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Volume: 4, Issue 1, 2017 (Jan-Mar.)

Impact Factor 4.1 (IB Factor)

INTERNATIONAL JOURNAL OF LAW, EDUCATION, SOCIAL AND SPORTS STUDIES (IJLESS)

ISSN:2455-0418 (Print), 2394-9724 (online)

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www.kypublications.com

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SPECIAL ECONOMIC ZONES UNDER THE CONSTITUTION PARAMETERS

RESEARCH ARTICLE

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**Dr. CH. VENKATESWARLU****ABSTRACT**

Constitution is the first law of the land; the Indian Constitution is an embodiment of human values such as rights, duties and contracts, State sovereign power, which are all vested with the people of India. The Directive Principles of the State Policy has directed the government to mitigate the problems of downtrodden. The idea of welfare state is not directly initiated by the Constitution, but it is chanting mantra of the government during era of cold war. The government of India has followed the pursuit of socialistic ideology. This was the scenario of pre-liberalization of period. After of enforcement of government Indian scene of economy totally changed. The objective of liberalization is to develop the country in speedy manner. The foreign investors are all to take part in the growth of industries, transport and agro based industries. Manufacturing sector, service sector has been privatized by withdrawing the government share from public sector. During the era of reforms a concept is new SEZs came front. Tax free business, free transport of goods, liberal employment schemes, supplies of goods at cheaper rates are the main features of SEZs. In 2005 to cater the needs of people in the backward areas SEZ Acts has been enacted by the parliament. The UPA government has specified some of the areas to promote industries free supply goods through easy transport mechanism. Article 19(1)(g) is the source of developing SEZ. Hence the SEZ Act promotes employment generation, area development and free supply of goods within the parameters of the Constitution. But the modern governments are opting the illegal methods for the acquisition of land inviting foreign investor to initiate SEZ by using the land provided by the government. the acquisition of land from the poor farmer is a severe blow on the life of the people, all these issues are discuss in this article in detail.

Keywords: SEZ, Constitution, Acquisition, India

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INTRODUCTION

Land is the largest primary source of livelihood in an agrarian society like India. Land acquisition becomes the most obvious case of forcible transfer of resources from ordinary people to private corporations, destroying livelihoods, and displacing people. In this process, invariably the gainers are the corporations and losers are the ordinary people connected to land in many, the farmers and tenants, workers depend on cultivation and artisans, tribal people and other suppressed people. The SEZ became the most grotesque reminder of this pro-corporate, anti-people bias built in shape of industrialization. Only rising popular resistance could force the government to moderate its stand, but the difference between acquiring SEZ land, and land for mining or industrialization is very little insofar as the destruction of social auditing, people's livelihoods, and displacement are concerned.

SEZ is not new concept. In ancient Indian history we found several economic zones, where goods are sold. Most of the ancient capital cities were identified as SEZs. Rajahrajah Chola has enforced his authority over Srilanka to accept the India merchant to Srilanka and ordered Srilankan king to specify particular area for Indian merchant to sell their goods. During 17 and 18 century the Indian rulers have provide certain area for European companies for their trading activities, but after the enforcement of Constitution the free India government has followed the policy of mixed economy till the downfall of USSR in 1991. India was forced accept the WTO rules with forced the Govt. for setting-up of free economic zones. The government acquired lands for setting-up of SEZs.

The modern first official mention of SEZs in India was in 2000, when National Democratic Alliance(NDA) government announced a SEZ policy which hoped to not only establish SEZs all over the country but also aimed to refurbish the existing Export Processing Zones with a view to providing an internally competitive and 'brother free' environment for the manufacture of exports. The UPA government set about making this operative by ensuring that the policy was supported by an enacting law the Special Economic Zone Act, 2005. There have been many protests against SEZs by both affected parties and civil society, predominantly in relation to the vexatious issues of competition and displacement as established patterns of property and livelihoods have come under challenge.

Special Economic zones aimed at stimulating foreign direct investment and rapid, export-led, industrial growth. The essential characteristic of such schemes is that they allow the by-passing of particular social legislation or tax provisions which are perceived to be an impediment to progress or the competitiveness of an export-oriented activity.

SEZs and Socio-Economic perspective

The farmers are protesting against the forced acquisition of their lands. The development of SEZs may destroy the employment and livelihoods of farmers whose land will be acquired and will create very little employment for high-tech or highly skilled and net employment to be good, produced a negative result. Handling over thousands of hectares of land cheaply to promoters of the industry and the relaxation of the laws of the country, including those relating to the welfare of industrial workers, the protection of the environment, taxes, etc would automatically promote industrialization and would solve the nagging unemployment problem of the country overnight.

The highest level of opposition in West Bengal was observed when land was purchased by the state government for the Tata group at Singur and Salim Group of Indonesia in Nandigram and another protest against establishing industries in Srikakulam and Nellore in Andhra Pradesh. Thus, land constitutes a key source of identity belonging to socio-economic bonding. It represents a social and productive asset as well as a source of security and shapes prospects of substantive citizenship in much of rural India.

Special Economic Zones Act, 2005

The Section 3 of the SEZ Act stipulates identification of the area for setting up SEZs, keeping the issue of modalities for acquisition of land as well as rehabilitation and compensation package for land losers which in its nature, is totally open. Rules are also silent about such a vital social aspect involving thousands of possible land losers as well as agricultural workers.

Section 5(1) (a) of the Act says that notification of any SEZ shall be guided by the generation of additional economic activity and creation of employment opportunities.

The same cannot be achieved if there is a serious social unrest, likely to erupt without specific guidelines on land compensation and rehabilitation package. Therefore, in order to avoid social unrest, there must be specific provisions in the Rules with regards to (a) Modalities of acquisition of the land (b) Grant of compensation and rehabilitation package for the land losers and agricultural workers.

The main objectives of the SEZ Act are:

- (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;
- (e) development of infrastructure facilities;

It is expected that this will trigger a large flow of foreign and domestic investment in SEZs, in infrastructure and productive capacity, leading to generation of additional economic activity and creation of employment opportunities.

The SEZ Act lays down that it is to be set upon a minimum 1,000 hectares of land. Traditionally these lands would have been under multiple uses. They could be agro-biodiversity farmlands, mangrove belts, wetland and even

forest patches. Each of these has a critical ecological role in maintaining healthy environment besides being having an inherent link with people's livelihoods. Thus, when these lands metamorphose in to SEZs, the ecological functions and human survival are bound to be adversely affected. The Supreme Court has elaborated on the right to adequate housing, shelter and livelihood as part of the all-encompassing Right to Life under Article 21 in the landmark case of *Olga Tellis v. Bombay Municipal Corporation*, Local people are resisting projects in other parts of country like West Bengal and Maharashtra on the grounds of the loss of productive lands in hinterland and costal area and on ecological degradation. Not only this much, but there are also some other vital issues that needs to be mentioned the least which clearly goes against the rapid growing favors to the SEZ movement. These are as follows:

- (a) Revenue loss
- (b) Large-scale land acquisition by the developers which lead to displacement of farmers with meager compensation
- (c) Acquisition of prime agricultural land having serious implications for food security
- (d) Misuse of land by the developers for real estate purpose, and
- (e) Uneven and aggravated growth creating regional inequalities.

Legal Issues

The absence of democratic process in large zones will even deny Gram Panchayat elections and will form private monopolies responsible for providing wide range of service like water, power, sanitation etc. These services will not fall under any regulator of either sector or tariff type and provide enormous powers to private monopolies. The reaction of private administration will lead to stray sovereignties as per SEZ Act and it, thus, clearly violates the spirit of the Constitution of India as well as the functioning of the Panchayati Raj Act, 1996. There is no clearly defined exit route of the Units operating inside SEZs and pose uncertainty of fixed asset. Thus, less capital intensive industry is coming to set up shops in SEZs rather than high capital intensive industry. State SEZs policy does not talk about decentralization of authorities to DC of SEZs which leads to administrative complexity and act as hindrance to the success of SEZs.

Land Acquisition, Compensation, Resettlement and Rehabilitation

Private land is regularly acquired for both State-sponsored development and private projects, which has increasingly become contentious. Compulsory acquisition of land till the end of December 2013 is primarily governed by the Land Acquisition Act, 1894, which is a century-old legislation enacted in the very different social, economic and political milieu. In this background the colonial Land Acquisition Act, 1894 was repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. Compensation for Land Acquisition Compulsory acquisition is only of private lands means the statute pertaining acquisition cannot be invoked against crown lands. The cardinal rule is that there should be compensation for acquisition. It is improper for a State to appropriate or confiscate private property without paying due compensation. To be just the compensation must be adequate. It is something if some compensation provided though not adequate on the plea of overriding public interest, but to yield no compensation is deemed unjust. Every violation of rights of ownership which causes damage gives raises to liability to make compensation to the owner for the damage done (tort). This principle also applies when violation is indulged by the State. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, provides procedure for rehabilitation and resettlement of project affected families (rehabilitation and resettlement entitlements) and displaced people has right to sue for rehabilitation and resettlement entitlements.

Loss of Land & Displacement

Displacement has been invariably without rehabilitation. The land acquisition Act, 1894, a law made during the British rule, is still being used in a shameless manner for acquiring not only properties, but also the livelihood of peoples in exchange for meager amount of cash. (Acres for heartache) -Medha Patkar

In some SEZ, state governments are joint venture partners. In the case of some special incentives by means of concessional electricity and water tariffs have been offered. In *M.G. Badappanavar v. state of Karnataka* the court held that basic concept equality "equality is a basic feature of the constitution of India or any treatment of equal unequally or unequals as equals will be violation of the basic structure of India.

The SEZ Act, which violates the letter and spirit of the Constitution of India, it violates the fundamental rights of citizens guaranteed in Part III of the Constitution. Relaxation / inapplicability of the labour laws of numerous (which includes law disputes, Contract Labour (Regulation And Abolition) Act, 1970, Factories Act, 1948, Minimum Wage

Act,1948, Law on Trade Unions Act,1926), environment (protection)Act,1986 is not applicable to SEZ not required environmental clearance.

Violate Panchayati Raj Act, 1996 for local self-government, in violation of laws granting rights and control to Adivasi communities over their lands, violating a lot of international human rights conventions. As India is considered the policy implications emerging from SEZ could cause growing socio-political crisis, because society is much a lot more complex than assumed and that will lead to an organized or unorganized resistance and can even cause anti-neo-liberal political forces. Thus, in order to steer clear of polarization of society, civil society should participate to build consensus on development problems.

Constitution of India and Special Economic Zones

A Constitution cannot be regarded as mere legal document to be read as a will or an agreement nor is constitution like a plaint or a written statement filed in a suit between two litigants. A constitution must necessarily be the vehicle of the life of a nation. It provides for the framework of the different organs of the State viz. the executive, legislature and the judiciary. A constitution also reflects the hopes and aspirations of a people. (Khanna, J., Kesavanandabharathi case)

The Constitution of India guarantees Fundamental Rights to every citizen including the right to live and as the Supreme Court has pointed out the right to livelihood is inherent in the right to life. The ultimate aim of social security is to ensure that every one has the means of livelihood. In the light of the Act of 2005, the establishment of SEZs clearly violates the letter and spirit of the Indian Constitution. It violates the fundamental rights of citizens as guaranteed by the Part III of the Constitution.

Relaxation / inapplicability of many labour laws (including Contract Labour Act,1970; Factories Act,1947; Minimum Wages Act,1948; Trade Union Act,1926; Environment (Protection) Act,1986 are not applicable to SEZs). It also does not need environmental clearance. The Act, in furtherance, seems to violate the Panchayati Raj Act, 1996 meant for the local self-government, violating laws on granting and monitoring, affecting the vulnerable community of indigenous people or the Adivasis to the level of threat to their existence and violating many international conventions on human rights.

Land acquisition has resulted in the disruption of the livelihoods of affected households, lasting several years. Unemployment was a direct result of loss of land, and also of the absence of wage labour in neighbours' farms. Increased unemployment was also due to the large scale conversion of farmland into non-farmland also reduced the scope for work in common lands such as the collection of fruits and fodder for domestic as well as commercial ends. Households engaged in offering services (barbers, washer men, artisans, molla, etc.) lost employment with the decline in the economic status of the farmers who were their patrons (Venugopal, 2005).

The constitutionality of Land Acquisition Act has been challenged number of times, but the Supreme Court observed it to be in consonance with the Constitution as though it appears to touch upon the right to property and might appear violative of Art. 14 on the face of it, the provision regarding opportunity to be heard, and adequate compensation along with proper mechanism for dispute redressal makes it perfectly constitutional. Though the fire seems to be extinguished for now but all is not than calm as doubt regards its constitutionality might reappear especially in the wake of SEZs and the consequent linkage drawn between the two. However, though the constitutionality of SEZ Act has not been challenged as such, it is alleged to be violative of several laws. The following are main legal violations because of the SEZ Act, 2005:

- ◆ It violates the letter and spirit of the Indian Constitution.
- ◆ It infringes the Fundamental rights of the citizen guaranteed in Part III of the Constitution.
- ◆ Relaxation/inapplicability of many labour laws(including under the Industrial Disputes Act, Contract Labour Act, Factories Act, Minimum Wages Act, Trade Union Act)
- ◆ Environment (Protection) Act is inapplicable to SEZs. No environmental clearance needed.
- ◆ Violates Panchayat Raj Act (1996) for local self-government
- ◆ Violates laws granting rights and control to Adivasi communities over their land
- ◆ Violates many international conventions on human rights

Conclusion

This research article focused several issues relating to the SEZs, to promote industries manufacturing sector and supply of goods with free of tax. After the introduction of liberalization programmes Indian market are opened to the

global companies. For this purpose acquisition land is an important aspect. The government has decided to winding-up of idea of welfare state. According to the market economy welfare activities are against the development. But the common-man does not understand the concept of development. The first generation and second generation reforms have been introduced to boast the corporate culture. The government acquire the land for promoting corporate culture, the land has been acquired by paying least compensation to the owner of the land even the courts cannot stop the over privatization, which promotes the corporate culture the fertile agricultural land is being distributed to the Multi-National Companies at cheaper rates. The shortage of food grains and problems of starvation is the results of land acquisition. Another step for promoting corporate culture is the setting-up of SEZs. The vast cultivated land is given to the corporate companies for setting-up of SEZs. The corporations are exempt from taxation, they are allowed to supply of goods at the rate prescribed by them. Water and Electricity are supplies at low tariff. The corporate companies are the ultimate beneficiaries of SEZs. The SEZ Act 2005 is boon to the companies. But the farmer's, house holders and laborers are real looser of their rights. They are turned as labour in their own land. The gulf between rich and poor is further widened. The Constitution has guaranteed right to all citizens. But only rich politician's, burocrates and corporates are only enjoying the rights. By throwing the people to the downwards stage. The goods supplied by SEZ are generally are not in demand among the general public. The people are dragged towards the costly life. The SEZ is an accepted social evil.

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