

# LEGALFOXES LAW TIMES

## LABOUR LAW CORRELATED WITH SPECIAL ECONOMIC ZONE

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### A B S T R A C T

Globalization guarantees to build ways of life for all by achieving more noteworthy specializations and higher efficiency, less expensive merchandise and ventures and furthermore speedier dispersion of mechanical developments. The facts confirm that to some degree it likewise does that and yet it is also expected that its unfriendly distributional consequences would likewise prompt a political backlash against it. The fundamental inquiry which emerges here now is that is globalization topping off and expanding the standards of living for everybody or is it only a bunch of individuals who are giving out of it? And ought the structure of globalization to be encircled routinely? How is the work still suffering from imbalance of wage however globalization has begun up? All these components fundamentally concentrating on the exchange association of India and what affect do they have by globalization will be managed by me in my project. As the exchange associations in India as per ILO 2004 is as yet a matter of concern in light of the fact that there is no international Govt. at the universal level to check the structure of system of globalization. My undertaking will manage every one of these points and will endeavor to propose solutions for this.

**Keywords-** Globalization, SEZ, Kandla, political

### I N T R O D U C T I O N

A Special Economic Zone<sup>1</sup> (SEZ) in simple terms can be defined as ‘an industrial zone with special incentives, set up to attract foreign investors, in which imported raw material undergo some degree of processing before being exported again’. This helps the nation to generate

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<sup>1</sup> Hereafter referred as SEZ.

employment and earn revenue. According to the latest ILO figures<sup>2</sup> there are, at present, some 850 exports processing zones worldwide, employing almost 27 million people.<sup>3</sup> Therefore to encourage this government's relay on a two-pronged strategy. Drawing from the characteristics of SEZ listed earlier, they can be grouped as (a) Reduction in restrictions, including liberal access to foreign exchange, permission for duty-free imports, streamlined industrial permits, flexible labour laws, etc. (b) Provision of incentives such as tax concessions and better infrastructure (including sometime utility and rental subsidies), with power, transport and communications being more developed than in other parts of the country.

The Kandla (Gujarat) SEZ was established in the year 1965 two years after the development of the Kandla port<sup>4</sup>. The need to set up the SEZ and the port in Kandla was to develop Kutch region in Gujarat as it was one of the most underdeveloped part of India. This led to people from all around the country being attracted to this region due to the increase in job opportunities. But the Labour laws are made flexible to encourage the industrial growth in Kandla SEZ. The Labour Laws applicable in Kandla SEZ are stated under the Ordinance passed by the then Governor of Gujarat Kailash Pati Mishra, on 10<sup>th</sup> February 2004. Therefore, this project the broadly tries to show the labor's position in Kandla SEZ and the application of the labour law in their daily life of the workers and also what role do they play for their benefit.

### **LABOUR LAW AND ITS IMPLICATIONS**

Labour laws applicable within the confinements of the zone are modified in such a way that the investor reaps maximum benefits by exploiting the labour. Some countries have enforced strict anti-strike laws and banned trade union activity in the zones to ensure conflict-free industrial relations for the investors as in South Korea, Taiwan, and Philippines. While at some places trade unions are not permitted in SEZs as in Sri Lanka. In India, all the SEZ have been declared as public utilities under the Industrial Disputes Act (1947). Trade unions are not banned; but all the strikes are illegal, unless they are preceded by stipulated reconciliation process involving Labour Commissioner's Office. It can be said that trade union activity is virtually non-existent in the

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<sup>2</sup> [www.ilo.org](http://www.ilo.org) as seen on 23<sup>rd</sup> August 2010

<sup>3</sup> The global distribution of zones by region, as per the figures provided by World Export Processing Zone Association (WEPZA), is given in the graph below:  
United States of America has 213 SEZ's; China Has 124 SEZ's; Mexico Has 107 SEZ's; India has 7 SEZ's as of now and 7 more are coming up.

<sup>4</sup> [www.kandlaport.com](http://www.kandlaport.com) as seen on 28<sup>th</sup> August 2010

Indian SEZ.<sup>5</sup>

International investment in several labour intensive manufacturing activities is critically dependent on flexible labour laws relating to engaging contract labour, retrenchment of workforce, closure of units in response to changing market conditions, etc. Several countries allow relaxed labour policies within these enclaves, combined with an effective social security net to absorb any shocks. The laws applicable in the SEZ are not the same as the labour law applicable in the other part of the state. In non SEZ area normal labour law apply, where else in SEZ the same law will apply after taking into consideration several notifications and amendments made by the state.

### **WORK FORCE AND GOVERNMENT CONTROL ON THE SEZ**

A normal labour law of the land applies to the units in SEZ. However, the State Governments delegates the power of the Labour Commissioner to the Development Commissioner of SEZ. He functions as Registration Officer, Conciliation Officer as well as Inspector under various Labour Laws to provide Single Window Service. As a part of liberalization process for filling returns, a Consolidated Annual Report has been designed, consolidating various periodical returns. The returns can be filed periodically means that the returns have to be filed yearly, half yearly, quarterly, monthly etc. these are filed as according to the wish of the employer. The units in SEZ are required to file annually Consolidated Annual Report to Development Commissioner and not be required to file periodically separate returns. For Inspection relating to worker's health and safety, units are permitted for obtaining inspection reports from accredited agencies as may be notified by the State Government.

One of the characteristic features of the SEZ around the globe is the prevalence of the young women workers. Almost 75 to 80 percent of the employment in the SEZ all around the globe is constituted of women of the age group of 20 to 25 years. The workforce of the Kandla SEZ is one of the biggest in the India with more than 7000 workers<sup>6</sup>, 75% of them are women; this means that out of the 7000 workers 5250 workers are women workers. As most of the men work in the Port and thus the women members of the family work in the SEZ in order to make money for the family.

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<sup>5</sup>Interview with Mr.Capt. B. Tewari, Then Secretary: Kandla Port Trust, Present Chairmen: Dock Labour Port Workers Federation and Trustee: Kandla Port Trust in August 2010 at Kandla, Gujarat.

<sup>6</sup> Interview with Mr.YogendarGurg, Labour and Development Commissioner Kandla SEZ and Trustee: Kandla Port Trust in August 2010 at Kandla, Gujarat.

## **DIFFERENT PROBLEMS FACED BY THE WORKERS OF KANDLA SEZ**

### **➤ PAYMENT OF WAGES**

SEZ in developing countries entice the investors by playing the 'low wage card'. India is also no exception to that. Investors look for cheap labour so as to bring down the cost of production in order to keep their goods competitive in the international market in spite of the heavy tax and duty concessions provided to them. The wages received by workers vary depending upon the kind of job, skills of the worker and also on the nature of the individual firm. Workers receive wages in the forms of daily, monthly and piece rate bases. Piece rated wages are common in the garment industry where a monthly wage is fixed on basis of some production norm. Contractual labour is also employed. The sub-contractor and not the firm determine the wages paid to contact worker.

The state governments have defined minimum wages for the zones but they are hardly implemented mainly due to the following reasons (1) the workers are paid on the piece-rate basis and so earn less than the minimum wages. (2) Since young women constitute the bulk of the workforce, they are most of the time employed at wages which are much below the minimum wages. For example: "the minimum wages set up by the Gujarat Government for the garment industry rupees 2400 per month while the average wages received by a worker in garment industry in Kandla SEZ is not more than 1600 rupees per month."<sup>7</sup>

The important point to be noted here is that Kandla is located far from Ahmedabad with no recourses of its own, due to this reason the cost of living is higher than any other Indian city and average wage of Rs. 80 is too less an amount for survival in such a city where the products cost adds to the transport charges for the incoming of the goods from Ahmedabad. Applying the section of the Minimum Wages Act, 1948 the minimum wages that are to be paid to the labour is 70 rupees per day. But the situation in Kutch Area is so bad that the average daily wage of the workers in the Kutch district is only 50 rupees. While according to the Labour Commissioner<sup>8</sup> the law states that the laborers in the Kandla SEZ should be given wage of 80 rupees daily. But in the Kandla SEZ the daily wage is 90 rupees<sup>9</sup> which was not agreed by the Labour Union.

### **➤ HEALTH AND SAFETY**

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<sup>7</sup> Interview with Mr. M.L.Bellani, Trustee: Kandla Port Trust, General Secretary: Transport & Dock Workers Union- HMS Kandla, Secretary: All India Port & Dock Worker's Federation and President: Hind Mazdoor Sabha (Gujarat) in August 2010 at Kandla, Gujarat.

<sup>8</sup>Supra at 6.

<sup>9</sup> Ibid

Hardly any stress was laid on the health and safety of the workers. Since all the industries are totally export oriented ones, all the emphasis is directed towards minimizing production costs to competitively price the product in the international market. Providing safe environment for workers would mean escalating overhead expenses. Even the zone authorities are concerned only about the export performance of the units and not condition of the workers. Keeping this in view, PRIA with support from ACILS carried out a study, which would not only look at the economical perspective but also peeps into the lives of the people who work there and also presents overall Health and Safety conditions prevalent in these zones. The report is an important document for the protection of the labourers in the SEZ's. The report not only features on the Health and Safety Condition but also other social problems concerning the labourers in the SEZ's. Workers are freely available and hence the industries in the SEZ do not mind dismissing a worker in the event of his/her falling ill even if temporarily. Workers are ignorant about the health and safety issues.<sup>10</sup> Due to the Limited access of any worker unions in Kandla, there is low demand from the workers for the improvement of health and safety conditions. Moreover, unions have not started to take the issues related to health & safety as other issues are regarded as more prominent.

Few companies do provide protective equipment's to their workers, but only permanent workers enjoy this facility and if some contractual worker is doing the similar sort of job, he is not provided with any sort of protective equipment. Permanent workers are covered under the Employees Insurance Scheme but nothing about the contract workers. The SEZ hospitals are 15 Kms away from the zone which is a great distance in case of emergency. Moreover, the workers have to take a day off so as to get themselves checked.

The Central Government has to inspect the industries in the SEZ once in six months, but the reality is that they make their report on the bases of the Labour Commissioner's report. The Labour Commissioner Office of the Kandla SEZ has to inspect the condition of the laborer once in two months and make a report accordingly.<sup>11</sup> The report is not only to include the social status of the labourers but also the health and safety mechanisms for the labourers. But industries get the knowledge of the investigation much before it happens hence steps of benefit are taken for that period till the investigation is over. Once it is over the life in the establishment is back to

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<sup>10</sup>Supra at 7.

<sup>11</sup>Supra at 5.

normal.

➤ **PROBLEM FACED BY WOMEN WORKERS**

Women constitute a major proportion of the workforce in the SEZ but unfortunately their importance is not recognized at all as the jobs they do are always unskilled or the low-skilled ones. Employers are reluctant to invest in developing the skills of women as they feel it as may be a waste of investment on them because they feel that the women may leave after marrying or having children. Women are not given any maternity leave and if some woman gets pregnant, she is simply shown the doors. In fact, at many places the precondition of the job is laid that they won't get married or have a child.

The Factories Act, 1948 states that the women work timings has to be between 6 A.M. and 7 P.M as per section 66 of the Act. As regards to the SEZ in Kandla the Act doesn't apply as it is. The Ordinance passed by the then Governor Of Gujarat gives special importance to the women working in the Kandla SEZ like empowering the State Government to the vary time limit subject to the following conditions that the employer shall provide free transport facilities, security and separate Crèche and rest rooms for the woman employee.

The employers do arrange for all their transport facility for not only the women workers but also for male workers but not for the protection of the employees, but it is to see that the workers come for the work on time and stay late till the source of transport leaves. This amendment was brought to make an illegal act legalized as it was widely practiced in the zone. As per factories law, employer has to provide the crèche facility in the factory premise if he employs more than 30 women even though most of the factory units in the zone employs more than 30 women. The employer's association provides a common crèche facility for the all women working in the zone but is of only one small room to cater to the needs of such large number of women working in the zone.

➤ **RETRENCHMENT POLICY**

The Retrenchment Policy of the Kandla SEZ has been a major. Chapter V-A and V-B of Industrial Disputes Act which deal with the retrenchment of the workers are replaced by chapter prepared by the Gujarat legislature as per the Ordinance prepared by the governor of the Gujarat. The impact of the amendment is that the Section concerning retrenchment will not apply to the workers on whom Chapter V-D shall apply<sup>12</sup>. Thus, the Legislation by the amendment has stated

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<sup>12</sup>Supra at 6.

that the concept of retrenchment shall not apply to the Kandla SEZ.

### **LABOUR LEGISLATION IN KANDLA SEZ**

The Labour Laws applicable in the Kandla SEZ is stated under the Ordinance passed by the then Governor of Gujarat Kailash Pati Mishra, on 10<sup>th</sup> February 2004. Work hours as per law have been limited to 48 hours per week but at many places workers work more than that (56-60 hours) and with no or improper remuneration for the extra hours. Provident fund becomes applicable after 3 to 5 years. Employer's contribution to PF is limited to just 8%. Bonus law prescribes a minimum of 8.33% and maximum of 20%. However, bonus is not obligatory in the first five years, if profits are not earned. Workers are hardly benefited by any of the labour legislations not only because they are not applied in practice but also due to many loopholes in the existing zone legislations e.g. declaring the zone as 'Public Utility' restricts the workers from going to strike, as it has to be accompanied by complicated procedures.

Kandla SEZ has recognized Trade Union but the attempts of the workers to get organized are discouraged by the investors as well as zone authorities due to fear losing investors. Strict action is taken against those employees who are involved in this, which would mean a worker losing his/her job. Moreover, the zones are walled enclaves and union organizers are not allowed inside, only the workers with proper identification are allowed. This makes it difficult for even the renowned national trade unions of the country to break inside. Workers of different units inside the zone are even prevented from interacting with each other and the factories buses leave their workers directly to and from the factory door.

The SEZ workers union was established in 1990, after a hard struggle for 3 years, but it has a membership of 6,500 (20%-25% of total workforce) involving only 13 units of the zone. Although membership is less but the impact is quite visible. The workers of the unionized units are getting much better salaries compared to the non-unionized ones which continue to be exploited. The various legislations that apply to the Kandla SEZ have been stated in the Ordinance passed by the Governor. The ordinance states the list of the legislation in the ordinances, applicable on the SEZ in Gujarat<sup>13</sup>. It applies to all SEZ in the state of Gujarat. Schedule I<sup>14</sup> and Section 19 of the Ordinance states the various Statutes that apply on the

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<sup>13</sup> www.gujarat-india.org as seen on August 24<sup>th</sup> 2010

<sup>14</sup> The said schedule contains the following statutes The Payment of Wages Act, 1936.  
Employment (Standing Orders) Act, 1946.  
The Bombay Industrial Relations Act, 1946.

workers. Both the Schedule and the sections state which statute on the whole applies to the workers in the SEZ of Gujarat. Further the Schedule II<sup>15</sup> of the Ordinance state the list of the Statutes that apply with certain amendment.

### **SUGGESTIONS AND CONCLUSION**

At policy level SEZs are considered as tools to earn foreign exchange which can be used for social upliftment. Ground reality, however, speaks differently. With more than 30 years of their existence, SEZs in India have failed to create a visible impact as predicted before their existence. The 7 Indian SEZs roughly generate a direct employment of 1 lakh which is not more than 0.45% of total persons employed in the manufacturing and processing industry. So, they should not be termed as the employment generating zones.<sup>16</sup>

An audit report on the SEZs made by the Comptroller and Auditor General of India in a Central revenue audit report has highlighted serious lapses in their functioning. The report reveals the fact that Government has approved setting up of about 2,300 units in the SEZs, but most of them never started and there are only 500 active units now. The important point in the report was that **"Customs duty amounting to Rs. 7,500 crores were forgone, for achieving net foreign earnings of about Rs. 4,700 crores<sup>17</sup> (over value of imports) and government does not seem to have made any cost benefit analysis"**. In spite of all this Government, in the 1999-2000

The Factories Act, 1948.

The Minimum Wages Act, 1948.

The Industrial Disputes Act, 1947.

The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955.

The Maternity Benefit Act, 1961.

The Payment of Bonus Act, 1965.

The Beedi and Cigar Workers (Conditions of Employment) Act, 1966.

The Contract Labour (Regulation and Abolition) Act, 1970.

The Payment of Gratuity Act, 1972.

Equal Remuneration Act, 1976.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

The Child Labour (Prohibition and Regulation) Act, 1986.

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

<sup>15</sup> The said schedule contains amendment to the statutes;

The Bombay Industrial Regulation Act

The Factories Act

The Industrial Dispute Act

The Contract Labour Act

The Trade Union Act

<sup>16</sup>Interview with Mr.YogendarGurg, Labour and Development Commissioner Kandla SEZ and Trustee: Kandla Port Trust in August 2010at Kandla, Gujarat.

<sup>17</sup> Interview with Mr.S.K.Chowdhry, Commissioner Customs, Gujarat and Trustee: Kandla Port Trust in August 2010at Kandla, Gujarat.

Budget raised the corporate tax holiday period in SEZs from 5 to 10 years<sup>18</sup>. On papers the national labour laws are applicable in the zones but in practice the things are different. This is clearly visible as out of 7 zones only one zone has a recognized Workers Union. In absence of any trade unions, workers find it difficult to demand their rights. If they do, they may lose their jobs. The investors in the zones are demanding that the zones should be exempted from the labour laws in spite of the heavy concessions given to them by zone authorities. Surprisingly some policy makers and economic analysts in the country too think in the same terms.

More SEZs in the countries are being encouraged, in Gujarat only three more SEZs are coming up without seeing the harmful effect of them on the Indian society like worker's rights being neglected as the investors feel that the production costs may go up. The problems of the SEZs are far more complex than they appear to be. However, while putting the matter in perspective, it is realized that the issue needs to be dealt with at two planes - issues of policy and issues of practice. While the first is to view the institutional arrangements specific to the occupational rights of the workers and their environment, the second is towards effective implementation of safe working practices. It is realized that the real problem is in the implementation of the laws. It is also realized that while the investors would never like to invest in providing rights to their workers, any change in policy has to have the consent of the bureaucracy, which is either insensitive or helpless to the plight of workers.

Several Micro level measures have to be undertaken for the protection by the labour law. The policies regarding SEZ are framed by Ministry of Commerce, without consulting Ministry of Labour. In order to safeguard the interests of the workers working in these zones, the Labour Ministry needs to play a decisive role during the formulation of policies. The selection of the investors should be made in such a way that they comply with the labour legislations and if at some point non-compliance is found, their lease should be ceased immediately. This should be done irrespective of their export performance. The package offered to the investors should reflect the firmness of the zone authorities in not compromising on the issues of workers' rights.

Since women are a majority in the zone hence, they need special attention. This should be reflected at the policy level. Labour commissioner and the factory inspectors should ensure that the units in the zone comply with the existing laws. The role of Development Commissioner of the zone should not be restricted in monitoring the export performance of the zone only. He

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<sup>18</sup> Ibid

should also ensure the workers their due. There should be proper interaction in this regard between the Development Commissioner and the relevant Labour department of the region.

It should be made mandatory for the units in SEZs to have a health and safety policy. Workers participation should be ensured in the all decisions related to the health and safety, which can be done by the formation of Safety Committees etc. Workers should be educated about the hazards at the workplace and all of them should be given at least some basic training on health and safety and their rights under the law. It should be ensured by the zone authorities as well as by the relevant labour department that no worker is harassed by his/ her employer on the pretext of forming union. The national trade union of the country should be also allowed to take effective steps to organize the workers.

As similar problem is faced by the workers of even other SEZ's the companies in all SEZ should remember that workers are a very important part of a unit, without which a unit cannot function. Therefore, they should be given their right and just not be forced by the state (law) to enforce it.

## **B I B L I O G R A P H Y**

### **WEBSITES REFERRED**

1. [www.gujarat-India.org](http://www.gujarat-India.org)
2. [www.ilo.org](http://www.ilo.org)
3. [www.indialegal.com](http://www.indialegal.com)
4. [www.kandlaport.com](http://www.kandlaport.com)

### **CONVENTIONS REFERRED**

1. Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)
2. Labour Inspection (Seamen) Recommendation, 1926, No.28
3. Merchant Shipping (Minimum Standards) Convention, 1976:
4. Workers' Representatives Convention, 1971 (No. 135)