The phenomenal success of East Asian countries in achieving growth on the back of exports was made operational in many instances by setting up so called export processing zones (EPZs)—a small enclave within a city engaged in modern export-processing of manufacturing production. These strategies paid off well and starting in the 1960s these economies grew at unprecedented rates with concomitant increases in employment and wages. This growth was somewhat dampened by the financial crisis in the 1990s but the earlier rates of growth demonstrated the possibilities of growth which was primarily spurred by orienting the manufacturing sector towards producing for the export market. Many other countries have since attempted to imitate this model, including India but these imitations have not been as successful in generating extraordinary growth. These endeavors were not successful possibly because the scale of the operation and limited diversity of economic activity made these zones merely shifting shop locations for MNC firms, and were not able to adequately impact the economy as a whole because of weak linkages with the rest of the economy. The earliest EPZ in India was set up in 1964 and referred to as the Santa Cruz EPZ, followed by the NOIDA EPZ and Madras EPZ, all of which were small scale affairs and have provided only four percent of total exports over the 1990s. [Kumar (1989) in comprehensive study of export processing zones identifies the factors that adversely affected the performances of these zones. In a related study, Agarwala (2004, 2005) provides a descriptive account of export processing zones.] In the meanwhile China translated the experience of the East Asian countries by establishing Special Economic Zones (SEZ), starting the process in the late 1970s. The phenomenal growth experienced subsequently by China is widely attributed to the progressive establishment of these SEZs [Ge (1999)]. While the SEZ is inspired by the EPZ of the East Asian economies, it exhibits many unique innovations. In comparison to the standard export processing zone, Chinese SEZs are spread over a fairly large geographic space, where activity is not merely confined to manufacturing labour-intensive consumer goods but also includes the activity of firms that provide banking and insurance services alongside authoritative participation of the government administration in engineering the provision of infrastructure as well as orienting the general trajectory of economic activity in the zone. The original export processing zones had been locations where processing

was rapidly passed through the Indian Parliament with a very brief discussion on 10th May 2005⁴. Though the law was passed with ease and very little discussion, a good deal of adverse reaction has visited the SEZ endeavour later—particularly so, once the process of land acquisition to set up the zones was initiated. There have been many protests against SEZs by both affected parties and civil society, predominantly in relation to the vexatious issues of compensation and displacement as established patterns of property and livelihoods have come under challenge.⁵ The prominence of these concerns in the discourse has somewhat drowned out concerns regarding labour in SEZs, though some apprehensions have been expressed intermittently.

The tone of the apprehensions and degree of engagement with labour issues was set even at inception, as is evident from the brief

and assembly for export had been facilitated by removing or easing constraints that had limited the operation of market forces elsewhere in the economy—in China the SEZs should be viewed as moves to create a market environment while maintaining intense controls on the rest of the economy. This partial opening of the economy was performed by imitating the export promotion zones, but with the difference that while the export processing zones grew organically when faced with the limits of import substitution strategies of growth, China sought to jump directly from being a closed self reliant economy to being an economy oriented to the production for external markets.

⁴ For a full text of the debates see http://164.100.24.208/debate14/debfile_display.asp or alternately <http://loksabha.nic.in/debates>, daily debates, finally edited debates, session 4, date 10/05/05.

⁵ It is impossible here to document the large number of protests, their sheer size and diversity succinctly and attempts to do so here will deviate from the main intent of this article. However to name a few instances there have been extensive protests in *Nandigram* (See www.indianexpress.com/news/SEZ:-Protests-warn-of-Nandigram-at-Nandagudi-/33980), *Goa* (<http://www.indopia.in/India-usa-uk-news/latest-news/46013/National/1/20/1>) *Haryana* (www.merineews.com/catFull.jsp?articleID=137323) and *Maharashtra* (See infochangeindia.org/200708175423/Trade-Development/News-Scan/Protests-against-land-acquisitions-in-India-intensify.html) to name just a few. The matter is slowly finding its way into the Indian Supreme Court which has stayed a SEZ in Gujarat. (See <http://www.expressindia.com/latest-news/supreme-court-stays-adanis-mundra-sez-project/330797/>)

exchange in the Indian Parliament regarding the SEZ Act, where a couple of members voiced a line or two in relation to labour—One member, Rupchand Pal, said ‘This piece of legislation is a welcome move, but the Government should look into the basic labour interests, the ILO Convention, basic human rights, fundamental rights etc. I have given some extreme cases and examples and these are happening in our country.’ In a related comment another Member, Gurudas Dasgupta said ‘We wish you best, Shri Kamal Nath [the Commerce Minister and one of the key architects of the SEZ Act], but please have caution. Our task is to caution you to see that while your concessions are made use of, there should be a monitoring system also and the condition of labour has also to be protected.’ After the passage of the SEZ Act, a similar uneasiness was expressed by trade unions as a part of general list of Charter of Demands accompanying a general one day strike held on 29th Sept 2005 where one of the points in the charter state ‘Strengthen inspection and enforcement machinery to ensure strict implementation of all labour laws including statutory minimum wages in all sectors including SEZs and EPZs; no pro-employer changes in labour laws in the name of flexibility.’⁶ It needs to be appreciated that while this disquiet indicates a general suspicion and apprehension of labour conditions in SEZs, it is also the case that the articulation on these matters is never specific or explicit. This is largely on account of the clever nature of the regime governing labour—a regime that does not explicitly strip labour of their current rights but rather reorients rules ever so slightly, leading to a potentially disproportionate impact. To understand this it is important to begin by closely looking at the rhetoric and the minutiae of the legal provisions and rules that form an integral part of the SEZ endeavour.

⁶ See ‘General Strike: Reflection of Working Class Power’ in Labour File; A bimonthly journal of Labour and Economic Affairs (<http://www.labourfile.org/ArticleMore1.aspx?Nid=729>)

Labour and the Special Economic Zones Act, 2005

To best enter into the rhetoric and the enabling law associated with SEZs, it is useful to follow the contents of the official document on SEZs put out by the Ministry of Commerce and Industry, Government of India⁷. The document begins by stating that India has had ‘shortcomings’ in promoting exports, which have been ‘on account of the multiplicity of controls and clearances; absence of world-class infrastructure’—it is to correct for these hurdles and ‘with a view to attract larger foreign investments in India’ that ‘the Special Economic Zones Policy was announced in April 2000’. The document goes on to describe how this policy was translated into law by the passage of the *Special Economic Zones Act, 2005*. The Act is understood as having the following objectives—‘(a) generation of additional economic activity, (b) promotion of exports of goods and services; (c) promotion of investment from domestic and foreign sources; (d) creation of employment opportunities; and (e) development of infrastructure facilities.’ To achieve these ends, it is emphasized reiteratively throughout the document that the SEZ Act has been framed to enable ‘single window’ approvals.⁸ It is also emphasized that the dominant mode of transmitting information is to be self certification in the interest of simplifying compliance procedures and documentation. In view of this, the envisioned administrative structure consists of a *Board of Approval* at the apex which approves of a SEZ and each SEZ has an *Approval Committee* which approves the units and activities seeking entry into the zone. A *Development Commissioner* acts as the ex-officio chairperson of

⁷ *Background note Special Economic Zones in India* Ministry of Commerce and Industry, Government of India (<http://sezindia.nic.in/>).

⁸ Applications for setting up SEZs recommended by respective State governments are approved by a 19 member inter-ministerial SEZ Board of Approval and SEZ Rules that govern activity associated with a SEZ are characterized by ‘single window clearance’, whether it be a matter of setting up a SEZ, unit in the SEZ or in relation to matters of regulation by Central or State governments.

the Approval Committee—a reading of the SEZ Act clearly shows that an enormous amount of power is delegated to this office. The document then goes on to list the incentives and facilities offered to units in SEZs to attract investment, including foreign investment, which are specified in the Act. The list consists of a series of fiscal concessions which include exemption from customs and excise duties and exemption from income, central sales and service taxes. Next, the document provides some general information about the SEZs that have been approved—apart from the assertion that they include approvals of a number of labour intensive manufacturing industries, projected figures of anticipated growth of exports, investment and employment are provided. In particular it is suggested that if one takes into account the 130 SEZs notified so far, 17, 43,530 new jobs will be created by the year 2009 and that if all 341 SEZs that have been proposed are included in the calculation, four million new jobs will be created.

The document is silent on labour laws governing labour relations in the SEZs and an examination of the SEZ Act shows that the legal regime relating to labour has not been altered. In fact it is decreed that labour laws are excluded from the purview of Section 49 of the SEZ Act which empowers individual states to modify the SEZ Act and other related laws and regulations that enable the delivery of fiscal benefits envisioned by the SEZ policy. In relation to labour, it is stated that such powers of modification are not applicable to ‘matters relating to trade unions, industrial and labour disputes, welfare of labour including conditions of work, provident funds, employers’ liability, workmen’s compensation, invalidity and old age pensions and maternity benefits applicable in any Special Economic Zones.’ In other words unlike fiscal laws, rules and regulations, the set of labour laws, rules, regulations and orders relating to labour matters cannot be modified invoking the provisions of the SEZ Act. The overt statement that labour laws will not be changed within a SEZ partially explains the muted response to SEZs in relation to labour—it is hard to protest when the ‘speak’ says that there is to be

no change in the legal status quo. Even though labour laws cannot be modified, it is still open for state governments to make changes by notifications and other administrative means.

Upon close inspection of administrative documents generated by individual Indian states, announcing policies in relation to SEZs, it turns out that the regulatory regime faced by labour in SEZs has been modified. As a representative illustration take the case of a notification by the Government of Punjab⁹ that lays out the state's policy on SEZs where under the sub heading *Labour Regulations* it is stated that the powers of Labour Commissioner will be delegated to the Development Commissioner, that a system of Self Certification in respect of Labour laws notified under the scheme of Labour department shall be followed by the units in SEZ and that all units and other establishments set up in SEZ shall be declared as 'Public Utility Services' under the provisions of the Industrial Dispute Act, 1947. Similar statements either originating as notifications, intentions, ordinances etc. can be found in the documents released by a number of other Indian states such as Gujarat, Goa, Tamil Nadu, Andhra Pradesh and Karnataka. To more precisely understand the significance of these moves, it is important to locate these changes in the context of Indian labour law, legislation and the labour market.

The Context of the Changes—Indian Labour Legislation

The Indian labour force consists of 430 million persons¹⁰, about three fifths of which is employed in agricultural activity with the rest of the force spread over industrial and service activity. The standard institutional description of the Indian labour market charts a spectrum with rural labour at one end and labour employed in the high productivity formal sector at the other end, with the formal

⁹ Notification No.5/58/2002IIB/4630 Dated: 11.8.2005

¹⁰ For a detailed description of the Indian labour market see Anant, et al (2006).

sector employing only eight per cent of the work force. In between these two ends there is a large and growing residual ‘urban informal’ or ‘unorganised’ sector, typically associated with the provision of services, but more importantly associated with low productivity employment—the ubiquitous underemployed or the disguised unemployed of a ‘developing’ economy.

However a complementary institutional description of the Indian labour market would additionally emphasise the fact that while formal sector labour is covered by labour laws, the bulk of the labour force—the agricultural as well as the informal sector work force, is not. In other words, the many Indian labour laws are operational only for a worker who is employed in a legally recognised category of establishment where labour benefits are sanctioned by law and if she is legally recognised as a labourer, conditions that are fulfilled typically only if the worker is employed in the formal sector.¹¹ Given the overall desire of the SEZ endeavour to push for labour intensive export oriented consumer goods, the entire enterprise is probably best understood as being located at the notional border between the formal and informal sectors. At this location, the very act of employment generates a dilemma because the instant a worker is drawn from the informal/agricultural sector and employed, she becomes eligible for all the benefits provided by law to formal sector workers. If this were indeed to be allowed, it would raise labour costs which would presumably dampen national and international investment and if disallowed explicitly, the political rhetoric associated with the SEZ enterprise would end up being more widely challenged. Given the border or frontier location of the labour involved, the solution to this dilemma has been to nudge the practice of law in a

¹¹ See Sankaran (2007) who summarizes details of the law in this regard. It also needs to be noted in this context that a number of workers employed within ‘formal’ enterprises could still fall outside the capacity of the law due to the nature of the work they perform which can act as exclusionary criteria—criteria which is characteristically juridical. See also Sankaran(2006)

manner which minimises the coverage of labour law without actually changing the law—a relatively smoothly accomplished step, given the structure of Indian labour law.

To achieve an instant and overall sense of the content of Indian labour law, the *Industrial Disputes Act 1947* (IDA) can be read as a metaphor for Indian labour law in general (Singh, 2007). The IDA is the essential legislation associated with ‘industrial relations’ in India, covering labour disputes, strikes, lock-outs, lay-offs and retrenchments. The legislation gives the executive branch of the government a very important role in the resolution of labour disputes. When a dispute takes place, the legislation calls for the constitution of a *Works Committee* to resolve the manner internally, a step which is by and large not terminal because the decisions of such committees are not binding on the parties involved. The next stage is to initiate a *conciliation* process. This involves active participation of the executive branch of the government, involving officials of the Labour Commissioner. The *conciliation* process is an attempt to work out a settlement, but again since such a settlement is not binding on any of the parties—there is always pressure for the dispute to move to adjudication in a labour court. In this context it may be noted that it is entirely up to the involved labour department or Labour Commissioner to make a reference for adjudication, without such a reference the case cannot move into the labour courts. It may also be mentioned that when conciliation is a failure, the parties can call for arbitration under the IDA but since the agreement is not adequately legally binding, the impulse is always to seek subsequent adjudication.

The centrality of the executive involvement in the governance of labour is also manifest in the point that the Labour Department headed by the Labour Commissioner, is largely responsible for the implementation of various laws regarding work conditions. These responsibilities include monitoring for compliance through inspections and imposition of penalties for not conforming to the statute. One prominent law in this regard is the *Factories Act, 1948*,

which is intended to protect the safety and work conditions of workers. Other important laws include *Payment of Wages Act, 1936*, *Minimum Wages Act, 1948*, *Contract Labour (Regulation and Abolition) Act, 1970*, *Equal Remuneration Act, 1976*, *Interstate Migrant Workmen (RE&CS) Act, 1979*, *Payment of Bonus Act 1965*, *Child Labour (Prohibition and Regulation) Act, 1986*, *Payment of Gratuity Act, 1972*, *Labour Laws (Exemption from furnishing and maintaining registers by certain establishments) Act, 1988*, *Building and Other Construction Workers (RE&CS) Act, 1996*, *Industrial Employment (Standing Orders) Act, 1946*, and the *Maternity Benefit Act, 1961* and *Employees Provident Fund Act*. It must also be mentioned here that the controversial Chapter V-B of the IDA (and the bête-noir of national and international calls for reform in Indian labour legislation) which requires that firms employing more than 100 workers obtain permission before retrenching workers vests the power to grant such permissions with the state labour department or the Labour Commissioner.

Alongside acknowledging the prominence of the executive branch of the government in routing labour disputes and ascertaining the implementation of the law, it is important to take stock of the legal position of trade unions in India. While the *Trade Unions Act 1926* allows any seven adults to form a trade union, there are no legal principles in operation that compel the recognition of a particular trade union as representing the interests of the workers. Court judgments in this regard have made it clear that the law does not support obligatory recognition of a particular trade union as the bargaining agent¹². This creates a complicated regime because simultaneously Section 36 of the *Industrial Disputes Act* says that in the event of a dispute, a worker can be represented by *any* registered trade union. In effect this means that though the employer decides who the representative bargaining agent for workers is, any union can potentially instigate the dispute resolution process—as a result

¹² See for example *T.C.C Thozhilali Union v. T.C.C*, 1982 1 L.L.J 425

multiple unions are structurally encouraged, each having a support of a fraction of the work force. This framework clearly cannot easily be interpreted as one that encourages a cooperative bargain between workers and employers. This is not a case of direct confrontation since each side can always set into motion the conciliation–adjudication played out in an atmosphere of ambiguity as to the precise number of players. The critical participation of the executive branch of the government implies that not only is the labour department involved in the conciliation process but if the conciliation is not a success, the next stage again involves the executive since the labour department makes the crucial decision to refer the dispute for adjudication. Such involvement of the government at various steps of dispute resolution causes large scale political interference in the resolution process. It is thus no surprise that political parties control the bulk of union activity in India and the independent trade union movement is quite weak. In this context, it is, often enough not adequately highlighted and acknowledged that though India has signed some of the Conventions associated with the ILO Declaration on Fundamental Principles and Rights at Work, it has *not* ratified the critical Conventions regarding Freedom of Association, Right to Organise and Collective Bargaining¹³.

The brakes on the freedom of association and the rights to organise and collectively bargain are often made operative by exploiting the juridical device of ‘illegal strikes’—a contrivance that derives from the provisions of the IDA which enables executive government to support certain categories of employers in relation to labour. To see this, consider first the provisions of Section 22 of the IDA which states that if any person employed in ‘a public utility service’ goes on strike

¹³ India has ratified a total of 39 Conventions adopted at different sessions of the International Labour Organisation. These include conventions on hours of work, unemployment, night work, minimum wages, weekly rest, workers’ compensation, forced labour, labour inspection, child labour, underground work and equal remuneration for men and women for work of a similar nature.

without a) giving notice or b) strikes during conciliation proceedings, it will be considered to be a breach of contract. The requirements associated with ‘giving notice’ under this section are abstruse—in particular specifying very tight time schedules over which the notice needs to be given—clearly designed to make ‘going on strike’ in ‘a public utility service’ a very difficult proposition. Section 23 which pertains to establishments other than a ‘public utility service’ covered by Section 22 is lighter in its requirements, making it a breach of contract only if a strike is declared over arbitration, conciliation or adjudication proceedings. Next, Section 24 states that a strike is illegal if ‘it is commenced or declared in contravention of Section 22 or 23’. The stringent requirements associated with a ‘public utility service’ in contrast to other establishments, obliges one to look at the definition of the term given in Section 2 (n) where a ‘public utility service’ is defined by associating the category with railways, ports, post, telegraph, telephones, power, light, water and sanitation. In addition to this, clause 2(n) (vi) gives the government the right to in public interest to declare, by notification, any industry specified in the First Schedule of the IDA as a ‘public utility service’. Since labour is a concurrent issue as per the Indian Constitution, individual states have by amendment put in a host of industries in the First Schedule—to illustrate some of the industries labelled as ‘public utility service’ include dubious categories such as polyester, resin, flour and rice mills.

In relation to the SEZs, it may be noted that even before the advent of SEZ movement and ‘export promotion’ had reached the levels of current enthusiasm, ‘hundred percent export units’, particularly those located in export processing zones (the smaller precursors of the SEZs) have been regularly listed in the First Schedule by a number of Indian states. With the initiation of an explicit SEZ policy and the legislation of the SEZ Act, one of the key devices sought to be used to circumscribe labour rights is to have the establishments located in a SEZ to fall into the First Schedule. As mentioned earlier, various state level documents associated with

SEZ policies, explicitly state that apart from delegation of the powers of Labour Commissioner to the Development Commissioner of the SEZ, respective state governments have taken steps to declare SEZ as a 'public utility service', making units positioned in a SEZ immune to strikes.

PROMOTING REGIMES OF NON-IMPLEMENTATION

To summarise from the contents above, three significant features can be identified regarding the regime governing labour in SEZs. Firstly, ostensibly speaking, standard labour laws continue to operate in the SEZs; there is no change in the legislation and as per the SEZ Act, labour laws cannot be changed invoking the Act. Secondly, while there is no change in the laws, the laws will now be implemented by the office of the Development Commissioner rather than the Labour Commissioner. As a corollary to this reorientation, in keeping with the general agenda of 'single window clearance', procedural change requires units in a SEZ to report details pertaining to labour conditions prevailing in the units not to the Labour Commissioner but only to the Development Commissioner. Thirdly the ability of workers to organise strikes is curtailed by undertaking a general policy measure that labels economic activity within a SEZ as a 'public utility service'.

The Development Commissioner and the Concentration of Power

In the first instance this raises the question as to whether in fact labour laws have changed with the advent of the SEZs. Though the 'speak' of the SEZ Act suggests that the law has not changed, it has certainly been reinterpreted at the level of policy formulation so as to weaken implementation as far as possible. The implementation of Indian labour laws is in general, at the best, quite partial and tardy as is candidly admitted by *Report of the Second National Commission*

on *Labour* (2002). The move to pass on the powers of the Labour Commissioner to the Development Commissioner will make it even more unlikely that labour laws will be implemented. In fact it can easily be surmised that the Development Commissioner would have a structural incentive to prevaricate on implementing the laws as the office seeks to balance pressures to keep earnings of the zone high and to keep costs as low as possible. As has been described above, Indian labour legislation is structured to give the Labour Commissioner enormous voice in determining labour market outcomes, whether it is in relation to work conditions or firing decisions—all this power now comes to vest with the Development Commissioner, whose job, unlike that of the Labour Commissioner is not primarily to look into labour matters but to ensure that the SEZ is able to attract sufficient investment and generate earnings. This clearly generates a conflict of interests in the office and there is no in built guarantee that labour interests will be privileged efficiently in relation to those of employers.

Apart from this concern about competency in terms of incentives, questions about the competency of the office of the Development Commissioner to deal technically with labour matters can also be raised. It is an open question as to whether the office of the Development Commissioner will be able to learn about the implementation of the plethora of labour laws¹⁴ in place, if so, it is essential to acknowledge that this will be a costly in resources and to the extent such learning is not invested in, it will be costly to

¹⁴ It is apt here to quote a set of passages from *Report of the Second National Commission on Labour* (2002)—‘Those who lead and ‘man’ the Ministry should therefore, have the highest degree of competence, vision, empathy, tact, skill in the arts of persuasion and inducing introspection, and activating social and group consciences....To enable industries to be competitive in the present context and at the same time to protect the rights of workers, labour administration has to provide an industrial relations system, which induces the adoption of a new mindset and participatory culture including the development of appropriate skills. On the enforcement side, labour administration has to ensure effective enforcement of labour laws.’

the degree the office slackens in the implementation. It appears that policy makers are not incognizant of such costs—for instance a SEZ related policy document¹⁵ from the Government of Gujarat states ‘For inspections relating to workers’ health and safety, units will be permitted for obtaining inspection reports from accredited agencies as may be notified by the State Government.’ Such farming out of statutory obligations admits not only to lack of in-house competency but bespeaks of the denial of the moral hazard associated with such data being generated by private agencies.

Indeed, if these costs—many of them intangible—were to be aggregated, they are not necessarily small. Unfortunately the generation of such costs are endemic to the process of reform in India. Such reform is typically initiated by fragmentation of ongoing institutions rather than by consolidation—in the case on hand—possibly the reform of the office of the Labour Commissioner could have been more beneficial all around rather than fragmenting the office by removing the Labour Commissioner and vesting the very same powers with the Development Commissioner.

It is also pertinent to raise questions about the ‘single window clearance’ as a strategy to improve ‘governance’—this notion, as we have noted earlier, permeates all SEZ aspirations and policy including matters relating to labour. This celebration of ‘good governance’ as being tantamount to speed, is subject to question because speed of decisions and generation of quick outcomes is clearly only one dimension of governance (the notion of ‘governance’ presumably carries the burden of multiple objectives). By privileging speed alone, the lack of adequate checks and balances denies voice to other normative concerns that would operate within a SEZ. It is highly probable that the premium on speed acts primarily to reinforce

¹⁵ Policy Regarding Establishment of Special Economic Zones in Gujarat Government of Gujarat Industries and Mines Department Resolution No. SEZ-2001-1465-G

the concentration of power in the office of the Development Commissioner, initiating the institution of an important centre of rent seeking activity.

Labour Standards

Possibly the most explicitly noticeable circumscription of labour rights is manifest in the relegation of all units functioning within a SEZ to the category of 'public utility service' and thereby curtailing the ability of workers to initiate strikes. The brakes on the right to strike take on particular significance in the face of a fragmented trade union movement—the stringent requirements mean that when unreasonable demands are placed on workers, they will have to be borne out because only very organised resistance can work around the impediments faced by a striking 'public utility service'. It is unlikely that unions will be able to achieve a credible presence in SEZs, apart from a possible token presence. This conjecture is somewhat strengthened by observations reported in a survey performed by *The International Trade Union Confederation (ITUC)*¹⁶. This document reports that trade unionists are not able to enter the EPZs/SEZs in India because entry in to the zones is restricted to the workers who are transported in by their employers, making it is very hard to organise workers and rendering union activity virtually non existent. The survey proceeds to note that the bulk of the employment in these zones is confined to young women who are too frightened to form unions. These women are subjected to bad working conditions and compulsory overtime. It is also reported workers face the constant threat of immediate sacking if they make demands to implement labour laws. Studying firms in Cochin Special

¹⁶ See 'Annual Survey of the Violations of Trade Union Rights 2007: India' *The International Trade Union Confederation (ITUC)* <http://survey07.itucssi.org/getcountry.php?IDCountry=IND&IDLang=EN>

Economic Zone and NOIDA yet other studies repeat precisely these patterns and findings—no unions, poor working conditions, a largely female work force and threats of being sacked if moves are made to demand the implementation of labour laws. (George, 2003; George, 2006) Apart from reporting these patterns these studies also observed the practice of non implementation of labour laws is consciously supported by the state particularly by limiting union activity as well as ensuring that SEZs remain listed as Public Utilities. At the level of official rhetoric of the Indian state, public policy documents tend to represent SEZs as locations where the legal regime will allow a ‘flexible labour market’—for instance the *Economic Survey 2003–2004* celebrates the delegation of the powers of the Labour Commissioner to the Development Officer of the SEZ as a means to ‘make a flexible labour policy applicable to the units in such zones.’ While the term ‘flexible labour policy’ could be read only as an euphemism indicating a regime characterised by the ease of firing workers, it more widely signals an administrative framework structured to minimise the chances of *any* labour law being implemented.

The fact that units in existing Export Processing Zones prefer employing women (since, it is reported, women are perceived as being docile and dexterous) has compelled some detailed studies relating gender and work in these zones. Some of this work has been reviewed by Ghosh who collates the fact young women form the bulk of the work force in most Export Processing Zones (Ghosh, 2004). Apart from reporting the pattern that union activity is widely discouraged and absent in the zones, she notes that, among other things, workers are not paid minimum wages, work very long hours to complete stringent targets, are subject to being fired without justification or compensation, denied any maternity benefits and suffer from work related illness. These concerns come noticeably alive in the narrations of women working in the Madras Export Promotion Zone assembled by Swaminathan (Swaminathan, 2005). This ethnography brings out the lived experience of work in ‘export

oriented' industries under a regime where labour laws and standards are implemented poorly, if at all—resulting in demanding work schedules, unhygienic work environments, sexual harassment and ill health arising from both the nature of the work and the ambient air quality at the work place. However the most interesting insights that emerge from this ethnography are not confined merely to the documentation of the adverse work conditions but flow from noting the mixed affects generated by the fact that employment in the export-promotion zone offers these women a higher 'wage' than they would earn otherwise. This admixture of the negative and positive affects of such employment causes Swaminathan to say '*The observation that wage income has enabled families to improve the quality of food consumed has to be juxtaposed against the reports of many respondents that they were unable to eat before leaving for work for want of time and also they often say there was an odour pervading the work areas leading to a loss of appetite and reduced intake of food.*' It is precisely this juxtaposition that is challenging and is at the heart of the critical questions that can be raised in relation to the move to make 'flexible labour policy' applicable to SEZs. Clearly, the opportunity of employment and higher wages involves an internal trade that subjects the employed worker to some combination of long hours, sexual harassment and unhygienic and/or hazardous work conditions. What normative valuation can be made of this trade-off?

One way to initiate such an evaluation is to proceed with a standard economic welfare exercise performed over labour employed in SEZs; it may not be untoward to confine ourselves to this category, since (as noted earlier) one of the key agendas of the SEZ endeavour is to encourage the developmental goals of expanding productive employment. In this setting the worker who gains employment does so voluntarily, presumably weighing the utility of gaining productive employment and the accompanying wage increase against the disutility of hazardous/stringent/sexually exploitative work conditions. The standard precepts of welfare economics view any voluntary choice as Pareto improving and by

this criterion the outcome of a single labourer taking on a job in a SEZ is unequivocally welfare improving for the worker. However what is obvious and true of such a single transaction, considered in isolation, may not hold so unambiguously if a number of such transactions were simultaneously considered. In some recent work, Basu has shown that addition over many such transactions is not necessarily welfare enhancing because there are often spillover effects on those not immediately employed (Basu, 2003). Though he makes his argument in the context of sexual harassment laws, there is a suggestion that the argument could be more widely extended to a 'maquiladora, or an export-processing zone'. Indeed this model extends quite easily to the Indian move to atrophy labour standards in SEZs, and since it sheds light on the issue on hand, it is useful to run through a simple version of the model.

A Model of Employment with and without a Ban on Hazardous Work

Using the category of 'hazardous work' as a metaphor for labour standards understood more widely, assume *a perfectly competitive market* where all agents are price takers. To set up the model, two regimes can be defined:

Regime I: Labour Standards are Upheld and Hazardous Work is Banned

Under this regime labour standards are upheld and therefore hazardous work is banned legally and the ban is fully implemented. Invoking the usual forces of supply and demand in the labour market a single wage (w^*) will prevail in equilibrium.

Regime II: Labour Standards are Not Upheld and Hazardous Work is Not Banned

Under this regime there is no legal obligation to uphold labour standards and since hazardous work is not banned, some firms offer employment which is subject to hazard while others offer work

free from hazard. Thus, two options are available to workers, one, workers can be employed in a firm where work is *hazardous* (H) and the other where work is *not subject to hazards* (NH). Since the firm that offers hazardous work gets a benefit from not upholding labour standards (for example, the benefit derived from not paying the cost of providing protective gear), a premium should be subtracted from the wage the firm offers and this amount will equal the wage offered by the firm providing the option for *non-hazardous* work in equilibrium, an equilibrium which is also characterised by the fact that all firms will be indifferent between the offers that they make, i.e. Firms are indifferent between being an ‘H firm’ or a ‘NH firm’.

Turning to workers it is fair to assume that workers find hazardous work painful (measured as c_i) but though they all find it painful, some find it less painful than others. If it is further assumed that there exists at least one worker whose pain exceeds the premium that a hazardous firm enjoys and there is at least one worker whose pain is less than the premium, then both types of offers will prevail in the market. Thus some workers take up hazardous work like the women who spoke to Swaminathan (Swaminathan, 2005), while others do not. In equilibrium two wage rates will prevail: One for firms offering hazardous work (w^*_{H}) and the other for firms that offer non hazardous work (w^*_{NH}).

Proposition

By comparing the two regimes the model throws up a very interesting proposition—Consider the scenario where hazardous work is banned legally and the ban is fully implemented. In this case only a single wage (w^*) will prevail in equilibrium. It can be proved that this single wage will be higher than the wage rate offered by firms making non-hazardous work offers if there was no legal ban on hazardous work ($w^* > w^*_{NH}$). The significance of this proposition becomes evident in the process of spelling out the intuition behind the result.

Intuitive Proof

To see the intuition behind this result consider an initial situation where a ban on hazardous work is in place, which is replaced by a regime where there is no such ban. After the ban is removed if it is held that wage w^* remains as the wage associated with firms that offer non hazardous work, this will clearly not be the equilibrium wage because of the presence of offers being made by firms that offer hazardous work, which a certain subset of workers will take up—those who value $w_H - c_i > w_{NH}$. This higher net wage will cause labour supply to expand and cause w_{NH}^* to be less in equilibrium than the initially assumed w^* . If now one were to switch back to a regime which bans hazardous work all workers who are working in firms offering non-hazardous work will benefit because $w^* > w_{NH}^*$. Furthermore many workers whose valuations of c_i are such that they lie in the interval $w^* > w_H - c_i > w_{NH}^*$ also stand to benefit from a regime that bans hazardous work. Thus though a single offer of hazardous work is Pareto improving, banning hazardous work does not lead to a Pareto inferior state in relation to absence of a ban. For this result to hold it is clear that we need large numbers—it is when a large number of offers for hazardous work are taken up then adverse affects are visited on the welfare of a bulk of remaining workers.¹⁷

Welfare

To confront alternatives that cannot be ranked on purely Paretian grounds in the model—all those workers who have such a low valuation of pain from hazardous work that they value the high net wage that they get from hazardous work more than the wage they would get if they worked in a regime that banned hazardous work, Basu invokes certain ethical considerations to override their loss of

¹⁷ It needs to be mentioned in this context that Basu (2003) demonstrates that if we do away with the axiom of transitivity, one can get a similar result with smaller numbers.

welfare. To do this he classifies preferences as being maintainable and inviolable, where maintainable preferences are associated with having rights that one can pay for (I have the right to not work everyday, though I will lose income for the days I do not work) and inviolable preferences are associated with having a right but no one should have to pay for having such a right (I have the right to be free of sexual harassment at the work place). He argues that the notion of inviolable preferences should be invoked to privilege a person who is forced to take a low paying job because of her inviolable preference, and make this the basis for taking action to legally ban such outcomes¹⁸. These arguments allow one to mix ethical concerns with economics based consequentialist arguments to make a powerful case for upholding labour rights and standards.

Whereas the matter as to which right should be considered inviolable may be subject to moral/ethical discourse, the consequential argument outlined above cannot be easily dismissed. To restate the central insight—while the expansion of economic activity without upholding labour standards may lead to a set of Pareto superior contracts, this does not in turn imply that upholding labour standards is Pareto inferior to a regime that upholds standards. The impact that the diminishing of labour rights and standards envisioned in SEZs cannot just affect those who will be employed in the zone but also labour as a group—particularly if the numbers are going to be large, large numbers as has been noted are essential for the argument to hold.

There is obviously no easy way by which one can precisely say at this stage as to how labour will come to be situated once the Special Economic Zones become fully operational—the zones *will*

¹⁸ An echo of this can be found in Edwards where he says, ‘some social relationships and outcomes are so vital to the welfare of society and may be so inadequately determined by the market that society has refused to leave their determination solely to the market’ (Edwards, 1993: 43)

provide some employment though whether such employment will be in consonance with the predictions put out by the Ministry of Commerce and Industries cannot be predicated with any accuracy. Much will depend on linkages with the rest of the economy and the extent to which skill based technical change is incorporated by the firms operating in the SEZs. However to the extent employment is generated among the unskilled labour force, one can only be pessimistic about the work conditions such employment will bring to labour given that the legal framework is oriented to promoting a regime of non-implementation of labour laws and standards.

CONCLUSION

A reading of both the rhetoric and the formal statute law associated with the SEZ endeavour in India seems to suggest that there is little difference between the legal regime confronting labour within and outside the SEZs. However upon closer inspection, documents associated with the articulation of the ongoing SEZ policy show that the regime of labour governance in SEZs is oriented towards the non-implementation of the existing law. While it is widely accepted that labour laws are generally poorly implemented in contemporary India, the envisioned labour regime in SEZs has been consciously structured to promote the non-implementation of laws. One of the key devices to enable this regime is to place the implementation of labour laws in the office of the Development Commissioner rather than the Labour Commissioner. The other device is to mitigate the impact of labour laws in SEZs by exploiting certain provisions of the *Industrial Disputes Act* that enable Indian states to label all economic activity in a SEZ as a 'public utility service', which in turn, acts to curtail the ability of workers to strike and therefore lower the bargaining strength of labour in a SEZ. This regime obviously generates a series of social costs.

The act of shifting the implementation of labour laws from the Labour Commissioner to the Development Commissioner

undoubtedly generates a conflict of interest in the office, generating costs to the extent there is an inducement with the office not to privilege labour interests in relation to those of employers. Apart from such costs reflected in terms of incentives of the office yet other costs are generated in terms of the competency of the office to deal technically with labour matters. These costs could have been mitigated to the extent reform in the legal regime governing labour were to be targeted at the office of the Labour Commissioner rather than fragmenting the office by vesting the very same powers of the office with the Development Commissioner. Since the stated aim of the regime of governance in a SEZ is 'speed' of decisions, other normative concerns find very little voice in the venture—making the lack of checks and balances in the office act to centralise power in the office, possibly instituting an important centre of rent seeking activity.

Since the administrative framework governing activity in SEZs is structured to minimise the chances of *any* labour law being implemented, this has a negative welfare impact on labour at large. Following Basu (2003) it can be maintained that while the act of a single worker gaining employment and higher wages in an unregulated SEZ is a voluntary welfare enhancing move, once the effects of the unregulated regime are taken into account on labour as a group, it needs to be conceded that the beneficial affects on single individuals are clearly not 'additive'. Thus while the unregulated regime may in tandem with the aspirations of the SEZ endeavour expand employment and wages in SEZs—this is not without a negative impact or imposition of costs on labour as a group. It is precisely this sensitivity as to how protagonists of a normative exercise are conceived that plays an important role in evaluating the legal regime that should be informing the SEZ endeavour.

Finally it needs to be noted that SEZs are locations where the aspiration to have 'labour flexibility' a euphemism for 'reforming' India's labour laws is sought to be made operational. There is a definite case to reform the laws in a manner such that both labour

and producer interests are adequately balanced—laws that enable producers to be more flexible backed by social security and labour standard legislation. This needs to be followed by the establishment of a system that ensures implementation of the laws. To do this requires serious engagement with various social and political groupings—it is to precisely avoid this engagement Indian labour law is transforming incrementally by eroding labour rights, representing a certain ‘reform by stealth’ a phrase used by Nagraj (2004), a ‘reform’ process that is hurting labour as a group.

References

- Agarwala A (2004) ‘*Export Processing Zones in India: Analysis of the Export Performance*, Working Paper 148, Indian Council for Research on International Economic Relations, New Delhi
- Agarwala A (2005) ‘*Performance of Export Processing Zones: A Comparative Analysis of India, Sri Lanka and Bangladesh*’ Working Paper 148, Indian Council for Research on International Economic Relations, New Delhi
- Amnesty International (2002) People’s Republic of China: *Labour Unrest and the Suppression of the Rights to Freedom of Association and Expression*, AI INDEX: ASA 17/015/2002
- Anant, T C et al (2006): ‘Labour Markets in India: Issues and Perspectives’, in Jesus Felipe and Rana Hasan (edited): *Labour Markets in Asia: Issues and Perspectives*, Palgrave Macmillan, for Asian Development Bank, Manila.
- ‘Annual Survey of the Violations of Trade Union Rights 2007: India’ *The International Trade Union Confederation (ITUC)*
 (<http://survey07.ituc-csi.org/getcountry.php?IDCountry=IND&IDLing=EN>)
- Background note Special Economic Zones in India Ministry of Commerce and Industry, Government of India (<http://sezindia.nic.in/>).
- Basu, Kaushik (2003) ‘The Economics and Law of Sexual Harassment in the Work Place’ *The Journal of Economic Perspectives* Vol. 17 No. 3 (Summer) pp. 141–157
- Edwards, Richard (1993) *Rights at Work: Employment Relations in the Post-Union Era* Washington D.C The Brookings Institution
- Ge, Wei (1999) *Special Economic Zones and the Economic Transition in China*, Singapore, World Scientific

- 'General Strike: Reflection of Working Class Power' in *Labour File: A Bimonthly Journal of Labour and Economic Affairs* <http://www.labourfile.org/ArticleMore1.aspx?Nid=729>
- George, Sobin (2003). *Informalisation of Labour and Its Implication for Health: A Study with Special Reference to Export Processing Zones in India*, Unpublished M.Phil Dissertation Submitted to Jawaharlal Nehru University.
- George, Sobin (2006) *Labour Practices and Working Conditions in TNCs: The Case of Samsung India' in Labour in Globalising Asian Corporations: A Portrait of Struggle*, Hong Kong: Asian TNC Monitoring Network Series, AMRC,
- Ghosh, Jayati (2004) 'Globalisation, Export-oriented Employment for Women and Social Policy: A Case Study of India' in Razavi, Shahra Pearson, Ruth and Danloy, Caroline (eds.) *Globalisation, Export-Oriented Employment and Social Policy: Gendered Connections*, Hampshire, Palgrave Macmillan.
- Government of India (2003–04), *Economic Survey 2003–04*
- Government of India (2002) *Report of the Second National Commission on Labour*
- Kumar Rajiv (1989) *India's Export Processing Zones*, Oxford University Press, New Delhi
- Nagaraj, R. (2004), 'Fall in Manufacturing Employment: A Brief Note', *Economic and Political Weekly*, Vol. 39, pp. 3387–90, July 24–30.
- Sankaran Kamala (2006) 'Protecting the Worker in the Informal Economy: The role of Labour Law' in Guy Davidov and Brian Langille (ed.) *Boundaries and Frontiers of Labour Law: Goals and Means in the Regulation of Work*, Hart Publishing, Portland, Oregon
- Sankaran, Kamala (2007) *Labour Laws in South Asia: The Need for an Inclusive Approach*, International Institute for Labour Studies, Geneva: International Labour Organization
- Singh, Jaivir (2007) 'Labour Laws' in Kaushik Basu ed. *Oxford Companion to Economics in India*, New Delhi: Oxford University Press
- Swaminathan, Padmini (2005) 'The Trauma of 'Wage Employment' and the 'Burden of Work' for Women in India' in Kannabiran, Kalpana (ed.) *The Violence of Normal Times: Essays on Women's Lived Realities*, New Delhi, Women Unlimited.

