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SPECIAL ECONOMIC ZONES IN INDIA: LABOR ISSUES AND KEY CONSIDERATIONS.

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SEZ-KEY CONSIDERATIONS AS AN ECONOMIC CONCEPT

Michel Chossavovsky recognizes that this era of globalization, is marked by a relocation of the Industrial base of advanced countries to cheap labour locations in developing countries.\(^1\) The obvious requirement is that of a cheap, stable and disciplined industrial labour force in a “secure political environment”. In tune with Global adjustment requirements various measures are being adopted to promote export competitiveness by the governments in these countries.\(^2\) These measures attempt to fulfill the hidden agenda of structural adjustment programmes, which endorse the development of a cheap-labour export economy, and drive down world commodity prices.\(^3\) Post 1991 in line with the motto “Die or Export” India has chosen to promote ‘non traditional exports’ through the Special Economic Zone Model.\(^4\)

An SEZ in purely essentialist terms is a geographical area that has economic laws which are more liberal than countries typical economic laws.\(^5\) In India in particular these Zones have been promoted as “safe heavens” for profitable investment untouched by the economic realities of the rest of the state.\(^6\) SEZs have been aggressively promoted by the Ministry of Commerce as an endeavour to combat procedural barricades, infrastructural deficiencies, bureaucratic complexities and structural bottlenecks raised by trade, taxation and labour policies which negatively affect the investment climate of the country.\(^7\) Since in the present scenario nation wide infrastructure development is not economically feasible and since structural reforms require time, SEZs are viewed upon as important strategic tools for accelerating the process industrial development in developing

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3 Supra n.1.
4 Hereinafter referred to as SEZs.
economies such as India. The SEZ policy of 2000 which was later given legal sanction in the SEZ Act of 2005 avowed the objectives of export promotion, creation of world class infrastructure in a climate of fiscal instability, along with the creation of employment opportunities. It attempts to do so through incentives such as a single window clearance for proposals to set up SEZs, exemptions from central sales tax and service tax, duty free imports and hundred percent export income tax exemptions for the first 10 years in operation. However so far, there is no conclusive evidence as to the role of SEZs in the achievement of the aforementioned objectives.

The decision to bolster India’s economic growth through development of SEZs was in no small measure influenced by the widely accredited success of the SEZ model in China. The Shenzen province SEZ of China has become synonymous with the bringing about of rapid infrastructure development and increased Foreign Direct Investment. It has grown from a small fishing village in the 1970’s to a metropolis having a population of over fourteen million people with foreign nationals investing more than US$30 billion for building factories and performing joint ventures. However one must realize the more realistic reasons for why China chose to follow the SEZ model and why its reasons differ from India. Western observers have mistaken China’s decision to develop SEZs as a move to integrate herself into the world Capitalist Economy. On the contrary it should be viewed as a part of China’s strategy to preserve socialism on one hand, while being able to experiment and utilize Capitalist economic forces under state control. Therefore in China SEZs were essentially a “laboratory” where an “experiment” of state capitalism

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9 See Gazette of India, June 23, 2005.
12 Supra n. 4.
13 Mayumi Murayama, Nobuko Yokota; “Revisiting labour and Gender issues in export Processing Zones: Cases of South Korea, Bangladesh and India”; Economic & Political Weekly EPW may 30, 2009 vol xliv no 22 73.
could be carried out at a relatively low cost.\textsuperscript{16} If the experiment succeeded significant policy conclusion could be drawn and applied to other areas, if it failed the “ripple effect” or damages to the country as a whole could be contained, while still proclaiming that socialist economic development was the best path to modernization.\textsuperscript{17} In either case, the conclusion to be drawn is that China never wished to open up its major cities to foreign capital and allow it to dominate there, in a blind search for Foreign Direct Investment.

For India on the other hand the concept of a demarcated enclave that has economic laws that are more liberal than the country's typical economic laws, was not new to its economy.\textsuperscript{18} India experimented with such a concept as early as in 1965, wherein it became the first country in Asia to set up an Export Processing Zone or EPZ\textsuperscript{19} in Kandla Gujrat.\textsuperscript{20} Nevertheless India could never establish itself as a successful example of the EPZ experiment unlike South Korea or Taiwan. The relative failure was attributed to strict Government Control and lack of infrastructure.\textsuperscript{21} Therefore post 1994, policy makers agreed to boost FDI through an economic concept similar to that of the EPZs only this time with greater relaxation of governmental controls and larger tax benefits.\textsuperscript{22} Ergo SEZ’s, with greater tax exemptions, with a freedom of private and public investment and with a single window clearance were seen to be the next engines of growth.\textsuperscript{23} The main difference between an EPZ and SEZ is that the former is just an industrial enclave while the latter is an integrated township.\textsuperscript{24} Hence one can see by this reason alone an SEZ requires far more land than an EPZ, a move that has been vehemently defended by the Ministry of Commerce and Industry by stating the benefits of employment generation and

\textsuperscript{16} Ibid. at p. 202
\textsuperscript{17} Id.
\textsuperscript{19} Export processing Zone.
\textsuperscript{20} Different names such as EPZ, FTZ, SEZ and maquiladora are used in different countries to represent similar institutions, however in the Indian Context the two terms EPZ’s and SEZ’s differ in terms of the incentives bestowed upon each by the state in order to achieve similar objectives. \textsuperscript{:} Mayumi Murayama, Nobuko Yokota; “\textit{Revisiting labour and Gender issues in export Processing Zones: Cases of South Korea, bangladesh and India}”; Economic & Political Weekly EPW may 30, 2009 vol xliiv no p. 22-73.
\textsuperscript{21} Ibid at 79
\textsuperscript{22} Id.
\textsuperscript{23} Supra n 4.
\textsuperscript{24} Supra n. 18.
that the total land in all the SEZs approved so far constitute a negligible share of India’s total agricultural land.\textsuperscript{25}

This segment will look at the flaws of the SEZ model in India, but does not seek to problematize the model from the standpoint of forcible land acquisition. Despite the Chinese influence, the implementation of the SEZ model in India has been distinct. In such a scenario, the using of China’s success as an example to justify excesses in order to push forward the SEZ model is intrinsically flawed. While in other nations\textsuperscript{26} the SEZs model was implemented in a regulated and restrictive manner, in India as of October 27, 2006 immediately after the coming into force of the SEZ Act policy makers had approved the setting up of 212 SEZs across 21 states.\textsuperscript{27} China on the other hand, (which had set up its first SEZ almost a decade earlier), has only six so far.\textsuperscript{28}

Economies of scale and the development of common public infrastructure require SEZs to be of a certain minimum size. However a substantial number of the notified SEZs in India (43 out of 63) have an area of less than one square kilometer. This is in sharp contrast to China where SEZs such as Shenzen and Hainan extend to an area of approximately 400 square kilometers and 3400 square Kilometers respectively.\textsuperscript{29} In addition SEZs are being developed as attachments to metropolises, in order to benefit from the city’s infrastructure rather than developing their own. Therefore poor choices of land allocation, wherein small portions of land have been allotted close to cities, have lead to a failure of SEZs in promoting infrastructure development in India unlike in

\textsuperscript{25} The land requirement of all SEZs a is 1,00,000 hectare, which is less than 0.1 per cent of total cultivable land in India: T.K. Rajalakshmi, “SEZ overdrive”, Frontline Magazine, Volume 24 - Issue 08 : Apr. 21-May. 04, 2007; Also see Mayumi Murayama, Nobuko Yokota; “Revisiting labour and Gender issues in export Processing Zones: Cases of South Korea, bangladesh and India”; Economic & Political Weekly EPW may 30, 2009 vol xlv no 22 73.
\textsuperscript{26} China, Korean and the middle-eastern model.
\textsuperscript{28} Report by Citizens Research Collective titled “SEZs and land acquisition factsheet for an unconstitutional economic policy” p. 3: Available at http://www.sacw.net/Nation/sezland_eng.pdf.
\textsuperscript{29} S. Joshi. “SEZ’s as Growth Engines - India Vs China”, SSRN abstract#1279023, March 14, 2007.
China.\textsuperscript{30} After the incidents at Nandigram and Singur, the size of SEZ has been limited to 5000 hectares; however one must realize that the problem lies not in the size of the SEZ but the type of land that is used to acquire it.\textsuperscript{31}

The trend in initial SEZ approvals depicts the fact that, SEZ are being set up in states which are already at the forefront of manufacturing and exports\textsuperscript{32} as opposed to developing states, aggravating regional disparities unlike in China.\textsuperscript{33} Furthermore in 1998, a waiver of $1.67 billion on customs duties was given to earn $1.04 billion in foreign exchange.\textsuperscript{34} Due to the extensive tax exemptions doled out to investors the government looses Rs 23,475 million annually, which is about 6.7 per cent of the central government’s total revenue receipts during 2005-06.\textsuperscript{35} The Finance ministry estimates a loss of Rs.1,60,000 crore till 2010 in revenue\textsuperscript{36} highlighting the fact that the concessions are overzealous, causing more harm than good. This coupled with the fact that as per Chossaoovsky, export promotion in developing nations is leading to over production and hence the contraction of export revenue, one doubt the efficacy of the SEZ model in India.\textsuperscript{37}

\begin{thebibliography}{9}
\bibitem{31} Government Notification dated April 05, 2007available at http://sezindia.nic.in/notificationDet.asp?id=2
\bibitem{32} The share of states, leading in industrial development namely Tamil Nadu, Karnataka, Gujarat and Maharashtra in total approvals with respect to SEZs is 49.5 per cent. On the other hand, industrially backward states of Bihar, north-east and Jammu and Kashmir do not have a single approval: Aradhna Aggarwal, “Special Economic Zones: Revisiting the Policy debate”, Economic and Political Weekly November 4, 2006.
\bibitem{34}Report by Citizens Research Collective titled “SEZs and land acquisition factsheet for an unconstitutional economic policy” p. 3: Available at http://www.sacw.net/Nation/sezland_eng.pdf.
\bibitem{35} Supra n. 31.
\bibitem{36} Supra n. 30.
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Nevertheless SEZs do poses the potential to provide employment in sectors other than agriculture and in doing so can significantly contribute to Human development as will be described in this segment.

It is argued that if India wishes to continue on its present growth trajectory, the absorption of surplus agricultural labour is inevitable. SEZs as channels of employment creation are viewed as one of the important means of facilitating the absorption of surplus agricultural labour of which there is plenty. The marginal productivity of labour was shown to be negative when during the period of 1993-1999, there was a decline in agricultural employment by 6.87 per cent however agricultural GDP actually climbed by 18.6 per cent. Amartya Sen argues that surplus agricultural labour in the subsistence agriculture sector eats into agricultural productivity. Therefore a diversification of agricultural labour is essential to increase earnings per unit of agricultural labour. Lewis contemplates that such a diversification is beneficial only of the diverted labour is gainfully employed in other sectors. The facilitation of such employment requires investment from entrepreneurs, backed by suitable incentives by the government. Therefore SEZs are promoted to provide gainful employment to surplus agricultural labour, which earlier yielded a zero marginal product.

Furthermore Aradhana Aggarwal has introduced the concept of a life cycle hypothesis of SEZs for analyzing their effects on human development. She proposes the existence of three broad phases in life cycle of an SEZ and how they impact human development and poverty depends on which phase of the life cycle the Zones are in. Depending on the stage one identifies three channels through which SEZs may affect human capabilities

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39 According to estimates provided by the Ministry of Commerce, 4 million jobs will be created through SEZs by 11th December 2009: available at http://sezindia.nic.in/.
40 Table on agricultural GDP available at www.macrosan.com
• Employment effects
• Human capital formation effects
• Technology upgrading effects

In the early stages of development of an economy, Zones are concerned with assembly type, low skilled, labour intensive production. At this state the Zone have a poverty reducing effect as they alleviate the unemployment challenge, for low skilled workers and generate income, thereby having a poverty reducing effect.\textsuperscript{44} They also provide indirect employment in what Chossaoovsky calls immobile sectors such as construction.\textsuperscript{45}

As the economy develops, SEZs enter the second stage where technology is advanced requiring a greater skill component from labour. The skill formation effect operates directly when workers are given specific training by the firms or when they acquire skills by working in the zone units. Hence in this stage SEZs partake in skill formation and human capital formation.\textsuperscript{46} The last stage is when zones need to give way to technology parks and clusters. They become important contributors to technology generation, transfers and technological spill-overs.\textsuperscript{47}

\textsuperscript{44} According to ILO (Online), the greatest number of jobs is created in China, with some 30 million employed in the SEZ sector. In Bangladesh, total SEZ employment grew from mere 624 in 1983 when the first zone was set up in Chittagong, to over 144,000 by 2003–4.: ILO (Online) ‘ILO database on export processing zones’ website : \url{http://www.ilo.org/public/english/dialogue/sector/themes/epz/epzdb/}; Currently, According to Aggarwal (2006) SEZs constitute 6 per cent of the manufacturing employment in the country.


\textsuperscript{46} 66 per cent of the companies surveyed reported the existence of formal training programmes, 124 of total 229 labourers (that is, 54 per cent) reported that they had undergone formal training. 70 per cent of female workers reported that they acquired training while 47 per cent of the male workers reported the same: Aggarwal, A (2007), “Impact of Special Economic Zones on Employment, Poverty and Human Development”, Indian Council for Research on International Economic Relations, Working Paper No.194.

\textsuperscript{47} Examining the importance of technology imports in the zones, firms were asked whether they imported technology. Of the 75 firms, 36 informed that they used licensed technology. Overt 75 per cent of pharmaceutical and textile sector units reported licensing arrangements to use imported technology, 25 per cent units in the chemical, rubber and plastics and other sectors used imported technologies. The average share of units importing technologies in electronics, engineering, and gems and jewellery was 50 per cent. Investigations revealed that a majority of firms that are importing technologies update the technology on
continuous basis: Ibid.
SEZ AND LABOUR ISSUES.

Ben Fine reiterates the theories of Marx when he propounds the fact that all surplus value is created by the exploitation of labour, and capital will always attempt to do so, to fulfill its role as self expanding value. Capitalism under which labour power becomes a commodity, must produce surplus value and this must be created by the excess of labour time over the value of labour power. Iris young writes that the injustice of capitalist society consists in the fact that some people exercise their capacities under the control, according to the purposes and for the benefit of other people. Exploitation then is that oppression occurs through a steady process of the transfer of the results of the labour of one social group to benefit the other. What is clearly evident in the Indian scenario, is that structural adjustment programs, in tune with the “Die or Export” requirement of Globalization favors a relaxation of labour laws in order to maintain a competitive investor climate and benefit Capital. In other words this benefit transfer is augmented by the SEZ model.

This segment will deal with the systemic structural changes in the labor law regime that advantage capital, rather than portray specific instances and data showcasing the dismal working conditions and plight of workers in various SEZs across India.

While it is widely accepted that labour laws are generally poorly implemented in contemporary India, the envisioned labour regime in SEZs has been consciously structured to promote the non-implementation of laws. Industrial lobbies wished for the labour environment in India to be along the same lines as that of China. This influence is evident on a cursory reading of the original SEZ Bill that contained provisions which if

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49 Ibid.
50 Iris Marion young, “Justice and the Politics of difference” (1990) chapter 2,“The Five Faces of Oppression.”
51 Ibid.
implemented, would deny workers even their basic human rights. Revisiting the Parliamentary Debates surrounding the Bill, one gains an insight into the intention of the state to cast away established labour rights, in an eager attempt to encourage capital to invest and assure it surplus through institutionalized exploitation labour. Section 50 of the Bill which did just this, was subsequently deleted under pressure from Left parties.

Section 49 took this intention a step further when it in essence stated that the Central government could, by notification, direct that any of the provisions of any other ‘Central Act’ shall not apply to an SEZ. It did not take long for Rupchand Pal of the CPI(M) to detect the government's hidden agenda in using the phrase "any other Central Act", which include laws intended to protect the interests of workers, and hence an amendment was promptly sought. The Act when it finally came into existence carried an important proviso to Section 49, to address the concerns of the Left parties, and ensured that the section wasn’t applicable to labour laws.

By doing so, a window was left open for the Ministry of commerce to employ the defense that all labour laws still continue to exits in SEZs. Nevertheless the availing of labour entitlements was made extremely arduous. Therefore what was required by capital to generate surplus was surruptiously provided by the state, in terms of a systemic break down of the protection available to the labour in these Zones. These changes represent using the words of Nagraj a “reform by stealth.”

What is worse is that such a dereliction of labour entitlements is proudly marketed an incentive to encourage capital. This is confirmed by public policy documents which characterize SEZs as areas where the legal regime will allow a “Flexible Labour

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54 Section 50 of the Bill stated "Directing that any of the provisions of any state Act relating to trade unions, industrial and labour disputes, welfare of labour including condition of work... invalidity, old-age pensions, and maternity benefits or any other activity relating to the SEZ shall not apply."
56 Parliamentary debates passing the SEZ act on 10th May 2005, FOR FULL TEXT of the debates: http://164.100.24.208/debate14/debfile_display.asp.
58 Janak Raj Jai, “SEZs, massacre of human rights with special reference to Singur & Nandigram”
Market”. The Economic Survey 2003-04 Celebrates delegation of the powers of the Labour Commissioner to the Development commissioner of the SEZ as a means to ‘make a flexible labour policy applicable to the units in such zones.’ Never mind the fact that the shifting of the duty of implementing labour laws from the Labour Commissioner to the Development Commissioner will create a conflict of interest in the office, in so far as the development commissioner is also charge with the economic success of the SEZ and to that extent there is always an inducement within the office not to privilege labour interests in relation to those of employers.

The process of facilitating capital continues with favorable restructuring of governance pertaining to SEZs to benefit capital and in turn exploit labour. Under sub-section (3) of Section 12 of the SEZ Act 2005, the Development Commissioner or his or her office is responsible for the administrative control of a Zone. Chapter 2 Clause 5(g) of the SEZ Rules 2006 hands over the power to the Development Commissioner to declare the SEZ as a “Public Utility Service”. In broad terms workers employed by public utilities have restricted rights under the Industrial Disputes Act of 1947. Clause 5 (f) of the SEZ Rules of 2006 delegates power to the development commissioner to handle workman employee relations; the way he desires.

Section 23 of the Act requires that designated courts will be set up by the state governments to try all suits of a civil nature and notified offences committed in the SEZs, thereby curtailing the jurisdiction of labour and criminal Courts.

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61 Jaivir Singh, “labour law and Special economic zones In India”, Centre for the Study of Law and Governance Jawaharlal Nehru University, CSLG WORKING PAPER SERIES CSLG/WP/09/01, APRIL 2009.
62 Public Utilities are defined under Section 2(n) of the Industrial Disputes Act, 1947.
63 The workers of Public Utilities cannot go on strike unless a notice six weeks in advance is given, nor can they do so during conciliation proceedings. Furthermore a Strike by a worker of a public utility in convention of Section 22 of the Industrial Disputes Act would be illegal.
As per section Section 20 of the Act, the central government may by notification specify a particular agency to carry out inspections of SEZ units to ensure compliance of Central government Acts. The net effect of such a provision is that, the periodical inspection of the factory, required to be made by the Factory Inspector under the Factories Act and Employees State Insurance Act, will now be made by such an accredited agency. The report of the accredited agency has no binding force under the Factories Act and ESI Act. Therefore, no penal action can be taken against the employer for industrial accidents, occupational disease or hazards.65

Furthermore every attempt has been made to prevent labour from organizing themselves in SEZs.66 In Schedule-II of the SEZ Act, a proviso has been added to Section 2267 of the Trade Union Act, with respect to SEZs, the effect of which is that national trade unions such as CITU, AITUC, INTUC, etc., cannot organize the workforce in SEZs and cannot form their unions within an SEZ.68 In addition access to an SEZ is severely restricted and closely monitored. As per Section 46 of the Act every person, whether employed or residing or required to be present in an SEZ, shall be provided an identity card by every Development Commissioner.69 Hence the observations of The International Trade Union Confederation (ITUC) hold true that because entry into these zones are restricted to only those workers, who are transported by their employers, every attempt to organize them is thwarted, rendering union activity non-existent.70

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66 The Entry of Central trade Unions into SEZs have been barred by an amendment to Section 22 of The Trade Union Act. which provides that trade union leaders not employed in the industry can become office-bearers of the registered trade union.

67 Proviso to Section 22-"Provided further that all the office bearers of the registered trade unions of the industry registered trade unions of the industrial establishment situated in the Special Economic Zone declared as such by the Government of India shall be persons actually engaged or employed in an industry with which trade union is concerned."

68 Ibid

69 Section 46 of the Act.

70 See ‘Annual Survey of the Violations of Trade Union Rights 2007 :India’ The International Trade
Union
Confederation (ITUC) available at http://survey07.ituccsi.org/
getcountry.php?IDCountry=IND&IDLang=EN.

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The mandatory prerequisites to be complied with before the retrenchment of a Worker as envisaged in Section 25-F of the Industrial disputes Act, of 1947, such a one months ______________ notice, along with reasons of retrenchment and compensation etc. also do not apply to SEZ units. This gives a free hand to employers to throw out workers at will. This along with the fact that the aggrieved party is precluded from approaching the Labour courts with his or her grievances leaves labour entitlements significantly diluted.  

In order to further simplify procedure with respect Labour laws, a system of Self certification rather than periodic inspection of compliance has been adopted. A representative example of this is the notification by the Government of Punjab stating that a system of Self Certification, in respect of Labour laws notified under the scheme of Labour department, shall be followed by the units in SEZ.  

The same stance has also been adopted by the Govt. of Kerala. Under such a scheme Units in SEZs are required to furnish consolidated annual reports in the prescribed form to the Development Commissioner in respect of periodical returns under the following Acts: (1) The Workman Compensation Act (2) Payment of Wages Act (3) The Factories Act (4) The Minimum Wages Act (5) Maternity Benefits Act (6) Payment of Bonus Act (7) The Contract Labour (Regulation & Abolition) Act and such other Acts as the state government may specify in the notification.  

At the end of the consolidated form, the employer himself has to certify, that his establishment is covered under say the Minimum Wages Act, 1948 and the said Act and its rules have been complied with, and all the registers and records required under the law are being maintained. This self-certification operates as conclusive proof of compliance with the Minimum Wages Act.  

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71 Supra n. 54.  
75 Ibid.
The systemic watering down of structured Labour protection programs is clearly evident and hence the above content can be summarized by listing the three significant features of the labour regime as it exists with respect to SEZs. First and foremost standard labour laws continue to operate with respect to SEZs, with no substantial change being brought about by the Act itself, and no scope of using the Act to change existing labour laws. Secondly, while there is no change in the laws, the laws will now be implemented by the office of the Development Commissioner rather than the Labour Commissioner. In accordance with their objective of ‘single window clearance’, SEZ units are required to report labour conditions prevailing in the units via a process of self certification not to the Labour Commissioner but only to the Development Commissioner. Thirdly the capability of workers to organize themselves and exercise their right to strike is abridged by the classification of activities with an SEZ as ‘public utility services’.

CONCLUSION
The Success of China has been, has been the standard rebuttal to most accusations of the inevitable failure of the SEZ model in India. However a cursory glance at the different styles and reasons for implementing the same Model in the two countries portrays the fact that two are different cannot be equated. No doubt as per Aggarwal SEZs have the potential to enhance human capabilities, but for this potential to be realized, the government must devise strategies to strengthen the opportunities that are likely to emerge, protect interests of the SEZ workers, and forge linkages between SEZs and the domestic economy. As of now no evidence exists as to any positive steps being taken in this regard. However, from the evidence that one does posses one realizes that there has been a clear and conscious dismantling of the existing legal structures as regards labor laws to promote their non implementation without fear of sanctions. Such an attempt has been couched in mild terms of “labour flexibility”. As per Eminent Jurist Upendra Baxi

the choice of words tend to normalize what ought to be centrally problematic.\textsuperscript{77} Therefore with respect to SEZ one can’t help but remains skeptical and is left asking the question “Does what we hope to achieve, justify the depravation caused along the way to achieving it?”

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