



COMPARATIVE ANALYSIS OF SPECIAL ECONOMIC ZONES (SEZs) IN INDIA WITH CHINA WITHIN INTERNATIONAL TRADE LAW

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ABSTRACT

Special Economic Zones have been built to foster the economic growth of the country, attract foreign investment and promote international trade. These areas are governed by unique regulatory frameworks that catalyze economic growth, and technological advancement and create job opportunities. SEZs have evolved from Export Processing Zones (EPZs) and Free Trade Zones and have been tailored in such a way to meet the needs of the host country. These zones have played a pivotal role in shaping investment policies and enhancing the competitiveness of the country hosting them. The methodology used in this article is doctrinal research. The research gap in the topic is that a comparative analysis can be done to understand the shortcomings in the present regulatory system of India and will help in the effective implementation of SEZs. In the present article, a comparative study of SEZs in India and China has been conducted. A comparative analysis of SEZs in India and China within trade law has provided insights into the economic, trade, export dynamics of these two powerful nations. The analysis helps explore the legal framework, regulatory environments and trade law implications in India and China.

KEYWORDS: Special Economic Zone (SEZ), Free-Trade Zones, Export Processing Zones, Industrial Parks, Specialised Zones.

INTRODUCTION

A Special Economic Zone is an area where trade laws are different from the rest of the country and is located within the territory of the country. The purpose is to increase employment, foreign direct investment and effective administration. SEZ (Special Economic Zones) concept dates back to the 1950s, referred to as export processing zones (EPZ) and later as free zones¹. SEZs are a geographical area within a country's borders subjected to unique regulations and policies distinct from the rest of the country. SEZs aim to attract FDI (Foreign Direct Investment) and economic growth, increase exports, boost industrialization, and create jobs. These zones are established at particular locations near ports, airports or transportation hubs to promote international trade and business activities. SEZs offer incentives like tax rebates, custom duty exemptions, streamlined regulatory processes and provide infrastructure to support business operations within the zone.

¹ Rajneesh Narula and James X. Zhan, *Using special economic zones to facilitate development: policy implications*, Vol 26 (SSRN), Pg.1, (2019)

An SEZ is geographically defined in a limited space with various location-specific advantages². The difference in location-specific characteristics and outside are of three types. First, they offer relief from customs duties and taxes. Second, they provide superior infrastructure and privileged access to some inputs. Third, they have offered reduced regulatory requirements with improved mechanisms of compliance with such regulations through administrative procedures³.

There is a lot of diversity in the quality of characteristics in terms of location of SEZs. SEZs and industrial parks are being built around the world to promote industrialisation. The term “special economic zones” (SEZs) covers many zones, including free-trade zones, export-processing zones, industrial parks, economic and technology-development zones, high-tech zones, science and technology parks, free ports, and enterprise zones⁴. Broadly, four characteristics define the SEZ concept:

1. it is a geographically delineated area, usually physically secured.
2. it has a single management or administration.
3. it offers benefits for investors physically within the zone.
4. it has a separate customs area (duty-free benefits) and streamlined procedures⁵.

Research on SEZs has been a critical discussion among scholars, policymakers and researchers for decades. The **research gap** is that a comparative study can be done to evaluate the success and failure of SEZs in different regions. Moreover, it can help assess the best tools for promoting SEZs in international trade.

SEZs are vital to a country’s international trade policy as they help facilitate the nation’s exports by providing an edge within the zone. Moreover, to support SEZs, the government invest in infrastructure development, including roads, bridges, etc. It helps in the overall economic development of the country. SEZs also attract foreign direct investment and help in creating employment. They offer unique regulations, making them essential in the global economic landscape.

TYPES OF SPECIAL ECONOMIC ZONES

There are various types of SEZs established to promote the country's economic development. The most common ones are:

- **FREE-TRADE ZONES:** They are also called as commercial-free zones, and they have unique customs and enjoy duty-free treatment. They are secured areas that are designated for the processing of imported and exported goods.⁶
- **EXPORT PROCESSING ZONE:** These zones are generally meant for commercial and industrial exports, and the goal is to encourage economic growth through foreign investment⁷. Moreover, these zones offer certain benefits, such as tax and import duty exemptions and few barriers.
- **INDUSTRIAL PARKS:** These parks are designed for industrial use instead of commercial or residential purposes, and tax-related incentives are common benefits for those that use these special zones⁸.
- **SPECIALISED ZONES:** Some of the most common uses for these areas include technology hubs, airport-based zones, and logistics parks⁹.

² *Id.*

³ *Id.*

⁴ Douglas Zhihua Zeng, *Special Economic Zones: Lessons from the global experience*, (PEDL), Pg1.

⁵ *Id.*

⁶ Adam Barone, *Special Economic Zone(SEZ) Meaning and relation to FDI*, INVESTOPEDIA, June 8, 2023, <https://www.investopedia.com/terms/s/sez.asp#:~:text=The%20first%20SEZs%20appeared%20in,American%20and%20East%20Asian%20countries.>

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

HISTORICAL BACKGROUND OF SEZ'S

Special Economic Zone history in India suggests that the seeds were sown in the mid-sixties. Moreover, the present model of the Indian Special Economic Zone was structured by establishing the first Export Processing Zone (EPZ) at Kandla in 1965¹⁰. Several other Export Processing Zone (EPZ) were found in various parts of the country. Still, the need for more efficient management and sound economic policy were the reasons for the failure of these zones in India. The Special Economic Zone existed because the economic reforms made during the 1990s did not give the desired results. The Indian manufacturing sector declined during the second half of the 1990s. The history of SEZs in India suggests that red tape, lengthy administrative procedures, rigid labour laws and poor physical infrastructural facilities were the leading cause of the deterioration of Foreign Direct Investments (FDI) inflow into India¹¹. Furthermore, the Indian markets did not give access to Foreign Institutional Investors (FIIs) into the Indian economic system. Moreover, the legal framework of the Indian economy was not strong enough to prevent misuse of Indian markets by foreign investors¹². Thus, the lack of a legal framework in India prevented the growth of Indian industry despite the implementation of liberal economic policy by the central government. This resulted in the formation of SEZs with world-class infrastructural facilities.

The SEZ Act of 2005 was passed by parliament in May after various meetings. It defines the role of the State Government in promoting exports and creating infrastructure. A board of Approval is created by SEZ by a 19-member body, and the board's decision is binding and final. The main aim of establishing a Special Economic Zone is to boost infrastructure development, simplify procedural complexities, remove bureaucratic hassles and reduce barriers raised by taxation and labour policies.

CHALLENGES FACED BY THE GOVERNMENT IN ESTABLISHING SPECIAL ECONOMIC ZONES (SEZs)

The major challenge in establishing SEZs is acquiring land. In a developing country like India, where there is already a shortage of land, acquiring land for establishing SEZs is a challenging task. In establishing SEZs, massive displacement of farmers takes place, and thus, it is required that a balanced approach is taken where the interests of both parties are taken into consideration. Therefore, State Governments are advised first to consider waste or barren land to establish SEZs. The Government enacted a national policy on Rehabilitation and Resettlement in 2007 in which land-for-land compensation will be given along with employment to at least one person from each affected family. The Central Government established a National Rehabilitation Commission to care for the affected families' rehabilitation. Moreover, housing benefits are also provided to the affected families. A robust grievance redressal mechanism has been prescribed, which includes standing R&R Committees at the district level, R&R Committees at the project level, and an Ombudsman duly empowered in this regard. The R&R Committees shall have representatives from the affected families, including women, voluntary organizations, Panchayats, local elected representatives, etc.¹³ The policy was formulated to strike a balance between the need for land for developmental purposes and protecting the interests of displaced persons.

LEGAL FRAMEWORK FOR SPECIAL ECONOMIC ZONES IN INDIA

The Special Economic Zone policy was announced in 2000. This policy was translated into the **Special Economic Zones Act, 2005**. The Act is understood as having the following objectives—'(a) generation of additional economic activity, (b) promotion of exports of goods and services; (c) promotion of investment from domestic and foreign sources; (d) creation of employment opportunities; and (e) development of infrastructure facilities.'¹⁴The SEZ act has been framed to enable a 'single window' approvals. The Special

¹⁰ Mr. Abhijeet Singh, *Special Economic Zone: The history and the Future*, Manupatra, (2012), <https://articles.manupatra.com/article-details/Special-Economic-Zone-The-History-The-Future>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Jaivir Singh, Labour law and special economic zones in India, CSLG/WP/08 Pg.1, Pg.6, (2012) <https://www.jnu.ac.in/sites/default/files/u63/08-Labour%20Economic%28Jaivir%20Singh%29.pdf>

Economic Zones (Amendment) Bill, 2019 was introduced in Lok Sabha by Mr. Piyush Goyal, Minister of Commerce and Industry, on June 24, 2019¹⁵. It amends the Special Economic Zones Act of 2005 and replaces an Ordinance that was promulgated on March 2, 2019¹⁶. The Act provides for establishing, developing and managing Special Economic Zones to promote exports.

JUDICIAL APPROACH ON SEZs IN INDIA

In *Mohan Lal Sharma v Union of India*¹⁷-It was held that to promote exports and attract substantial investments for export-led growth, the parliament simplified the procedure.

In *Reliance Industries Ltd. v Designated Authority*¹⁸ - The Supreme Court observed that the SEZs are given relaxations of customs and other duties, including anti-dumping duty¹⁹.

In *Ahmed Ehtesham Kawkab v. The Government of India*²⁰- the validity of the appointment of development commissioner under the SEZ Act was in question before the High Court of Andhra Pradesh. It was held that the Director, Software Technology Parks of India(STPI), Hyderabad, could not be equated to an officer not below the rank of deputy secretary. Therefore, appointing the Director, STPI as development commissioner was held invalid in the public interest litigation case²¹.

In *Dhabji Meghji Maheshwari v Hindustan Lever Limited*²², the petitioner's services were terminated in 2004. Therefore, they raised industrial disputes under section 2(A) of the Industrial Disputes Act of 1947²³. Moreover, the Assistant Commissioner of Labour had been authorised by the development commissioner to act on their behalf and discharge all the duties and functions related to the respective acts in so far as they related to labour and industrial operations of the Kandla Special Economic Zone. The Gujarat High Court remanded the matter back to the Labour Court, Gandhidham, to decide it on merits being a legal and valid reference made by the assistant commissioner of labour after giving reasonable opportunity of hearing to both the parties as early as possible within a period of one year from the date of receiving the copy of the said order²⁴. Henceforth, it may be understood that the development commissioner might empower the assistant commissioner of labour and maintain the spirit of the SEZ Act, which seeks to maintain the status quo relating to implementing the labour laws.

Thus, the judiciary has played a significant role in the effective functioning of SEZs in the country.

COMPARATIVE ANALYSIS OF SEZs IN INDIA AND CHINA

A comparative analysis of India and China in SEZs gives valuable information regarding the different approaches, successes and issues faced by these two countries in establishing SEZs as instruments for economic growth, promoting exports and in attracting foreign investment.

- China's SEZ initiative started in the 1980s to promote foreign direct investments and trade. On the other hand, India passed the Special Economic Zone Act in 2005 to promote exports in India and to boost economic growth.
- China is one of the most prosperous countries in SEZ initiative so far. They have built large SEZs, but the major one is Shenzhen, which has become a global economic powerhouse. India's SEZ programme is relatively small and has faced several challenges, such as land acquisition and infrastructure development.
- China's governance and regulations in SEZs are flexible and streamlined, and hence, they are attracting a lot of foreign direct investment. On the other hand, India has faced some real challenges

¹⁵ PRSINDIA.ORG, <https://prsindia.org/billtrack/the-special-economic-zones-amendment-bill2019#:~:text=It%20amends%20the%20Special%20Economic,for%20the%20promotion%20of%20exports> (last visited 24th Oct, 2023).

¹⁶ *Id.*

¹⁷ AIR 2007 Raj 244.

¹⁸ 2006(10) 3 SCC 368.

¹⁹ A. Subhramanyam and Mohan Rao. B, *The Special Zones Act, 2005 and Judicial Response*, Vol.54 No.2(JILI) Pg.248, Pg.252 (2012).

²⁰ 2010 (251) ELT 203 (AP)

²¹ *Id* at 19.

²² (2008) 1 GLR 124

²³ *Id* at 19.

²⁴ *Id* at 19.

when it comes to governance and has seen issues like red tape and complex rules and regulations of the government.

- China's SEZs have mainly contributed to the country's exports, making China a manufacturing and export powerhouse. It has helped China in global trade integration. On the other hand, India has mixed results. Some areas have performed really well, such as the IT sector, while others struggled to give results.
- China has the advantage of a reasonable labour force which contributed to its success in labour-intensive manufacturing. In India, they faced problems related to the labour force, which led to disputes and concerns about working conditions.
- China invested much money in transportation, logistics and utilities infrastructure. While India faced related to infrastructure, mainly in remote areas.

Both India and China have used SEZs for economic growth, foreign investments, and promoting exports. Still, both the countries face different kinds of challenges in implementing SEZs, and hence, they can learn from one another. The simplified regulations in China and the development of suitable infrastructure have been the key reasons for the success of SEZs in their country.

FINDINGS OF THE RESEARCH

The key findings of the research on SEZs in India and China are:

- China has many SEZs as compared to India, and the establishment of SEZs in China happened way before as compared to India and thus, China is able to make large scale impact.
- China's regulations are more streamlined as compared to India. The rules are less complex and easy to execute and hence, SEZs in China has resulted in economic growth.
- The current research will help India understand its shortcomings in the field of regulations and rules and they can follow the guidelines of China in this field.
- The research will help understand and study the system of a different country that is already ahead of India in the establishment of SEZs. This will help them improvise and make changes in the current system.
- The research will also help them make certain innovations which will be helpful in the field of technological advancement.

SUGGESTIONS

The following suggestions will be helpful for scholars, academicians, etc.

- The regulatory system of India should be made simpler and easier to access.
- The system should be digitalized so that it is convenient for people and the authorities.
- Any sort of corruption should be dealt with strictly and stringent provisions should be drafted to deter the people from indulging in corrupt practices.
- In cases of land acquisition, a balancing on interests should be done so that no one is injured by the act of another.
- China's SEZs system should be taken as a base and should be studied lucidly so that they can come up with changes in the current system.

CONCLUSION

Special Economic Zones(SEZs) represent a framework that has changed the country's economic landscape in the last few years. They were introduced in 2005 to promote exports, boost economic growth, attract foreign investments, etc. and made a major contribution to India's trade and industrialisation efforts. However, their impact and effectiveness have varied across regions which has led to complex issues and challenges. The policies of SEZs are still evolving and they are trying to make it simpler to enhance the ease of doing business. Numerous challenges have come along the way of SEZs, like bureaucratic hurdles, land acquisition and infrastructure development, and some SEZs have not been able to meet their desired objectives. They have played a significant role in attracting foreign direct investment.

The comparative analysis of India and China in SEZs within trade law has given very significant insights as to the advantages and challenges faced by both the country in establishing SEZs. It reveals that both countries have achieved substantial economic growth but have taken different paths. The comparative analysis emphasises aligning policy measures and regulatory measures to create an environment that boosts foreign investment.