

## SE(I)ZING India!

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### Why the government should reconsider tourism development through STZs and SEZs

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#### EQUATIONS, November 2006

The Prime Minister, Dr. Manmohan Singh in a recent interview to the media termed the agitations across the country against the Special Economic Zones (SEZs) as “*Expressions of a functional democracy*” and reiterated that the sustained agitations and protests from far flung places around the nation need not be perceived as a weakness of the system<sup>1</sup>. He might have to gear up for more opposition with the central government now planning to cash in on the SEZ frenzy through setting up of Special Tourism Zones (STZs) across the country.

The Ministry of Tourism, Government of India is considering setting up Special Tourism Zones (STZs), on the lines of SEZs, to boost tourism and increase investment, employment and infrastructure through it<sup>2</sup>. It is working on advice from the National Tourism Advisory Council (NTAC) and private players for this proposal. In addition to the current national furor against the SEZ policy, this new proposal from the government to use the SEZ model to promote tourism through STZs has to be challenged on the economic, democratic, environmental and social concerns that arise.

#### Why is the SEZ Policy being opposed?

When the SEZ Act was passed in 2005, it generated a euphoric response from the private sector. The general feeling was that the government had finally given the space and incentive for private industry in upcoming sectors like IT-ITES, BT, real estate, and pharmaceuticals to boom. The last eight months have seen an unprecedented rise in SEZ fever with state governments undertaking widespread acquisition and leasing out/selling land for SEZ development; the central government’s blitzkrieg approval for over 250 SEZ projects and private entrepreneurs seizing this opportunity. All of these have raised concerns in the eyes of those who do not see SEZs benefiting them but rather increasing hardships for economic livelihood and sustenance. And these concerns are not unfounded.

Some of the prime concerns being raised by farmers groups, fisher folk communities, marginalized communities and other movements on the government’s SEZ policy are:

- Large scale and unjustified acquisition of land
- Inadequate resettlement and rehabilitation policies and plans
- Inadequate employment opportunities for local people through SEZs leading to loss of livelihood
- Increasing burden on natural resources and the environment and alienation of local communities from these resources
- SEZs contributing to real estate boom and creating real estate zones
- Potential revenue loss from heavy subsidizing in SEZs
- Concerns over the process of approving and implementing SEZs – where is local government consultation and sanction?
- No wider public consultation

The main question that voices and agitations across the country are raising is – if SEZs are truly meant to boost growth, what is the intended growth and for whose benefit? Going by the SEZ policy, private profit seems to be the barometer of growth and the preference by policy is for private players to lead the nation’s growth. The issue of development and the links between growth and development are however missing.

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<sup>1</sup> Refer “*Conflict Zones*”, Venkitesh Ramakrishnan, **Frontline**, October 20, 2006, Pg 4

<sup>2</sup> Refer “*Borrowing SEZ idea, Centre starts working on Special Tourism Zones*”, 7<sup>th</sup> November 2006, **Indian Express**, New Delhi.

The government has even been cautioned by its own financial bodies. The Reserve Bank of India, Planning Commission and even lead economists of the IMF have been crying hoarse over potential revenue losses through SEZs. Much to the chagrin of industry, the RBI has even resorted to stringent measures of directing all nationalized banks not to give credit at concessional rates to SEZ developers and treat it on par with real estate. Political parties like the CPI (M) have given scathing responses to the SEZ policy demanding that the government ensure farmers are adequately compensated and spare prime farmland from SEZs. There have been some even more interesting objections to SEZs like the Home Ministry objecting to an upcoming multi-product SEZ project in Kamrup, Assam on security grounds. In response to such criticism from all quarters, Commerce Minister Kamal Nath himself publicly said that prime agricultural land should be spared from SEZ development. But as the above summary indicates, concerns on SEZs go much beyond farmland and whether all the others issues have been satisfactorily addressed is questionable.

### **Why STZs must be challenged**

Tourism is the fastest growing sector in the services industry globally. Over the years, the arguments for tourism promotion have changed from merely its capacity to bring in foreign exchange to creating more income and employment opportunities for “local communities”. But the empirical evidence to support these arguments - especially linking increased investment in tourism to employment and income benefit to the locals - are negligible<sup>3</sup>. In addition, it is also true that tourism is the least regulated sector. Under cover of myths of it being smokeless, tourism’s adverse impacts – economic, environmental, ecological, social and cultural rarely come under the scanner. Therefore, it is a matter of grave concern when the government chooses to promote tourism through a model like SEZs, which do not address these inequities, imbalances and impacts, or ensure benefits to local communities.

### **STZ: old wine in a new bottle?**

The concept of identifying specific areas/zones for intensive tourism development is not new. It was first introduced in the National Tourism Policy of 1992 through Special Tourism Areas (STAs). When the STA policy was proposed in 1992, some of the identified locations were Bekal (Kerala), Sindhudurg (Maharashtra), Diu, Kanchepuram and Mahabalipuram (both Tamil Nadu). It is important to learn from the historical experiences of these locations on what have been the experiences of local communities in those potential STAs.

Consider Bekal in Kerala and Sindhudurg in Maharashtra. The long-term objective of the government converting the entire Konkan coastal belt into a tourism hub was reflected in the choice of places like Bekal and Sindhudurg that border the Konkan coast, with Goa being right in the centre. Large-scale infrastructure projects like the Konkan Railway and Mangalore Airport were seen to facilitate the movement of tourist traffic. In Bekal, a total area of 1000 acres with 11 km. of beach stretch was acquired through a ‘single window clearance’ mechanism with an initial investment of 1000 crores for development of the STA. The plan was to construct an International Tourist Village in Bekal– a resort of international standards that was to cater to the needs of foreign tourists with facilities like adventure sports, golf courses and tennis courts<sup>4</sup>. For the project to become a reality, 30000 farming and fishing families covering four fishing panchayats would have been rendered homeless and would have lost traditional livelihood<sup>5</sup>. A writ appeal petition was filed in the Kerala High court in 1995 highlighting that the project was being planned and pushed ahead with the greatest of secrecy, it would violate coastal zone regulation, had not complied with necessary Environmental Impact Assessment and superseded the rights of the panchayats. Following sustained struggles by the affected communities on the ground supported by larger campaigns against this project, it was finally withdrawn.

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<sup>3</sup> Refer “*Weighing the GATS on a development scale: the case of tourism in Goa, India*”, **EQUATIONS** January 2004, Bangalore.

<sup>4</sup> The Bekal Resorts Development Corporation (BRDC) brochure, states the ‘Bekal Game Plan’ as follows – ‘Identify, acquire and develop potential resort sites, strengthen infrastructure through roads, power, water supply and sewage systems, invite promoters and investors and market Bekal as an international destination’.

<sup>5</sup> Bekal Tourism Project: An SOS call **EQUATIONS** ANLetter Volume II Issue 4 November 96

In Sindhudurg, a stretch of land of 84 kms in length and 1 km in width, situated on the south Konkan coast belt was identified by the central government to be an STA. Large acres of agricultural land were acquired by the government for the construction of 5 star hotels, resorts and the proposed Oros Airport. Tourism development model in the region was to cater specifically to the needs of foreign tourists with the sole intention of bringing in foreign exchange. The image of Sindhudurg as a 'foreign tourist destination' has not only made it completely inaccessible to domestic tourists due to its ultra - expensive nature but also has gradually adulterated its socio - cultural ethos. Tourism activities have caused the displacement of locals from areas like Mithabao, Tarkali, Shiroda and Malwan giving rise to anti - tourism protests and demonstrations in many places. In both the cases, the project failed to understand the ethos and concerns of the local community with respect to issues related to livelihood, the environmental degradation to the region and cultural erosion. The only motive behind the project was generating greater revenue and creating a tourist hub on the lines of Goa.

### **The message in the bottle - the current STZ concept**

The Special Tourism Zone idea currently being floated by the Ministry of Tourism, specifically to capitalize on the SEZ model, comprises the following features<sup>6</sup>:

- STZs are to be located in tourist destinations, cities, along the coastline
- Government should provide single window clearance
- 100% tax exemption for a period of 10 years
- Each STZ should be able to provide 2,000 to 3,000 hotel rooms.
- Facilities for shopping, entertainment
- Exemption from import duty on capital goods
- Withdrawal of luxury tax, lower VAT etc.
- Exclusive NRI tourism zones or elite world tourist zones for high-end global tourists

The government hopes that with these incentives, private investors will come flocking to STZs resulting in improved infrastructure (i.e. improved even beyond infrastructure in existing SEZs), increased economic activities (i.e. providing an enabling environment like hotels, amusement parks, entertainment facilities, shopping malls for business to thrive) and creation of jobs for the “dependent communities” in the STZ area.

Some of the states, which are already considering setting up STZs, are Kerala, Haryana, Delhi and Maharashtra. In Kerala, the Malabar region, high ranges and Wayanad belt are being proposed for STZs where the stress would be on tourism-related infrastructure development<sup>7</sup>. In Delhi, the proposed Commonwealth Games Village is being considered for an STZ. As early as 2004, the PHD Chamber of Commerce (PHDCCI) had submitted a proposal to the Delhi government asking for STZ status for the 250-acre games village as a ‘one-stop shop’ for all tourists into Delhi<sup>8</sup>. Also, the Gorai-Manori-Uttan area of Maharashtra has been proposed for a specific Tourism and Entertainment SEZ<sup>9</sup>. The Subhash Chandra promoted Essel Group, which is the developer of this 1000-hectare plan, will invest Rs 500 crore in developing the Zone that promises to be Disneyland, Hollywood and Las Vegas rolled into one<sup>10</sup>. The land for the venture has been identified near Essel’s already existing amusement park near Mumbai.

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<sup>6</sup> Id. 2

<sup>7</sup> Refer “Special tourism zones would boost Kerala's economy”, 20<sup>th</sup> Sep 06, [www.domain-b.com](http://www.domain-b.com)  
[http://www.domain-b.com/industry/tourism/20060920\\_zones.html](http://www.domain-b.com/industry/tourism/20060920_zones.html)

<sup>8</sup> To provide an incentive to potential investors, PHDCCI had requested the Government for basic infrastructure support like road networks, drainage systems, potable water supply, sanitary sewer and waste management, electric power supply distribution and telecommunications. Refer “Commonwealth Games 2010: Special Tourism Zone proposed for Delhi”. Refer **Project Monitor**, India’s First Newspaper on projects. <http://www.projectmonitor.com>

<sup>9</sup> As taken from the Mumbai City Development Plan (CDP), ‘the scope of this project could easily extend to establishment of an Entertainment SEZ, with focus on tourism and entertainment. This is based on the fact that substantial potential exists in Mumbai in the form of entertainment industry and the film and television industry. The exports potential in the entertainment sector has been growing and this needs to be tapped and supported through the SEZ. Particularly the animation film industry has potential for development in SEZ’

<sup>10</sup> Refer “Chandra pitches for gaming SEZ”, **Business Standard**, 14th March 2006.

It is clear that the nature of tourism that will be promoted through STZ model is investment-driven, international and elite-tourist focused, resource heavy and even more unregulated. Such a model has been contested earlier when STAs were proposed and there is sufficient reason to oppose the current proposed STZ model as well.

### **Creating enclaves for tourism?**

STZs, STAs and like-named models promote “enclavisation”, which in the context of tourism refers to the process of converting tourist locations into exclusive ‘islands’ where elite tourism can flourish - thereby detaching them from the local environment, culture and economy. Globally, the process of enclavisation in tourism has been a result of the need to create exclusive centres of tourism, which exploit local resources but give back little benefit to the local economy. Enclaves are also often viewed as safe investments, which would ensure a steady, continuous and reliable, flow of income from tourism through all seasons. The concept of enclavisation can also be interpreted to signify a creation of employment enclaves where tourism development provides certain kinds of employment to certain kinds of labour force, locking the local community out, without providing them a chance to benefit from the “zone”.

The STZ concept has several international counterparts, especially in island nations like the Caribbean, Fiji, Maldives. The intense resource usage by tourism establishments, the resultant environmental pollution, widened income inequalities and socio-cultural effects are some of the adverse impacts being experienced in tourism enclaves around the world. Local communities are yet to see visible economic gains from tourism in these regions, as economic returns have just not ‘trickled down’ to their level. Generally, it is observed that the employment opportunities have also been limited to low-end jobs like housekeeping and support services like cleaning, gardening, security and the occasional guide services, except in cases where developers have taken special effort to build capacity of the local communities on skills and language<sup>11</sup>.

The proposed STZ concept by the Government of India has all the makings of a tourism enclave, which will not ensure long-term benefits to local communities. What meaningful employment, which is high-end and skill-based can local communities currently living in tourism areas hope for, in shopping malls, amusement parks, spas and luxury business hotels? In an industry that is already biased against local community/ unskilled labour, STZs will only increase the division without integrating capacity-building measures. Moreover there are already reports of foreign workers being brought in for employment in Indian SEZs, mostly in cases when the private developer/investor themselves are foreign<sup>12</sup>.

In fact, the potential for tourism-related activities being high in all SEZs and not only STZs, this will have a high compounded effect on local communities. This is because according to the SEZ Act and the Special Economic Zone Rules 2006 (to be referred as Rule), only 25% (as per the new proposal in case of IT services or SEZ for special products the limit is 35%) of the total area in any SEZ need be statutorily used for developing and setting up of industrial/ manufacturing units for the designated purpose for which the SEZ was created. The rest of the land can be used for developing infrastructure where ‘infrastructure’ according to the same Rule includes ‘social amenities’ like roads, housing, hospitals, *hotels, leisure, and recreation and entertainment facilities* (emphasis added). The tourism industry has already begun to make full use of this opportunity and is in the process of building tourism projects, resorts and other establishments within already existing or upcoming SEZs<sup>13</sup>. The nature of leisure and entertainment tourism likely to be promoted within STZs and SEZs is not in forms where communities will be benefited or can participate.

### **Land grab and tourism-induced displacement**

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<sup>11</sup> Refer “A WTO-GATS-Tourism Impact Assessment Framework for Developing Countries”, **EQUATIONS and EED**, October 2005.

<sup>12</sup> Refer “Home Ministry nixes foreign SEZ workers”, **the Indian Express**, Delhi Edition, 2<sup>nd</sup> November 2006.

<sup>13</sup> For instance, real-estate giant DLF is tying up with hotel-major Hilton to build hotels across the country for its SEZ business. In line, DLF has already signed a MoU with the Punjab government for an 11000 multi-product SEZ at Amritsar and two others at Ambala and Gurgaon. Refer “DLF likely to tie up with Hilton”, **Business news of Construction**, <http://news.jimtrade.com/200606/1535.htm>

STZs propose to provide tourism developers with land at subsidized rates on lease for 15 years as per the SEZ model. While it might seem that the land requirements for tourism activities are not high, this is not true. The tourism and entertainment SEZ in Gorai-Manori is acquiring 1000 hectares, the Delhi Commonwealth Games Village STZ requires 250 acres and the Harayana government's planned Tourism Economic Zone in Gurgaon to build "Disneyland" is going to grab huge tracts of land as well although no official figure on size of this project has yet been quoted. According to estimates based on proposals for SEZs, the total land that has been acquired or would be acquired for formally approved projects is to the tune of 30,000 hectares. The SEZ projects that have got "in principle approval" and those that are "under consideration" are expected to consume another 95,000 hectares. This would mean a total of 1,25,000 hectare –almost the size of Delhi which has an area of approximately 1,40,000 hectares. According to the Maharashtra based SEZ Virodhi Sangharsha Samiti, the quantum of land itself points towards large-scale displacement of people<sup>14</sup>.

Land use in India is not confined to cultivation but also extends to collective use for day-to-day survival. Fuel, fodder, and other non-timber forest produce requirements are met from land, which could be categorised as common property resources or charagah, gaucher, pandit bhoomi in local languages, but is referred to as wasteland by the government. This forms almost 20 percent of the total geographical area of the country<sup>15</sup>. These lands contribute to almost 12% of the income of poor households. In states like Maharashtra, Madhya Pradesh and Rajasthan pastoral communities depend entirely on these lands for livestock rearing<sup>16</sup>. To add to the complexity, by law, wetlands are designated by most state administrations as wastelands<sup>17</sup>. The shift by the Commerce Ministry from agricultural land to "wasteland" does not mitigate the problem but actually makes the issues of displacement, marginalisation of most vulnerable communities even more invisible and therefore insidious.

The private developers are not only in the fray to develop already demarcated SEZ areas but are identifying and buying land on a large scale across the country for future expansion of SEZs<sup>18</sup>. The pro-SEZ lobby might argue that land grabbing is not a new phenomenon and is not due to SEZs. It is true that with growing demand of infrastructure like roads and residential spaces, land grabbing in and around urban centres had started much before. However, the new phenomenon is that of acquiring vast tracks of land even in semi-urban and rural areas- which meant that the large tracts of agricultural lands and lands used for other customary practices like grazing land and common property land are getting targeted. The varied profile of protesters across the nation substantiates this point. Eminent historian Sumit Sarkar of Delhi University describes the trend as "the biggest land grab movement in the history of modern India"<sup>19</sup>.

Contrary to popular belief, tourism also displaces. The physical displacement of people through tourism-related projects may not be as high as in the case of mining, dam and industrial projects. But its adverse impact on livelihood, access to resources, decision-making powers of the community and socio-cultural ethos is no less than any other development project, which is forced. Development of resorts in forest areas, the coast, national parks and sanctuaries and mushrooming hotel complexes in urban spaces have displaced forest dwellers, fishing communities and the urban poor in large numbers, without even the basic notions of informed consent.

As a principle, any policy on resettlement and rehabilitation should be based on avoiding forced displacement in the first place and evolving non-displacing alternatives. It becomes imperative that a just rehabilitation policy for displacement, irrespective of its scale, be set in place before planning the land

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<sup>14</sup> Refer " *Conflict Zones*", Venkitesh Ramakrishnan, **Frontline**, October 20, 2006, Pg 7.

<sup>15</sup> Refer to " *Don't call it Wasteland*" , Manshi Asher, **The Times of India**, 12 October 2006, Editorial.  
<http://timesofindia.indiatimes.com/articleshow/2151679.cms>

<sup>16</sup> *Ibid.*

<sup>17</sup> Issue flagged by Sudarshan Rodriguez, a researcher working on issues related to coastal ecology and wetlands.

<sup>18</sup> Companies, including most of India's most famous firms, have filed more than 400 applications to set up SEZs and 212 have been approved. Refer to " *Cash Cows*", **The Economist**, October 14<sup>th</sup>-20<sup>th</sup> 2006, Pg 31. According to domestic data, the government had by September 2006, cleared a total of 267 SEZs of which 150-got formal and 117 in principle approvals. According to industry estimate it is perhaps the biggest push for industrial expansion in post-independence India. Refer " *SEZ-Good, Bad, Ugly*", **India Today**, October 9, 2006, pg 53.

<sup>19</sup> Refer " *Subversive Enclaves*" , V. Sridhar, **Frontline**, October 20, 2006, Pg 19.

intensive development such as STZ/ SEZ. The record of implementation on compensation and rehabilitation has been dismal in this country, as many mass struggles have shown.

Apart from the farmer who owns the agricultural land, the agrarian economy also subsists agricultural labourers. Approximately 30-35 % of the population in most villages of India depends on various kinds of labour associated to agricultural practices. These are usually *dalits* and most marginalised in the social and economic hierarchy. Even if the farmer, who owns the land, can dream of some compensation in the form of sale proceeds of the agricultural land, what about compensation/rehabilitation be given to these landless agricultural labourers whose livelihood is even more vulnerable? It is most ironic that the government is proposing tourism as the alternate livelihood option for the increasingly displaced and marginalized agricultural labour.

### **The costs of tax exemptions and incentives**

The *mantra* of foreign exchange earnings through tourism has resulted in the sector enjoying high incentives and tax holidays for the last 15 years in India. The National Tourism Policy of 1992 which accorded tourism 'industry' status, set the trend for investment incentives like tax exemptions and subsidized infrastructure support to which state governments added on in subsequent years. In its 15 years of having enjoyed fiscal incentives and a liberalised policy autonomously, investment in tourism has seen no major improvements and its contribution to national GDP is still under 6%<sup>20</sup>. In turn how beneficial the government's incentive policy has been in boosting investment and increasing direct income and employment opportunities in tourism is debatable. The expected revenue earnings that need to accrue to state exchequers from tourism exports have not yet been matched.

The SEZ policy has taken incentive-induced investment in the country to a new level. One of the policy's chief critics is the Ministry of Finance (MoF), which estimates Rs 1,60,000 crore revenue losses due to the tax incentives provided to SEZs. But the Ministry of Commerce (MoC) maintains that in the long run, returns from SEZs will be greater than this current loss. One of the primary reasons the MoC is arguing for high tax breaks is that industry needs incentive to enable it to invest and overcome the gestation period after which returns on investment will start pouring in. But there are several concerns on the incentive structure being provided to the tourism industry through STZs that need to be addressed –

- The tourism industry and all of its components – hotels, restaurants, other entertainment activities do not have high gestation periods as in large-scale industry projects and start seeing returns fairly early. In that case, the argument of providing 10-year long tax breaks or subsidized land on lease for 30 years does not seem necessary or rational
- The fear of loss in tax revenue is particularly valid for state governments in the case of tourism. The proposed STZs would be providing 100% tax exemption on central taxes and in addition a 10-year waiver from luxury tax and lower VAT for tourism specifically. Luxury tax is one of the prime sources of revenue for state governments dependent on tourism that brings in revenue to service debt and other social expenditure. In its Budget for 2006-07, the Kerala government increased luxury tax on hotels, houseboats and halls and exhibitions (all tourism enterprises) to 15% to bridge its Rs 7534.54 crore fiscal deficit and provide relief to the state's farmers<sup>21</sup>. An exemption from luxury tax for tourism enterprises would take away an important source of revenue for all governments.
- The luxury hotel industry in India is booming, estimates place the turnover of the five-star hotel industry in India at Rs 43 billion<sup>22</sup>. The high demand and shortage in supply of luxury rooms in commercial capitals like Mumbai, Delhi, Bangalore, Pune and Kolkata to cater to largely business travelers has shot up room tariffs. The Federation of Hotel and Restaurant Associations of India's (FHRAI) Indian Hotel Industry survey 2004-05 data reveals in five-star deluxe, five-star, four and three star category of hotels

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<sup>20</sup> For a detailed summary of estimated contribution of tourism and allied activities to India's GDP, refer to "*Tourism Satellite Account for India*", January 2006, **commissioned by the Ministry of Tourism, Government of India** and carried out by the **National Council for Applied Economic Research**.

<sup>21</sup> Refer "*Tax on luxury items to mobilise more revenue in Kerala Budget*", *The Hindu*, 24 June 2006 <http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=2006062404980700.htm&date=2006/06/24/&pr=th&>

<sup>22</sup> Refer "*Booming hotel sector*", 14 Aug 06, Rajender Menen, **Gulf News Report**, [http://archive.gulfnews.com/supplements/India2006/more\\_stories/10060093.html](http://archive.gulfnews.com/supplements/India2006/more_stories/10060093.html)

in seven major Indian cities<sup>23</sup>, over 70% of the guests were business guests. In Bangalore, for example, average room rates increased from Rs 4109 in 2003-04 to Rs 6792 in 2004-05 – a 60% increase. With such a boom, hotel sector profits are on a high and likely to stay so that way. Hotel stocks have been trading high and companies like Indian Tourism Development Corporation (ITDC) registering a 1396% increase in profits in the April-October 2006 period as compared to last year<sup>24</sup>.

So far, the nature of tourism activities being proposed within SEZs and STZs is of building 2000-3000 luxury hotel rooms, catering to the elite international traveler. And this is the kind of “tourism” that would be promoted to fill the demand that booming business is creating. With rising hotel stocks and the ability to pay, hotels today are well positioned to pay the taxes that currently apply to tourism industry. Therefore, providing tax cuts that deprives governments of their revenue for development when the industry can pay up is irrational and unjust.

- The STZ proposal offers exemption from import duty on capital goods<sup>25</sup> for the tourism industry. The FHRAI itself registers that import duty for capital goods (largely agricultural, meat and dairy items; liquor and other alcoholic items and machinery) used by the hotel industry has drastically come down in the last 4-5 years and quantitative restrictions completely removed. In the tourism sector, imports directly constitute a revenue leakage, thereby reducing the receipts and downstream income gains from the activity. World Travel and Tourism Council (WTTC) estimates place import-induced leakage of tourism in India at 45% - this means for every tourist who spends one dollar in India, 45 cents leave the country to pay for goods imported to serve the tourist. In such circumstances, the government must formulate policies that reduce the import leakage by sourcing raw material from local, domestic suppliers. This would help in retaining a higher percentage of tourism earnings domestically and support suppliers of ancillary goods and services. However, by providing import duty exemption on capital goods, the government is only increasing the incentive to import for tourism that will potentially increase the leakage and reduce local gains from tourism.

### **A law unto themselves - enforcement of environmental and labour regulation in STZs?**

#### **STZs and environmental regulation**

As per the SEZ Act, none of the sections lays down that environmental regulations are applicable on the units within SEZ. Rather the wordings in Section 49 and the SEZ rules categorically state that SEZ areas are outside the purview of the environmental regulations of the country. There are no provisions for monitoring the cumulative environmental impacts of all units coming under one SEZ or periodic review of the ecological effects of functioning of these industries in such zones. Further, large-scale services related activities like tourism, lead to excessive use of water, increased deforestation and environmental pollution in these areas without any regulatory blanket.

With respect to STZs, the matter is even more serious with the recent Environment Impact Assessment (EIA) Notification 2006 excluding tourism projects from the requirement of EIA clearances. Thus, the democratic spaces available to communities to decide on tourism development or voice their dissent /consent to projects under the available Environmental Clearance Regulations are not applicable to tourism industries. This change would bring a wider range of projects that are not directly tourism-based but related to it like shopping malls, entertainment facilities and amusements parks within the bracket of tourism to avail of this exemption.

The Indian Constitution contains specific provisions on environmental protection. The directive principles of state policy<sup>26</sup> and the fundamental duties<sup>27</sup> explicitly call for protection of environment. Judicial

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<sup>23</sup> Delhi, Mumbai, Bangalore, Pune, Kolkata, Chennai and Goa

<sup>24</sup> Refer “*ITDC registers over 1000% profits in April-October*”, November 20<sup>th</sup> 2006  
[http://www.zeenews.com/znews/print\\_articles.asp?aid=336874&ssid=53&sid=BUS](http://www.zeenews.com/znews/print_articles.asp?aid=336874&ssid=53&sid=BUS)

<sup>25</sup> Capital goods and intermediate goods used in the production of the final good or service for consumption

<sup>26</sup> Article 48-A of the **Constitution of India**: Protection and improvement of environment and safeguarding of forests and wildlife.

<sup>27</sup> Article 51-A(g) of the **Constitution of India** : To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

interpretation over the years has strengthened this constitutional mandate<sup>28</sup>. It would thus seem that the present exclusion of SEZs and the proposed STZs from environmental regulation is against the “Rule of Law” and the “Principles of Natural Justice” which are basic tenets of our Constitution.

### STZs and labour regulation

Section 49 of the original SEZ Bill had the words “*Central government may, by notification, direct that any of the provisions of this Act or any other Central Act or any rules and regulations made there-under or any notification or order issued or direction given thereunder ... specified in the notification shall not apply to a SEZ*”. Intense lobbying by the Left parties persuaded the government to accept the suggested amendment. The government deleted clauses that exempted application of labour laws in SEZ areas and the proposal of exempting application of State Acts relating to trade unions, industrial and labour disputes, welfare of labour, including conditions of work in SEZs.<sup>29</sup>

However, this does not solve the problem. Section 19 of the SEZ Act allows the central government to delegate all administrative powers relating to SEZ development its powers to the Development Commissioner (DC) or the Approval Committee (AC) (which also includes a member of the Developer of the SEZ but does not include any representative of the local self governing institutions [LSGI] or from the local community). This means that even the powers of the central government to refer disputes for adjudication, abolition of contract labour and other issues related to labour welfare can be so delegated to the DC<sup>30</sup>. As a result, in most states, like in Andhra Pradesh<sup>31</sup>, all powers of the Labour Commissioners are getting transferred to the DC. According to Prasant Bhushan, a senior advocate in Supreme Court of India, “...it is a clear case of excessive delegation of power to an executive.”<sup>32,</sup>

Such delegation of power is questionable. Historically the office of the Labour Commissioner (LC) was set up in April, 1945 for prevention and settlement of industrial disputes, enforcement of labour laws and to promote welfare of workers in the undertakings falling within the sphere of the Central Government. According to Section 11 of the SEZ Act, 2005, any central government officer not below the rank of Deputy Secretary to the Government of India can be appointed as the DC. Hence, the question arises does such delegation of power to “any central government officer” ensure that the concerns of the labour force, working in these SEZs would be addressed. In contrast to the role of Labour Commissioners, the specific role of the DC is the development and propagation of the SEZ. Moreover, observers apprehend, there could be a corridor of uncertainty as far as the commissioner’s position vis-à-vis the labourers on the one hand and the developers on the other goes. So, it is a farce to believe that the DC will uphold labour laws. As quoted about T V Chandran, one of the Assistant Development Commissioners of the Cochin Zone, “We cannot bother about the conditions under which the employees work nor about the contract labourers.”<sup>33</sup>. This trend to dilute the meagre provisions and protection of organised workers as seen in the bid to ensure that India shines and is competitive, is likely to be given freer hand in the SEZ regime. The fate of the majority-unorganised labour, who contributes approximately 63% to GDP and 93% of employed labour force<sup>34</sup>, is another chapter. Using these sections many State Governments have already made amendments to labour laws in their states.

### ***Cases of state labour laws being diluted in lieu of SEZs***

*In AP, state labour laws have been amended to make it possible to declare all the units in a SEZ as “public*

<sup>28</sup> Refer *M.C. Mehta v Kamal Nath* (Span Motels Case) 1997 (1) SCC 388; and *M. I Builders v Radhey Shyam Sahu* AIR 1999 SC 2468,2498. The Apex Court in both these cases laid down that, “*The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands. These resources cannot be converted into private ownership.*”

<sup>29</sup> Refer to the Proviso of Section 49(1).

<sup>30</sup> Refer “SEZs: Special Exploitation Zones!” Sanjay Singhvi, March 2006, <http://cpiml.in/060326.htm>

<sup>31</sup> *Section 6.1: The State Govt. delegates power of Labour Commissioner to the DC*. As per the order issued by Chief Secretary, Industries and Commerce Department – Policy Framework for Special Economic Zone (SEZs) in Andhra Pradesh

<sup>32</sup> Refer “SEZ How?” **Down to Earth**, November 15<sup>th</sup> 2006, pg 20 at 28

<sup>33</sup> Refer “SEZs: Special Exploitation Zones!” Sanjay Singhvi, March 2006 <http://www.indiatogether.com/economy/>

<sup>34</sup> Refer “*Informal Sector India*”, presentation made by Wage Indicator India team at the first Worldwide Wages Conference, Amsterdam, June 21-27 2006 <http://wageindicator.org/documents/wwwmeetingjune06/informalindia>

utilities” under the Industrial Dispute Act for an indefinite period, thereby making legal strikes impossible. A Bill is also pending there to amend the Trade Union Act, making it compulsory for all the office bearers of the union to be elected only from among persons actually working in the establishment, effectively abolishing “outsiders” from becoming a part of the union. Besides this notifications have been issued under the Bonus Act, the Payment of Wages Act, and other Acts giving the powers of the inspectors under those Acts to the Development Commissioner.

In Maharashtra a Bill making a similar amendment in the Contract Labour Act, differentiating between “core” and “non-core” activities has been passed in the Assembly and is awaiting the signature of the Governor. Similar notifications have been brought out to make the units in SEZs as “public utilities”. Notifications have been brought out to empower the Development Commissioner to hear cases for the payment of Gratuity. He will also have the powers of inspectors under the Payment of Bonus Act, the Maharashtra Minimum House Rent Allowance Act, the Motor Transport Workers Act, the Payment of Wages Act and many other Acts.

In Karnataka the powers of the Labour Commissioner under the 1) Trade Union Act 1926; 2) Industrial Employment (Standing Orders) 1946; 3) Industrial Disputes Act 1947; 4) Contract Labour (R&A) Act 1966; 5) Inter State Migrant Workers (Regulation of Employment and Conditions of Service) Act 1963; 6) The Minimum Wages act 1948; 7) The Payment of Bonus Act 1965; and 8) The Equal Remuneration Act 1967 have all been given to the Development Commissioner. The Karnataka State Government has also declared all the units in SEZs to be “public utilities”.

In U.P. a short and clear notification has been issued giving the powers of the Labour Commissioner under “all labour laws” to the DC of the SEZ. Here the provisions of Chapter V (against illegal retrenchment, closure and lay-off) have also been made inapplicable in SEZs.

Similarly in MP, besides making all units “public utilities”, section 9A of the I.D.Act, (requiring agreement with the union before effecting a change in service) has been made inapplicable to SEZs. Some Standing Orders have been made inapplicable to the SEZs and even some sections of the Factories Act and the Shops and Establishments Act, relating to hours of work and holidays.

According to the website of Navimumbai SEZ one of the benefits to units in SEZ is that, “Reservation policies for Small-scale Industries (“SSIs”) would not be applicable within the SEZ zones, enabling units within the SEZ to engage in industries that have traditionally been reserved for SSIs<sup>35</sup>. This has a huge implication towards the large small scale and cottage industry base in the country that can hardly compete in a level playing field. Small scale and cottage industry has been a source of survival sustenance for a large section of urban and semi urban poor as well as rural artisan and craftsmen communities.

The above analysis of how labour laws and regulation is being significantly diluted to benefit “unhampered and even unaccountable” SEZ has relevance to tourism as well. There are significant issues of labour rights and protection like contract labour, wages of working hours, gender disparity and discrimination, child labour (which is particularly high in hotels and restaurant sector) and even sexual exploitation that need formal redressal within labour laws. If STZs are to be the model for tourism development, there is little possibility of these issues being addressed. STZs, in fact, are likely to shrink the space for the organised working class. The fate of the large sections of informal and unorganised labour sector, which constitute 40.37% of the employment in the tourism industry<sup>36</sup> is thus likely to become even more pitiable.

### **Bypassing local governments and ignoring local communities**

The SEZ Act and its implementation are raising serious concerns about the phenomenon of centralization of power. The Board of Approval (BOA), which is the final authority with respect to granting of approval to SEZs and laying down conditions of approval, is a central body under the aegis of the MoC. All other authorities from DC to the AC are represented by the Central Government. The Act also very specifically lays down that all these authorities would be bound by such directions on the question of policy as the central government may give from time to time and its decision shall be final. Similarly, in the case of STZs,

<sup>35</sup> <http://www.navimumbaisez.com/overview.htm>

<sup>36</sup> Id 33

the proposals are being mooted and approved by the Ministry of Tourism and implemented by the state governments. The approach is inherently top-down and leaves no room for local communities and their representing institutions to have a say, contribute to, or reject the proposals. With AC's having statutory representation from the developer but no space for representation from communities not even elected representative of the local self governing institution, it is apparent that there is no role for elected bodies in these enclaves making it an overriding of designated structures and rights of democracy and governance in the country.

It is clear that local institutions are going to be bypassed by the proposed "Single Window Clearance" mechanism, which is being stressed for STZs. The Single Window System enables investors/developers to submit regulatory documents at a single location and to a single entity. Such documents are typically customs declarations, applications for permits/ licenses, and other supporting documents such as environmental clearances and labour-related licenses. In all likelihood, such a mechanism will free the investor/developer from approaching the relevant authority, probably even the local authority like the *panchayat*/municipal corporation, by granting all approvals at one place.

This special status STZs will encroach upon the rights of local self-governments such as Gram Panchayats and urban local bodies in violation of the 73<sup>rd</sup> & 74<sup>th</sup> Constitutional Amendments. It denies local communities the sovereignty to decide over the status of their lands and natural resources, which is the basis of local economy and sustenance. While the demand for greater local control and decentralization is on, this reversal to centralized and non-consultative processes is not justifiable. The SEZ Act also does not grant powers to local governments on SEZs and STZs within their jurisdiction<sup>37</sup>. This would be a clear disadvantage for local governments that are anyway suffering from a dearth of resources and options to sustain their activities.

In sectors like tourism, such a development process can sound the death knell for long-term economic sustainability. Tourism benefits local communities only if activities undertaken are suited to their abilities, skills and priorities and takes into account regional specificities of ecology, culture and society.

With the above concerns, we believe that the STZ concept needs to be seriously challenged and debated in the country at all levels. Most importantly, local communities need to be consulted in this move considering that they are the most impacted and even the targeted beneficiaries (in the words of the government) of this proposal. It is highly disturbing that while private players - who have an obvious interest in the STZ proposal - have been privy to the discussion and to shaping it, key stakeholders and rights holders groups that the government is accountable to have been left out of the process. We call upon the Ministry of Tourism, Ministry of Commerce and State Tourism Departments to open the proposal to public scrutiny and debate and consult with local governments and communities and interested civil society organisations before proceeding with this proposal.

This also opens the debate on the nature and models of tourism the government will keep privileging in its policies, marketing and promotion, subsidies and incentives and even accountability.<sup>38</sup> That leaves us with the question of who really benefits from tourism and is this the tourism that large majority of people in this country really asked for, need or deserve?

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<sup>37</sup> This has been a strong argument of local bodies against the formation of Special Tourism Areas as well.

<sup>38</sup> It is interesting to note that in a recent interview Ms Ambika Soni, the Union Minister for Tourism and Culture has emphasised on low budget domestic tourism. According to the minister, the need of the hour is to cater to the requirements of the domestic Indian tourist that include inexpensive accommodation and basic infrastructure and connectivity. Refer "Interview: Ambika Soni, Tourism Special" India Today, Tourism Special, November2006.