Infrastructures of Growth, Corridors of Power

Preeti Sampat

Paper prepared for *India's Political Economy*

Conference Organized at IGIDR, Mumbai

November 2014

Corridors of Power

The Revenge of Finance

"*Liberty will not descend upon a people. A people must raise themselves to liberty that must be earned before it can be enjoyed.*" It was a muted Delhi winter afternoon in November 2011 as I made my way up the wide red sandstone steps to the North Block. I was greeted by these words inscribed along the North Block's arched stone entrance. With the *Rashtrapati Bhavan* (President's House) in the center, the North and South Blocks flank either side of the expansive driveway leading up to the *Bhavan*. I was there to meet the Joint Secretary Finance, second in the Finance Ministry's bureaucratic hierarchy. He had chanced to answer my call intended for his personal secretary, and I "luckily" landed an interview with him without circuitous protocol. As I entered the corridors of the Ministry, I wondered if, somewhat ironically, the inscription was an unwitting invitation to all "people" across time. I later learned that these were Queen Victoria's words, likely inscribed upon direction of the main designer of the palatial premises and much of colonial New Delhi, Edwin Lutyen, after whom many parts of what is now central Delhi are called "Lutyen's Delhi."[1]

In his budget speech in March 2011, the Finance Minister had announced a Minimum Alternate Tax (MAT) of 18.5% on booked profits, bringing within the tax net all industries that otherwise enjoyed blanket concessions (hence the title, Minimum Alternate). This had severely distressed industrialists and developers of Special Economic Zones (SEZs).[2] I was eager to understand why the central government was seemingly "axing its own foot" with the MAT and other proposed measures like the Direct Taxes Code (DTC), that was to replace the Income Tax

[1] Herbert Baker, attributed with designing many significant buildings in Cape Town around the time, assisted him on this assignment, especially for the North and South Blocks. The *Bhavan* itself was built in the early 20th Century by clearing the Rasina and Malcha villages of a few hundred families, under the Land Acquisition Act 1894.This incredibly powerful elite area of Delhi subsequently came to be called Ra*i*sina Hill, in obvious allusion to the ruling caste connotations of the name, when the syllable i is added to Rasina.

[2] Under the SEZ Act 2005 until then, SEZ developers and units enjoyed blanket tax concessions for the first five years of operations, 50 percent concessions on booked profits for the next five years and an additional 50 percent concession on profits "ploughed back" into investment in the SEZ for the subsequent five. The 18.5 percent MAT reduced these benefits.

Act 1961 and among other things, link tax incentives to the scale of investments made by industries, rather than give them tax concessions on profits.

What I got from the Joint Secretary Finance, Rohit Khanna (name changed), was a lesson in "revenue foregone" (or lost) by the central government as a result of existing tax concessions. He explained that the diversion of export-oriented industries from the Domestic Tariff Area (DTA) to SEZs[3] was the reason behind the zero growth of exports from the domestic area in recent years, and the 100 percent growth of exports from SEZs. I also learned that the SEZ "model itself was flawed." Instead of promoting manufacturing, he asserted, the "model was catering too much to the services sector, [and] services never needed a boost since they were anyway doing well." He argued that it was sufficient to reduce taxes for units in SEZs, but the country could not afford to give up revenue from SEZs altogether (interview November 24, 2011).

This interview clinched my interest in the deeply divided motives and arguments of the Ministry of Finance (MoF) and the Ministry of Commerce and Industry (MoCI) over SEZs, which several sources were alluding to in the course of my research. As I dug deeper, interviews with bureaucrats and developers, as well as bureaucratic paper trails between the two Ministries revealed that the differences were entrenched, pointing to intense rivalry, mistrust and policy divergence.

The Finance Ministry then released a "harmonized" definition of infrastructure in March 2012. The new definition created consistency across various laws and Ministerial departments for smoother implementation of "infrastructure" projects. A "master list" deemed as "infrastructure" *all public and private* undertakings for transport, communication, energy, water and sanitation and social and commercial infrastructure; commercial infrastructure included private investments in health, education, SEZs, industrial parks and tourism facilities (GoI 2012a; see Table 1 below). SEZs were not liable for forcible acquisition under a departmental order

[3] SEZs are deemed "foreign territory" by law for commercial purposes.

from 2007 (GoI 2007b; 2009a), but their inclusion in the list seemed to open a possibility for doing this.

Table 1: List of sub-sectors for Infrastructure Lending

Category	Infrastructure sub-sectors
Transport	1. Roads and bridges 2. Ports[1] 3. Inland Waterways 4. Airport 5. Railway Track, tunnels, viaducts, bridges[2] 6. Urban Public Transport (except rolling stock in case of urban road transport)
Energy	1. Electricity Generation 2. Electricity Transmission 3. Electricity Distribution 4. Oil pipelines 5. Oil/Gas/Liquefied Natural Gas (LNG) storage facility[3] 6. Gas pipelines[4]
Water & Sanitation	1. Solid Waste Management 2. Water supply pipelines 3. Water treatment plants 4. Sewage collection, treatment and disposal system 5. Irrigation (dams, channels, embankments etc) 6. Storm Water Drainage System 7. Slurry Pipelines
Communication	1. Telecommunication (Fixed network)[5] 2. Telecommunication towers 3. Telecommunication & Telecom Services
Social and Commercial Infrastructure	1. Education Institutions (capital stock) 2. Hospitals (capital stock)[6] 3. Three-star or higher category classified hotels located outside cities with population of more than 1 million 4. Common infrastructure for industrial parks, SEZ, tourism facilities and agriculture markets 5. Fertilizer (Capital investment) 6. Post harvest storage infrastructure for agriculture and horticultural produce including cold storage 7. Terminal markets 8. Soil-testing laboratories 9. Cold Chain[7] 10. Hotels with project cost[8] of more than Rs.200 crores each in any place in India and of any star rating; 11. Convention Centres with project cost[8] of more than Rs.300 crore each.

1. Includes Capital Dredging
2. Includes supporting terminal infrastructure such as loading/unloading terminals, stations and buildings
3. Includes strategic storage of crude oil
4. Includes city gas distribution network
5. Includes optic fibre/cable networks which provide broadband / internet
6. Includes Medical Colleges, Para Medical Training Institutes and Diagnostics Centres
7. Includes cold room facility for farm level pre-cooling, for preservation or storage of agriculture and allied produce, marine products and meat.
8. Applicable with prospective effect from the date of this circular and available for eligible projects for a period of three years; Eligible costs exclude cost of land and lease charges but include interest during construction.

Source: http://www.rbi.org.in/

On the one hand, Finance[4] had deliberately stymied the SEZ model by introducing the MAT and the DTC, and on the other it sought to facilitate the smoother implementation of "infra" projects. I learned over the course of research that the differences between the Commerce and Finance Ministries modeled divergent policy imperatives for the Government of

[4] In the interests of readability I refer to the Finance Ministry as simply Finance and to the Commerce and Industries Ministry as Commerce or Ministry of Commerce through the text.

India (GoI); Finance oriented towards an "inclusive" model of "economic growth" with revenue collection for state expenditures, while Commerce took a more "hardline" approach of "minimal government," allowing capital a freer run with subsidies and concessions. But what constituted "infrastructure," and its significance for "economic growth," was undisputed between the two.

The institution of the SEZ model in India met two key sources of resistance that transformed its implementation trajectory. One was the intense peasants and citizens' resistance to land acquisition, especially for large and medium SEZs; and the other, somewhat unlikely, was the Ministry of Finance, which objected to their scale, scope and tax and duty concessions from the word go. While resistance highlighted dispossession, corruption and real estate scams in the institution of SEZs, Finance consistently warned of their potential for "land-grabs," speculative investment in real estate, transfer of existing industries to SEZs and the "revenue foregone" by "concessions." These two arenas of resistance effectively dampened the SEZ model, changed the rules of the SEZ law (or game), and influenced the formulation of the new land acquisition law.

This paper analyzes the "behind-the-scenes" law-making process of SEZs. The "formal" SEZ law-making process has involved several Ministries, predominantly Commerce and Finance, that have been at loggerheads over them. "Soft law"[5] settings (by which I refer to industry-bureaucrat conclaves and recommendations by industry in the form of submissions or reports), were also powerful influences on the policy framework. Extra-legal influences, like the protests in SEZ areas, influenced political "course-correction," but beyond the pale of evidence and shadowing "formal" and "soft law" circuits, rumors and gossip point to bureaucratic "turf wars," Ministerial rivalries and high-level corruption as major extra-legal forces shaping the law. These "circuits of power" have determined the trajectory of SEZ infrastructures in India. Their

[5] Zerillo (2010) refers to "soft law" as non-binding but coercive processes of closed-door consultations and recommendations that result in non-binding directives, declarations, resolutions, which inevitably come to be enacted as law. This interpretation is disputable, as coercion renders these processes more appropriately in the realm of "mixed" or "private governance." Here I refer to "soft law" as arguably non-coercive closed-door consultations and recommendations from private bodies that influence law-making (see discussion later in the chapter).

analyses offer insights into the motivations and forces driving other "growth infrastructures," like the ambitious Delhi Mumbai Industrial Corridor (DMIC).

The materiality of infrastructure allows for the possibility of exchange and circulation of goods, ideas, waste, power, people and finance, among other things; and also signifies aesthetic and affective desire and possibility (cf. Larkin 2013). Infrastructure also signifies paradigms of development. In the post liberalization period in India there has been a marked shift from the post-independence model of state-led investments in infrastructure, to private investments or Public Private Partnership models (see also Nilsen 2010; Goldman 2011). The institution of what I call the "infrastructures of growth," facilitates the circuits of capital with a deeply embedded (if hackneyed) model of "trickle-down" development.

At the scale envisioned in the policy framework, investments in "growth infrastructures" fundamentally reconfigure relationships with land and resources[6]—moving people away from agrarian mores and other possibilities of "development" or "infrastructures," and engendering deeper dependence on capital's investment circuits. Unwittingly for public and private investors, the institution of growth infrastructures by private entities is also allowing (often) successful opposition movements of peasants' and citizens' groups challenging takeovers of land and resources for private interest. An ongoing dialectic of "institution-opposition" is creating contingent "revisions" in legal frameworks, but the impact of "revisions" on resistance is minimal as people resist dispossession. Any analysis of these significant transformations then, behooves examination of policy-making processes: the who, what, why and when of law-making that despite ostensibly democratic frameworks, are invariably obscured in bureaucratic practices or rendered invisible in "corridors of power."

The materials for this chapter were obtained from interviews with senior and mid-level bureaucrats in the Ministries of Commerce and Industry and Finance; SEZ Commissioners and

[6] This is an underrepresented relation in recent anthropological analyses of infrastructures; see Larkin (2013) for an overview.

administrators; SEZ developers and unit owners; legal experts; journalists; and academics in and around Delhi, Mumbai and Goa. I also attended four industry-bureaucrat conclaves on SEZs organized by industry and state bodies. I tracked archival records of communications, agendas and minutes of meetings, reports and documents available on Ministerial websites as well as industry, media and academic archives on SEZs.

Contentious communications between the Finance and Commerce Ministries were especially hard to come by, and indicate the exclusive policy-related infrastructures of information. The bureaucratic paper trail I cite below proved critical to analyzing the SEZ law-making process and was accessed from the documents that two journalists had procured and passed on to me. I could not gain access to the EGoM documents on the merit of my requests and Right to Information applications. This underlined the extent to which bureaucratic privilege can derail entitlements and rights (and I was privileged in many ways, including that I knew the bureaucratic procedures relating to information applications and could eventually secure access to the documents through other sources). It indicated that what the refusal of disclosure was protecting may indeed point to significant issues in the law-making process. It also reinforced the exclusion of "ordinary citizens" from policy-making arenas. I was never meant to trespass in the "corridors of power" between the Ministries in New Delhi.

Policy Imbroglio (Hotel Le Meridien, July 2011)

An industry-bureaucrat conclave on SEZs was organized by the influential Associated Chambers of Commerce (ASSOCHAM) in the post-MAT period of "uncertainty" in July 2011. The meeting, held in the plush five-star Le Meridien Hotel, anticipated the growing "policy imbroglio" with SEZ investor "withdrawals" and "surrenders." I reproduce below excerpts from the presentations of two key actors, then Commerce Secretary (highest ranking bureaucrat of the Ministry) Arjun Vajpayi (name changed), and a prominent Delhi-based SEZ corporate lawyer from Vaish Associates, Hitender Mehta. Their arguments capture the hedging by the Commerce

Department over MAT and land acquisition on the one hand, and the growing disquiet among investors over SEZ "policy reversals," on the other.

The day-long panels at the ASSOCHAM convention were held in a large convention hall of the hotel and featured a range of talks, from the Commerce Secretary, the (next in line) Joint Secretary Commerce, Commissioners from various SEZs, representatives of Free Zones from Turkey and Oman, SEZ developers, industrialists and legal and taxation experts. Unrest in the SEZ industry in the aftermath of the MAT and land acquisition issues shaped the proceedings of the day.

a. The Bureaucrat:

Then Commerce Secretary Arjun Vajpayi was moved up the agenda as the first speaker, as he had "to leave soon after for another meeting" (industry's palpable unrest was possibly factored into his schedule). His speech revealed the Commerce Ministry's disposition around the MAT and land acquisition at the time, and indicated the agenda items Commerce was open to discuss, and those that it would not. He highlighted two related issues, the concentration of SEZs in a few states around metropolitan centers and the need to reach the "hinterlands."

In an obviously "educated abroad" accent, he started with a reprimand:

> …Most of your SEZs are concentrated in about six states. Those six states also account for 92 percent of total exports from the SEZs. Which means it's not merely the number of SEZs but the concentration is complete, almost total in terms of exports emanating from Maharashtra, Gujarat, Tamil Nadu, Andhra, Kerala and Karnataka. Even within those states, by and large, you would be spot on if you just looked at the major cities and looked around them. That's the second problem [that] within the states where they're coming up, the concentration is in highly selected areas.

Adding that the main motivation behind SEZs was a "hassle-free environment" with "infrastructure provision" to facilitate production, he said, tax concessions were secondary, the

first priority was a "good environment for producers." "Labor, land and infrastructure" he said, are "pan-India difficulties, with power and water shortages, inadequate roads, connectivity and ports." SEZs were to take care of "infrastructural bottlenecks that are worse now than at the time SEZs were envisaged in 2004." For a businessperson outside zones, he said "wage rates are going up and I may lose my edge, and I may need to get out of the business." Land he added "is a major issue in the country. It is just no longer possible, given the agitations that have taken place over the last 4-5 years, and the very complicated politics that is involved in all of this, to get hold of large parcels of land, and say this is an SEZ."

Snapping his fingers then:

> You know, there may have been a time when you snap your fingers and you could get a 1000 hectares. It's not gonna happen now. And if its not gonna happen now, what are we gonna do? Are we just gonna sit around and do nothing about it, or do we need to start having a second look? At both the SEZ Act and the rules?
>
> This concentration of SEZs all along metropolitan hubs, has got to end. Simply because the price of land has reached astronomical levels [in these areas]. Now, if you're real-estate developers, it doesn't matter. You buy land at astronomical levels, you sell it on at astronomical levels. But you're *not* real estate developers, you're *manufacturers*. Land, is only an instrument in your [business]. That regional concentration has to end. You have to get out of the Bangalores and the Hyderabads and the Kolkotas, you have to go into the hinterland. Because you're going to get land cheaper there. And you're going to get labor cheaper there, you're not going to get labor cheaper in Bangalore. If you don't [move] it won't happen. I *assure* you, it is far more difficult to get land in a village near Noida [suburb of Delhi], then it would be in a land [sic] in the boonies. I understand the concern of the DTC [tax concessions being linked to investments] and what have you. But, even if you fix the MAT and all those issues, you will have these three big problems to cope with. And the quicker you guys, collectively, think about what needs to be done

> on those matters and tell us, the better it would be to deal with the problems that may arise in the next five years (emphases in original, speech July 27, 2011).

After his speech, a developer raised a question about the cooling of investor interest in SEZs post MAT. Vajpayi assured the participants that the taxation concerns of industry would be given "fair hearing with the Parliamentary Affairs Committee" constituted for the issue. He urged again that industry focus on the three issues of "land, labor and infrastructure" for the long term (and forget about MAT). After this, he left the meeting.

His attempts to deflect developer and industry concerns over MAT and the proposed Direct Taxes Code (DTC) however, failed. It became clear over the day's proceedings that the convention had been convened primarily for SEZ developers and units to gauge how "serious" the central government was about revoking their promised tax benefits with the MAT and DTC. The Secretary's suggestion of focusing on "investment in the hinterlands" was not enticing, and ignored for the rest of the day.

b. The Lawyer:

Towards the end of the day, Advocate Hitender Mehta, a legal expert on SEZs, spoke on the two "burning issues," MAT and land acquisition. I juxtapose below the concerns he raised as a counter to Secretary Vajpayi. His presentation highlighted the agitation within industry circles with the "policy instability" unleashed by the MAT, the DTC and increasing activism by the higher judiciary in land acquisition cases.

Advocate Mehta began by exhorting developers to petition the Supreme Court against the MAT. He noted that in a recent interview he had heard Commerce Secretary Vajpayi argue over the reduction of the MAT from 20 percent[7] to 10 percent. This he said, meant that the Commerce Ministry was "resigned" to the MAT and only willing to "bargain" over it. He pointed out that the SEZ Act had its own tax regime and its "rules of business" clearly mandated

[7] Developers consistently referred to the 18.5 percent levy of MAT as 20 percent.

that any change in fiscal incentives to SEZs was to be initiated by the Commerce Ministry. He added that "Personally I am seeing this as a backdoor amendment which Finance Ministry has chosen to do." Only three petitions had been filed in the courts thus far he said, and he felt that others needed to step up: "unless they [other developers] take action, they initiate some sort of resistance process, Ministry of Finance may not actually then come down to [renegotiating] the terms."

On land acquisition, stressing that no compulsory acquisition is allowed for SEZs, he added, "but now issue comes up, previous acquisitions done by the state governments are being questioned. And there are some court rulings, one by Supreme Court in Noida case, [of] 156 acres. They ruled down the acquisition by the state government! They said now this is to be restored!" Similarly raising alarm over a High Court order of the demolition of the DLF SEZ in Gurgaon[8] he added:

> Another thing is coming. In Gurgaon, my friend from DLF is sitting, 22-year old acquisition by the state was reopened. And Punjab and Haryana High Court, they passed an order to demolish a functional SEZ! I don't know whether they've [judges] visited this SEZ or not, the kind of infrastructure that has come up, whether they've seen this or not, but it is scary, to see what kind of jurisprudence is evolving! Luckily, this decision has been stayed by the Supreme Court, but still, the final outcome is awaited.

He continued, "And in Noida we are now hearing that cases of 1976 onward, they are contemplating to reopen. So where is the stability of law?" Highlighting the Jagpal Singh vs State of Punjab judgment of January 2011 (also discussed in chapter two) he explained:

> The Supreme Court, what they're thinking I'm just trying to bring out to your notice. They're actually questioning state government acquisitions. This [case] was in particular

[8] The Punjab and Haryana High Court ordered the demolition of the DLF SEZ in Silokhera village in Haryana in February 2011 because of an illegal transaction between the company and the state government. Petitioners from the village had challenged the acquisition of over 200 acres of land from their village by the state government and its sale to private companies. The SEZ land had first been sold to another developer for a hospital who in turn sold it to DLF. DLF challenged the order in the Supreme Court and managed to get a stay on the demolition by July 2011 (Sura 2011; Ohri 2011).

> reference to the *gram sabha* [village assembly] acquisitions. And they come down very heavily and they cited this in their judgment. That in U.P., [the] consolidation of land holdings Act is widely misused and with the connivance of consolidation authorities. And surprisingly U.P. government has not chosen to object to this, so let us say that they have accepted it. And Supreme Court goes on, saying that 'similar [acquisitions] may have been practiced in other states. The time has come to review all these orders by which the common village land has been grabbed by such fraudulent practices.'
>
> Pausing for a dramatic moment he then exclaimed:
>
> It, it actually leaves me in a shivery condition! And before parting with this case what they've said, it's even more scary! They give direction to all the state governments in the country, that they should prepare scheme of eviction of illegal unauthorized occupants of *gram sabha*, *gram panchayat*, *peromboke* [village commons], *shamalat* [grazing lands] land and these must be restored to the *gram sabha*! This is quoted from the Supreme Court Judgment! And then they say the political connections, or, huge expenses incurred in construction, these are no excuses." He concluded, "Now I leave it to you to just, think about this, review this and what kind of jurisprudence is evolving. And it would be a message for investors also, if they want to invest in the SEZs, particularly developers, they need to take care of this situation also (presentation July 27, 2011).

Needless to add, legal developments and fresh litigation are great foraging grounds for lawyers and tax experts and his alarm may well be motivated by enlightened self-interest. Regardless, while Secretary Vajpayi tried to deflect attention from the MAT, Advocate Mehta advocated a frontal confrontation. Both highlighted the tax and land issues to very different ends. These presentations captured the widening gap at the time between Commerce's ability to deliver industry's expectations and the sundering of the "consensus" between capital and the state over SEZs. After the July convention, several "stake-holder" discussions were held by the Commerce Department in an effort to soothe industry unrest, and while changes in operational

rules were subsequently made, the major issues of MAT and land acquisition remained unresolved and festering.

The backlash was potent. As industry had to "bite back," there was growing and frequent industry decrial of "unstable policy" or "policy paralysis" engendered by then ruling Congress-led UPA. Though not confined to SEZ issues, this decrial especially intensified in the last two years leading up to the 2014 election year.[9] The endorsement of the controversial then-Chief Minister of Gujarat, Narendra Modi as an ideal Prime Ministerial candidate by major Indian business houses; their support for his spectacular high-tech "Presidential-style" election campaign; and the BJP's resounding victory under his leadership with his elevation to Prime Minister in the 2014 elections, have also to be seen in this context of capital's dissatisfaction with the previous regime.[10] The "surrender" of the Reliance Haryana SEZ Ltd. (RHSL) in the commercial and residential suburb of Delhi near Gurgaon in Haryana state is illustrative.

The RHSL "Surrender"

Promoted by one of the biggest Indian corporate houses, Reliance Industries Limited,[11] the proposed Reliance Haryana SEZ Limited was announced in 2006 by the Haryana government and was to cover over 20,000 acres in Gurgaon and Jhajjar districts. A total of 1,383.68 acres had been "acquired" by the project, which it sought to surrender in 2012. In 2003 (before the SEZ law was enacted), about 1,700 acres of fertile agricultural land was proposed to be acquired by the state government in five villages of Gurgaon by the Haryana State Industrial and Infrastructure Development Corporation (HSIIDC) under the Land Acquisition Act 1894 then

[9] Other factors fueling industry ire have included the number of crony capitalist deals busted by the Central Bureau of Intelligence and subsequently the Supreme Court in recent years.

[10] Modi has been known to facilitate big business through land and tax concessions in Gujarat state where he was elected for three consecutive terms as Chief Minister in the face of an extremely weak opposition. See also Varadarajan 2014 for a trenchant analysis of how the judicial fallout of "crony capitalism" scandals during the UPA regime have added fuel to industry's (f)ire in supporting Narendra Modi as an ideal administrator. Support by big capital has added to the spade-work of the Rashtriya Swayamsevak Sangh, the ideological caucus of the BJP, in the BJP's electoral campaign, and urban popular frustration with the UPA manifested in recent anti-corruption agitations.

[11] Reliance Industries also promoted the failed Mumbai SEZ on the outskirts of Mumbai city discussed in the previous chapter.

in force.[12] In 2004, amid protests from farmers, the state government scaled down its target by 100 acres and issued a final notification for about 1,600 acres. Some landowners petitioned the state's high court challenging the "public purpose" for which the land was being acquired. With unrest growing, the government constituted a "high-powered committee" to reevaluate its decision for acquiring the land (Ohri 2014).

In May 2005 (again, before the SEZ law was enacted), Reliance Industries proposed an SEZ in the adjacent Jhajjar district of Haryana over about 450 acres which was notified soon after. In May 2006, the high-powered committee released its decision to drop an additional 50 acres from 1600 acres. A week later the company proposed to the government that the Gurgaon land (1550 acres) be included in the SEZ project in Jhajjar. The Haryana industrial corporation soon passed a resolution, in which it expressed its "incapacity" to come up with an SEZ on its own, stating that since "world players" had come into the picture, a Public Private Partnership project would be prudent (ibid.).

In 2007, some landowners from the area filed petitions in the Punjab and Haryana High Court[13] against the government's decision to hand over their land to the company for an SEZ. By 2009, the high court ordered a stay on the creation of third-party rights (SEZ developer) on the disputed land. The state government subsequently challenged this order in the Supreme Court. The Supreme Court adjourned the matter until recently when it remitted the matter back to the high court for fresh adjudication.

By January 2012, Reliance offered to return the Haryana industrial corporation 1,383.68 acres of land given to it by the state government and abandon the SEZ project in Gurgaon, and petitioned the Board of Approval for SEZs for a "withdrawal," without stating any reasons. An official Haryana government release said the SEZ Project at Gurgaon had "been rendered economically unviable due to the mid-term corrections in the SEZ Policy viz. imposition of the

[12] Haryana is one of the "green revolution" states in Northern India with large areas of fertile irrigated land.
[13] The two states share a High Court and the capital city of Chandigarh.

Minimum Alternate Tax, withdrawal of the Tax holiday, slowdown in the global economy, prohibitively high prices of land and other problems associated with aggregation of land through private negotiations" (PTI 2014b).

RHSL had requested "refund" of the amount paid by them to the Haryana industrial corporation and reimbursement of expenditure incurred on the site, apart from interest on the said amount aggregating to Rs.1,172 crore (approximately $195.3 million)[14]. In February 2014, the Haryana Cabinet approved the return of the land to the Haryana industrial corporation, in lieu of payment of an amount of Rs 343.51 crore ($57.3 million) to RHSL as against Rs 399.85 crore ($66.6 million) paid by RHSL at the time of transfer of land, stating: "The claims on account of Administrative charges forming price of the subject, refund of the Stamp Duty, reimbursement of development expenditure and interest amount have not been accepted. The refund amount has been worked out strictly as per the terms of the Joint Venture Agreement date 19th June 2006 signed…" (PTI 2014b). The decision to denotify Reliance Haryana SEZ Ltd, was taken by the SEZ Board of Approval in June 2014.

In May 2014, the High Court questioned the Haryana government "for taking no action against Reliance Industries while taking back nearly 1,400 acres of land allotted for developing one of the country's biggest special economic zones under the public private partnership or PPP model" (Ohri 2014). The division bench sought an explanation from the state government for not levying any penalty despite the company's failure to develop the SEZ even after eight years (for more details on the case see Ohri 2014; PTI 2013, 2014b).

When I met a senior representative of the Reliance Haryana SEZ Limited in Delhi in September 2011 in the company's Gurgaon headquarters (before the SEZ withdrawal) located in the premises of the Ambience Mall, he explained to me that RHSL was "waiting and watching." His frustration was palpable. Enumerating the problems with land acquisition and "policy instability," he described the UPA regime as "governance with crutches" that "walks slowly" and

[14] At August 2014 dollar rate of Rs. 60 = $1.

is constantly "falling." He declared that India needs a "single party" with a "political focus on growth" and the "huge Indian market" with "300-400 million middle-class consumers." Elaborating on schemes like the National Rural Employment Guarantee Program,[15] he said, "Why is the government doing it? Teach the guy to fish; allow industry to teach [him].. [let] industry come in." He went on to add that there was "too much democracy" in the country, and described the need for a "strong administrator" to set it right. I sensed what was coming, and soon enough, he added, we need a "...strong leader. We need someone like... Narendra Modi" (interview September 20, 2011). As I disciplined my smile in place to allow the moment to pass, I experienced firsthand, for the first time, the meaning of the expression, "feeling the hackles rise at the nape of my neck." (It was one thing to know intellectually how the interests of capital allied with authoritarianism, but another to hear firsthand, and in silence, the endorsement of an authoritarian right-wing Hindu-nationalist accused of abetting and overseeing mass murder!)

Making the SEZ Law

The Indian economy was relatively insulated from the "global" financial crisis in 2008-11 by a combination of monetary policy, expanding domestic market and capital, and a mixed-bag of stimulus and welfare entitlements (see Subbarao 2009; UNDP 2011). As a result, Indian capital invested enthusiastically in the initial SEZ promise of land, resources, "infrastructure" (water and power were to be supplied 24x7 to the SEZs) and potentially, the labor of dispossessed peasantry. As is evident from the jump in the numbers of SEZs from 2008 to 2011 (366 to 584), while the SEZ model was to facilitate India's global economic integration, this was not necessarily at the "behest" of "global" capital seeking to come in, although global investors were certainly on the "invitation list," for instance the Indonesian Salem SEZ in West Bengal or the South Korean POSCO SEZ in Odisha. The interest of global capital influenced the development

[15] A hard-won, albeit limited victory of social movements in 2005 ensuring 100 days of employment a year for each rural family and unemployment compensation in case of failure to provide employment.

of the SEZ framework, with the involvement of consultancy firms like McKensie in SEZ policy formulation. The SEZ model as it bore out however, was more in keeping with the aspirations of domestic capital with its growing global reach and interest in real estate (this also becomes evident from the low number of operational SEZs, only 143 SEZs were operational in 2011 out of 381 notified and 584 total approved).

I discuss below the SEZ law-making process that has involved frequent inputs from business interests that also partly explain their sense of "betrayal" with the "reversals" of concessions.

"Soft Law"

Zerillo (2010) argues that to understand how legality works in social settings we need a more open definition of what law is. He refers to "soft law," as "non-binding coercions," those specific procedures and mechanisms aimed at obtaining compliance despite their non-justiciable character. He argues that it is a practical necessity to look at particular sites and locations where soft law originates and takes shape. In the increasing proliferation of law-making procedures and sites and in the privatization of legal regimes, which then draw upon the power of the state for enforcement, soft law becomes "hard law." However, coercive settings are more aptly described as "mixed" or "private governance" settings; my use of "soft law" here refers to non-coercive settings that influence law-making. The milieu of liberalization and export-led growth facilitated the SEZ policy framework through its genesis and evolution. The Commerce Ministry's "hard line" approach to promoting the interests of SEZ capital meant that the law itself evolved in frequent and ongoing consultations with industry "stake-holders." The Commerce Department actively championed industry concerns and needs. These consultations, reports and recommendations then, became the "soft law" settings that fed the making of the SEZ "bare law."

In 2000, under the leadership of then Commerce Minister late Murasoli Maran of the

BJP-led National Democratic Alliance (NDA), a new SEZ policy was declared. Deeply impressed by a visit to China's Shenzhen SEZ in early 2000, Maran soon incorporated SEZs in the Export-Import policy announced later that same year, calling for "a significant break with the past" through the introduction of a "simple and transparent policy" without "inspector-raj" and with "100% FDI" (The Hindu 2000).

In 2001, a report of the global management consultancy firm McKinsey & Company (2001) prepared at the initiative of then Prime Minister of the BJP-led NDA, Atal Behari Vajpayee, recommended, "Over the next 5 years India could attract FDI of over US $11 billion in the exports sector. Major action required for doing so is the creation of SEZs offering world class infrastructure and other facilities." A 2003 press release issued by the Commerce Minister cited this report and its call for SEZs (GoI 2003a), as did the 2003 proposal of the Commerce Ministry to enact a new SEZ law (GoI 2003b). The proposal also referenced interactions held with Indian financial institutions, leading to the establishment of a committee under the leadership of the Industrial Development Bank of India. The committee recommended provisions for a legislative framework for SEZs that would promote greater confidence among financial institutions.

In 2004 then, a joint McKinsey—Chamber of Indian Industry (CII) report (2004) recommended that the government needed to remove barriers to export-led growth, two key recommendations asking for simpler administrative procedures and flexibility in employment of contract labor to encourage SEZs. Indeed, a "single-window clearance mechanism" for approvals, and flexibility for state governments to relax labor and environment laws found their way into the legal framework of SEZs. Reports and submissions by global and domestic corporate consultants and interest groups found voice in the SEZ policy and legal framework as it evolved.

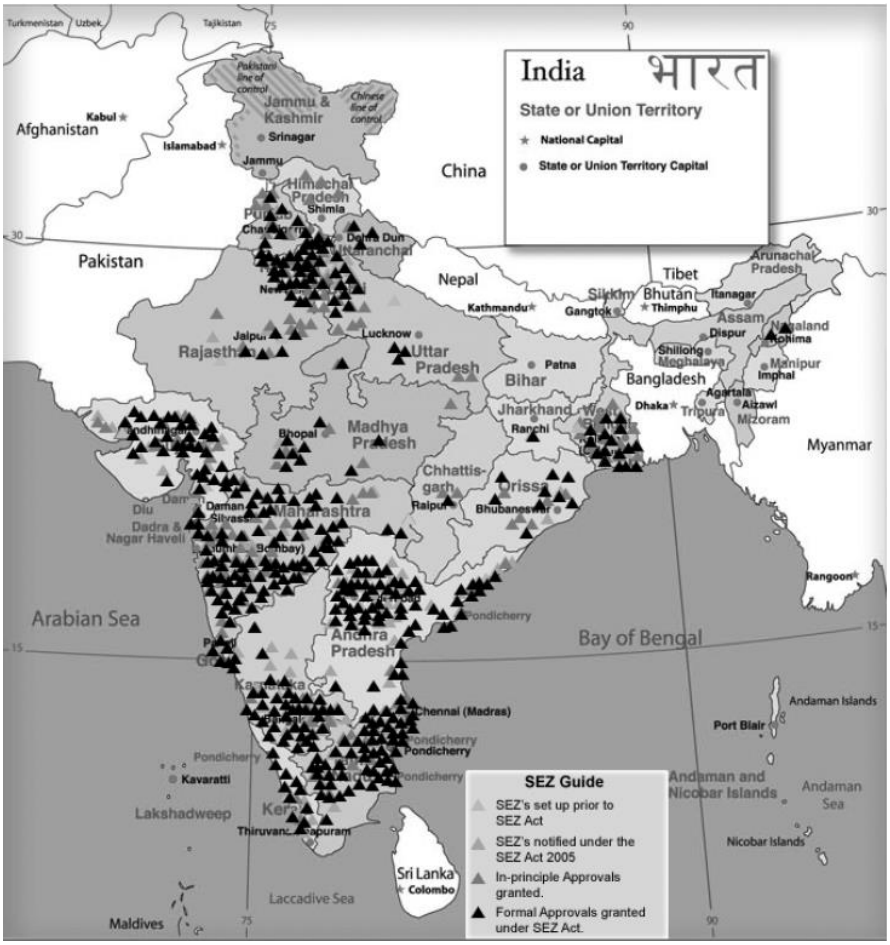
Ongoing engagement with "stake-holders" is reflected more recently in conclaves addressing industry concerns over SEZs organized by government and industry bodies. These

conclaves like the ASSOCHAM one discussed earlier are organized by important industry lobby groups and Commerce Department affiliated bodies. One conclave I attended was organized by the Chambers of Indian Industry (CII); two by state-led bodies, the Export Promotion Council for EOUs and SEZs (EPCES), and the Santacruz Electronics Export Processing Zone (SEEPZ) in Mumbai. Along with key developers, most of these conclaves had senior bureaucrats from the Commerce and Finance Ministry (particularly the Revenue Department) in attendance. At least two of them, the one organized by ASSOCHAM and the other by the Export Processing Council, were held in plush hotels and three accompanied with lavish meals.[16] Three were day-long meetings and one was a half-day consultation.

The first "stake-holder consultation" in post MAT scenario was organized by the Export Processing Council in September 2011 at The Hans Hotel in central Delhi. Here again, officials flagged the issues of the concentration of SEZs near urban areas (see Figure 3 below released at the time by the Commerce Department in a "discussion paper"), while developers complained about MAT. Revenue department officials in attendance felt obliged to explain that there was clear rationale for taxation and that Revenue was not against SEZs per se. Officials requested suggestions for improvements in the investment environment for SEZs, and developers asked for reductions in duties for sale in domestic areas given the slow global demand, and relaxation of norms for servicing domestic customers in SEZs. Other issues discussed at The Hans, such as the relaxation of "minimum land" and "contiguity of land" requirements, the "broad-banding" of sector-specific SEZs to allow additional sectors into an operational SEZs had also come up in the ASSOCHAM convention. By November 2011, based on recommendations from the first consultation and other submissions by developers and industry bodies, the Commerce Department had came up with a draft discussion paper to further facilitate discussions, identify "problem areas" and resolve them through new rules for the law.

[16] I note the settings of these consultations here as they contrast sharply with the settings of the areas where SEZs come up, the "underdeveloped" countryside. These "stake-holder" consultations also contrast with the intense agitations and strain that people opposed to SEZs (and similar projects) undergo to before they can get the representatives of the state to even acknowledge their grievance, often by repression, let alone negotiation.

Figure 3: Distribution of SEZs



Source: GoI 2011e

The discussion paper identified several issues raised by developers previously, like: a) the minimum area requirements for SEZs; b) contiguity of land parcels; c) "broad-banding" of sector specific SEZs to attract investors; d) allowing domestic customers to be serviced in non-processing areas; e) the increasing unattractiveness of SEZ fiscal incentives; and, f) leveraging domestic sale entitlements for manufacturers to attract more investment (GoI 2011e).

It identified four "adverse perceptions" of SEZs "on account of a few black sheep" that were "causing damage to 'Brand SEZ:'" i) that SEZs are about "garnering control of land;" ii) they were "tax havens leading to loss of government revenue;" iii) that there were coordination issues between various government departments undermining the Single Window Mechanism of SEZs; and iv) that the fiscal policy environment for SEZs was "unstable." It acknowledged that as a result of these "perceptions," there was significant reduction in the number of SEZ proposals; withdrawals of approved proposals and requests for denotification with a reduced interest in setting up new units in SEZs (ibid.).

The Commerce Department then used the discussion paper to facilitate "stake-holder discussions" in 2011-12 in Mumbai (SEEPZ), Bangalore, Kolkata and Kandla. The discussion paper was also posted on the official SEZ website inviting comments from "stake-holders."

At the SEEPZ meeting in December 2011, a developer proposed the reduction of minimum land requirements to 250 hectares for multi-product SEZs and 40 hectares each for sector-specific and IT SEZs. Representatives of the real estate body CREDAI (Confederation of Real Estate Developers Associations of India) and several other developers raised the issue of "relaxation of norms" for schools, hospitals and residential areas or non-processing areas in SEZs so that people not working in SEZs are also allowed access to these areas. Easier "exit options" for developers wanting to quit, or develop and transfer SEZs were also raised. With marked efficiency, the discussion paper on the official SEZ website reflected these fresh proposals within two weeks of the Mumbai meeting, ready for the subsequent stake-holder consultations.

Many of these recommendations found their way into the changes proposed to the SEZ rules by the Commerce Department. Commerce was clearly attempting to revive the flagging fortunes of the model, although it could not address the core issues of MAT and land acquisition. In August 2013, the Commerce and Industries Ministry finally released new rules, presumably after Ministerial deliberations. The new rules were not as comprehensive as the

discussion paper proposals of Commerce. The reduced minimum area requirement was 500 hectares for multi-purpose SEZs and 100 for sector-specific, 10 for food processing and none for IT SEZs (as opposed 250, 40 and 40 hectares respectively suggested in the discussion paper). "Broad-banding" of sectoral SEZs was allowed among industries related to each other and "exit norms" for investors wishing to withdraw were made more flexible. Domestic sale concessions, access to domestic area customers and contiguity norms were not allowed. It appears that the writ of the Finance Ministry held on attempts at the "dilution of the original SEZ concept" by the Commerce Ministry.

I met Commerce Secretary Vajpayi one afternoon in February 2012, in his smart office at *Udyog Bhavan* (Commerce House) near the Central Secretariat in Delhi. A popular upbeat bollywood number was playing on the large led screen hooked up to the wall by one side: "*dhoom macha le, dhoom macha le, dhoom*" (let's create an uproar, let's create an uproar, uproar). As I was shown in, he looked up from the files on his table, nodded in terse acknowledgment, lowered the volume and resumed signing the papers in front of him. After a few minutes, he set his files aside and matter of factly proceeded to explain the prevailing SEZ scenario. He explained that there were two to three main issues. The "politicization" of land acquisition "was not envisaged" at the time of the law's drafting. There was "consternation" with MAT among industry circles as benefits had indeed been taken back. He added that there were "things that can be fixed and we're doing it." Issues that could be fixed included procedural simplification, fixing rules of business and allowing the servicing of domestic customers in the SEZ "non-processing area," although not for "multi-story apartments and hotels" but "super specialty hospitals and schools" on a "case to case basis" (interview February 29, 2012).

"Soft law" practices in the form of industry recommendations consistently informed the legal evolution of the SEZ framework and eventually found their way into "hard law." The leverage of the soft law settings suffered greatly from 2011 however. As I show below, the

Finance Ministry's compliance was coercively obtained through the highest political intervention of the state, the Prime Minister, in 2005.

Then Prime Minister Manmohan Singh convened a meeting in April 2005 with several Ministers of his Cabinet, to intervene in the matter of Ministerial differences over SEZs, particularly between the Finance and Commerce Ministries. A number of issues were resolved in the meeting and Finance had to back off on its objections to the SEZ framework proposed by Commerce on several counts, most notably on tax concessions that Finance viewed as its legitimate turf. A decision was taken to constitute an Empowered Group of Ministers (EGoM) with special cabinet powers to resolve further differences (F.No.149/61/2003/TPL), and the documents related to EGoM meetings shed important light on how the SEZ policy framework evolved. The EGoM comprised Ministers of Commerce and Industry; Finance; Agriculture; Consumer Affairs, Food and Public Distribution; Home Affairs; Law and Justice; Labour and Employment; Defence; and Communications and Information Technology. The intervention of the Prime Minister underlines the significant political status the SEZ policy enjoyed at the time.

The subversion of Finance's opposition to the SEZ model by Commerce was critical to the evolution of the SEZ legal framework until 2011. The tables were turned by Finance in 2011 with the introduction of the MAT and the proposed DTC. I discuss the standoff over SEZs between the two Ministries in the next section.

Shadowing (Soft) Law

How did the Commerce Ministry establish its writ over the SEZ Law in the initial years? The bureaucratic paper trail gives ample evidence of the turf war that played out between the Ministries of Commerce and Finance over SEZs. But there is more to the SEZ law-making process than meets the eye, even more than the "secret" EGoM and other bureaucratic files reveal. Max Gluckman (1965) in his work on "law as process," showed how gossip and scandal revealed the role of shame, social pressure and suasion in legal processes. Here I extend this

wider interpretation of legal processes. Analyses of the paper trail and bureaucratic and developer grapevines reveal the role of bureaucratic and Ministerial rivalries and possibly high-profile corruption in determining the legal trajectory of SEZs.

A member of the SEZ Board (of Approval)[17] I interviewed revealed that each Board meeting approved over 25-30 proposals in a sitting of 2-3 hours. The decisions seemed already taken and there was little deliberation discussing the merits of the projects being considered for approval. This rendered the approval process a mere formal exercise.

The Finance Ministry has such complaints on record. In a letter to then Director SEZ on August 7, 2006, a day before the Board meeting was to be held, the Revenue Department raised issue that its representatives had not received copies of the proposals made by applicants that were to be discussed in the meeting. Relevant documents concerning several other agenda items were also not furnished. Revenue asked for the deferral of these agenda items until all relevant documents had been made available, with sufficient time for scrutiny. It cited and enclosed an intriguing December 2005 missive by the Finance Minister to the Revenue Secretary. The missive asked the Secretary to ensure that the Revenue representative in the SEZ Board (and other approvals committees of the Commerce and Industries Ministry), "be a high-level representative who can speak his [sic] mind and assert his views" and is "fully prepared with the agenda items." The letter added, "If the agenda papers have reached him [sic] late, and he has not had time to examine each item, he should insist on postponement of the meeting or at least some items of the agenda on which he has not had adequate notice or time to prepare" (F. No. 178/141/2006-IT.1; RTI document available with author).

The August 7 letter from Revenue also raised issue with the total number of SEZ approvals until then. An initial limit of 150 SEZs had been fixed in a previous EGoM meeting, after which a review of already approved SEZs was to be undertaken. Finance pointed out that

[17] When citing sensitive information I have not disclosed the date of interview or other details that may compromise the informant. This informant was not from the Ministry of Finance however, though Finance representatives on the Board additionally noted similar objections.

the agenda items indicated that the approvals were expected to go well over the limit. The letter recommended waiting for already approved SEZs to become operational before approving any fresh proposals.

The concerns raised in the letter were subsequently noted by the senior bureaucracy. Additional Secretary Revenue followed up with a letter to Special Secretary Commerce the day after the Board meeting. The letter raised concerns that "about 100 cases (6th item of the agenda) were considered by the BOA during the 3rd meeting in a matter of about an hour a [sic] quarter and formal as well as "in-principle" approvals were given. Important factors like the financial health of the Developers and their capacity to carry out capital-intensive projects were not discussed. In some cases Developers with lesser area of land were given approvals ignoring those who had bigger areas." He further raised the issue of the BoA going over the 150 mandated SEZs. (D.O. No. Member(IT)/SEZ/R-683/06; RTI document available with author). In his reply, the Special Secretary Commerce refuted all of the Revenue Secretary's charges adding that the "internal" limit of 150 approvals was reserved for final and not in-principle approvals.

An EGoM was convened within the same month to discuss Commerce's claim of distinction between in-principle and final approvals for SEZs and the "internal guideline" of 150 approvals. A case was made by Commerce that the limit had been an internal one, and referred to final approvals, with no bearing on in-principle approvals. The Finance Minister (FM) again raised concerns of "revenue loss" from the additional SEZs being allowed to escape the tax net, urging that the limit of 150 SEZs be adhered to. The Commerce Minister (C&IM) countered the Finance Minister with figures of potential revenue generated from additional SEZs. Most EGoM members rejected the distinction between in-principle and formal approvals but all save the Finance Minister were in favor of removing the "internal" limit of 150 SEZs. The FM had to give in. A national daily carried a news item the following day citing sources that claimed that the FM "waged a lone battle" against more SEZs (see Badarinath 2006).

At the same EGoM, the FM had also raised issue requesting suitable guidelines for SEZ approvals with clearly recorded reasons for approval, rejection or deferral. The approvals procedure could not be discussed in the EGoM, but was taken up by him through subsequent letters to the Chair of the EGoM (the Defence Minister) and the Commerce and Industries Minister. A series of communications over guidelines for approval followed between the Ministries, primarily between Commerce and Finance. The guidelines for approval were eventually drafted and approved two months later, in October 2006 (this series of events constructed from F.No. F.1/3/2006-EPZ; RTI document available with author). The pitched battle between the FM and the Commerce Minister over SEZs interrogates claims of a coherent ideology or interest within "the state;" in the SEZ contest, "cunning" was maneuvered between the Finance and Commerce Ministers.

a. Ministerial Rivalries and Corruption:

A senior developer I interviewed claimed that the tug of war over SEZs between the Finance and Commerce Ministers was a result of the Finance and Commerce Ministers' personal stand-off with each other. He claimed that the "rush" for SEZ approvals came with many developers lining up to meet then Commerce Minister with bribe money to get their projects approved. This "income" from SEZ approvals went to ruling party coffers, keeping the party favorably disposed towards the model, and the Minister. This, he argued, did not go down well with then Finance Minister, who felt threatened by the success of the Commerce Minister (interview December 6, 2011). While the veracity of these allegations of corruption and Ministerial rivalry is difficult (if not impossible) to ascertain with evidence, there was clearly a struggle between the Commerce and Finance bureaucracies and Ministers over SEZs, as indeed, the paper trails and interviews with bureaucrats, developers and others established.

b. Bureaucratic Turf Wars:

Ex-bureaucrat Ravi Menon (name changed) was Special Secretary Commerce during the initial years of the SEZ law's enactment (and subsequently served as Commerce Secretary) and widely acknowledged as a sincere promoter of the SEZ model.[18] When I met Menon, he spoke passionately of the model and shared brochures and other material with me. He openly accused Finance of being against the SEZ model and creating problems for it with a "vicious campaign about SEZs being a big scam." Finance "insisted" on three representatives in the BoA, he said, and that all decisions in the Board be made by consensus and not majority. Commerce, he added, "compromised" on these demands (interview February 20, 2012). Another ex-bureaucrat of the Commerce Ministry subsequently working in the corporate sector accused Revenue bureaucrats of waging a "turf war" as Commerce was getting all the "credit" for SEZs (interview September 20, 2011). A senior academic extremely sympathetic to the SEZ model similarly accused the Finance Ministry of derailing the SEZ model, but put its perceived need for revenue in perspective, adding that such a large part of the Indian economy is "informal" that any loss of revenue threatens the Finance Ministry. Given the "drag" on resources by welfare schemes such as the employment guarantee law, Finance, the academic explained, feels the need to secure revenue (interview March 1, 2012).

Joint Secretary Finance and the Customs representative from the Revenue Department in the SEZ Board on the other hand, insisted that the loss of revenue with tax concessions for SEZs, their potential for real estate speculation and the diversion of existing industry into SEZs to avail concessions were the prime reasons for raising issue with SEZs (interviews November 24, 2011; February 14, 2012). Indeed, the paper trail reveals that Finance raised these concerns consistently, from the time the present SEZ model was conceived, in 2000.

All legal provisions related to taxation and fiscal incentives in India come under the purview of the Finance Ministry. Journalist Suresh points out that Commerce acquired full

[18] R. Ghatak (name changed), who was then Secretary Commerce and later moved to Finance, was considered the visionary force behind SEZs, but I could not secure an appointment with him despite several attempts.

powers to frame the fiscal and economic policy of SEZs without any responsibility to collect revenue, through an amendment to the Allocation of Business Rules 1961 in November 2002. This was a "unilateral" decision by Commerce, without consulting the DoR. Revenue discovered this amendment only in September 2003 when a proposal for the SEZ law was sent to it. A previously sent draft Cabinet note on the SEZ Bill in February 2003 also did not mention this amendment. Revenue soon raised issue with this encroachment over its turf (unpublished notes shared September 8, 2011). Documents reveal that the disagreements that developed between the two Ministries were so profound that it was only just before the law was to be introduced in the parliament of India in June 2005 that a meeting of a group of Ministers was convened at the initiative of then Prime Minister, in April 2005, to prevail upon Finance's misgivings and retain the considerable incentive structure of SEZs (F.No. 149/61/2003-TPL; RTI document available with author). This was the same meeting in which the decision on constituting EGoMs was taken. These reservations over tax incentives likely laid the foundation for what would later develop into a full fledged war over SEZs between Finance and Commerce, with the 2011 introduction of the MAT and DTC only a latest twist in it.

To backtrack a little, amid records of Ministerial communications, I chanced upon a January 21, 2005 letter to the PMO (before the SEZ law was enacted later that year) by Chairman, Sea King Infrastructure Limited, forwarded on his behalf by the Commerce Ministry. The letter indicated the substantial leverage of big capital in the formulation of the SEZ law beyond the more visible soft law settings discussed previously. It also indicated Commerce's alliance with big capital. The letter described the predicament of the Mumbai Integrated SEZ (as the Mumbai SEZ was initially called). It claimed that Sea King Infrastructure had been working on designing and planning its SEZ from 2000, since the policy was initiated and had already spent over Rs. 3000 million ($75 million at then approximate rate of Rs. 40 = $1) towards it. It added, "We have been following up with the Commerce Ministry for the last three years for this vibrant policy to be converted into reality through the SEZ Act. However the investors and

users from all over the world are now feeling very shaky due to the unexpected delay in enacting the SEZ Act. This may not send healthy signals among the investing community within and outside the country. ...Developers, users and investors of SEZ [sic] from all over the world are now getting restive as they have been eagerly waiting to make large investments. We therefore have taken the liberty to request you for your kind intervention so that sound legal framework can be provided through an SEZ Act at the earliest possible" (PMO U.O. No. 130/31/c/4/2005; RTI document available with author).

A subsequent letter by the PMO dated February 3, 2005 to the Commerce Secretary requested that action towards finalizing the Cabinet Notes for the SEZ Bill be initiated "very urgently," so that they can be considered by the Cabinet meeting scheduled for 9th and 16th February 2005. While it cannot be clearly established that the Sea King letter had influenced this letter, it is significant that these letters were included in the same file by the Ministry of Finance (these were files I accessed from the second journalist). The subsequent meeting convened in April by the Prime Minister with several Ministers approved the draft Bill, overriding many of Finance's concerns. The Bill was finally introduced in the Indian Parliament in June 2005, and enacted in a matter of two days, with little discussion and no dissent.

However, Finance raised cudgels immediately after the enactment of the law, airing concerns now in the EGoMs. Repeatedly through the drafting of the rules for the SEZ law, Finance raised concerns that given the incentives all existing productive export units would relocate to SEZs doing little for fresh investment. No explicit provision was made in the law for preventing this shift until Finance prevailed upon the Ministerial deliberations. Finance additionally raised concerns regarding distortions in land, labor and capital resulting from uneven development of SEZs with a bias towards urban locations and industrialized states. The Ministry unsuccessfully pushed for the cap of 150 SEZs. It raised concerns of land and resource diversions for real estate speculation in SEZs. And it made repeated threats to Commerce that in the interest of a stable fiscal regime, the latter should desist from meddling in fiscal affairs (F.No.

149/61/2003-TPL; RTI document available with author). The threats of Finance were finally made good in 2011 with the introduction of the MAT.

c. Ministerial and Bureaucratic Personalities:

How did Commerce initially secure and subsequently lose its leverage over SEZs towards 2011? The academic mentioned earlier alluded to another facet of law-making, that of bureaucratic "ownership." Once the initial team of people driving a model or project is gone, through routine transfer, promotion or retirement, a model loses momentum. Thus, the academic explained, in the initial years there was a lot of passion behind the SEZ model, but once the initial team moved out, the subsequent Minister and bureaucrats were either not strong enough to confront Finance, or did not particularly care about the model, allowing it to falter (interview March 1, 2012). I recalled the Bollywood song playing on television when I had met then Commerce Secretary a few weeks earlier, and wondered.

Ministerial personalities may have also played a role here. At the time of UPA 1 (2004-09), when the SEZ law was being finally drafted, the standoff between Ministers of Commerce and Finance were equal political heavyweights of the Congress party, P. Chidambaram was Finance Minister from 2004-08 and Kamal Nath was Commerce and Industries Minister from 2004-09. In 2009, there was a change of guard with UPA 2 and while the Finance Minister's portfolio went to another Congress political heavyweight, Pranab Mukherjee (currently the President of India), the Commerce and Industries Ministry went to relatively junior, Anand Sharma. In 2011, it was Pranab Mukherjee who introduced the MAT in his budget speech. From 2007 onwards, as outlined earlier, the SEZ environment also became increasingly vitiated with several controversies over land acquisition raging across the country. Finance had also been pushing for a limit to the number of SEZs from the beginning, and by 2011 there were already 584 approved with 377 notified SEZs in the country. This combination of factors may have

pushed back the leverage Commerce had over the SEZ model and allowed Finance to reestablish its turf by 2011.

There is, of course, no proof to substantiate the allegations of corruption and Ministerial and bureaucratic rivalries but the paper trail clearly reveals that the Commerce and Finance Ministries have been at loggerheads over SEZs from their inception. I flag these allegations here as that arena of law-making process that lies beyond both "hard" and "soft" law but "shadows" them, present in "word of mouth," gossip and rumor, but beyond adequate evidentiary grasp. Analyses of paper trails and interviews, indicate their plausible influence over the SEZ law-making process. If the vicissitudes of bureaucratic and Ministerial interest indeed determine the fate of critical laws and policies, there is an even greater case for more robust and transparent systems of accountability and transparency in policy-making.

Legacies of a Mixed Economy: Revenue, Welfare and "Inclusive Growth"

The Ministry of Finance has fought a battle over SEZs from the inception of the policy in 2000, the enactment of the law in 2005 and down to current deliberations. The issues it has raised do not only pertain to fiscal incentives that Finance considers its turf, but also to concerns over "land-grabs," "real estate speculation," the diversion of industry from the domestic area to SEZs and the predominantly service-oriented investment in SEZs when its stated goal was manufacturing. There is thus an argument to be made for Ministerial and Departmental bureaucratic dispositions and cultures here.

India adopted a "mixed economy" model upon independence that sought to combine a centrally planned economy with capitalist growth (see chapter one). Finance has traditionally been an extremely powerful Ministry with revenue collection, budget and disbursement functions. Poverty has historically been an overarching policy concern (Ray and Katezenstein 2005) and as result welfare measures have been important policy strategies in dealing with poverty. The emphasis on public spending and ongoing welfare measures like the public

distribution system (for subsidized food grains); rural and municipal development works; public health centers; public primary and secondary schools; disability and old age pensions; more recently the employment guarantee program; and numerous such old and new state-led welfare initiatives may have historically engendered the Finance Ministry's dispensation towards revenue collection. It may also explain its deep suspicion of those trying to avoid its jurisdiction, or evade taxes, in this case SEZ developers and investors.

How then did Commerce go so far out on a limb in the context of SEZs? In the post-liberalization period, the Commerce and Industries Ministry is cast in a role of supporting and facilitating capital expansion and accumulation. As Commerce attempts to aid capital and its demands on "the Indian state" for concessions, Finance is still rooted in a model of revenue collection for the exchequer with an orientation towards "inclusive growth." The two Ministries are thus cast in contradiction with each other at this conjuncture, despite an overarching commitment to capitalist growth. The "policy instability" that industry decries in the reversal of SEZ concessions, in this sense does not emerge from Finance, but from Commerce's "break from the past" tax and other concessions granted to capital in the SEZ model.

A Note on "Consultations"

The infrastructure of consultations with "stake-holders" is in stark contrast with the stonewalling and often violent repression of the "stake-losers." Unabashedly skewed in favor of capital, there is no system of hearing or redress for the "stake-losers," or even a mechanism to record complaints or objections by the "stake-losers" under the SEZ law-making framework. For formal approval of a SEZ from the Board of Approval, all that is required is partial acquisition of land by the developer and an undertaking to acquire more land, with the endorsement of the state government in question. The state government deals with issues over land acquisition, including opposition, since land is a state subject. Despite a three-year maximum stipulated period of approval however, SEZs proposals are regularly renewed on request, keeping people

opposing them in constant stress and abeyance. For instance, in the case of the controversial South Korean-owned POSCO SEZ in Odisha, the developer has not managed to fully acquire land for seven years, but approval has been repeatedly renewed (see GoI 2013e; 2009d). Residents of the POSCO area resisting acquisition have been fighting for as many years against the project. The persistence of the Mumbai SEZ in the approvals list of SEZs as well, underlines the stone-walling of "stake-losers."

Infrastructures of Growth

The evolution of the SEZ legal framework has been a multi-layered process now spanning nearly a decade and a half, starting in 2000. Formal, "soft law" and other law-making processes in the shadows of the corridors of power have shaped SEZs, through their inception as policy, implementation as law and evolution in rules. Opposition in the SEZ sites has also influenced their policy framework.

Through the creation of SEZs, capitalists of largely Indian origin attempted to take control of large parts of the most valuable opportunities the large domestic economy offers the global market: land, resources, and arguably some freeing reserves of cheap labor, or dispossessed peasantry (although I argue that there is indifference towards the dispossessed; see also Levien 2012). SEZ concessions were not just in the form of tax incentives, but also over administrative and other legal measures for creating "quasi-corporate city-states." Disingenuously invoking exceptional legislation, in their scale and scope SEZs in reality sought to establish a normative paradigm of infrastructural development for economic growth. As the ambitious model unfolded, capital and allied forces in Commerce were forced to beat retreat. The state's repressive apparatus unsuccessfully attempted to counter resistance on the ground and bureaucratic and ministerial disagreements between Ministries of Commerce and Finance resulted in policy imbroglios. The grand vision of proliferating urban, gated global enclave

economies with state of the art infrastructure and 24/7 services is today in a considerable state of impasse.

In the current ruling dispensation of the far-right Hindu nationalist BJP, Commerce may well find its favors restored over Finance. Going by Ministerial hierarchy, the current Finance Minister Arun Jaitley overshadows the Commerce and Industries Minister Nirmala Sitaraman quite starkly. In his election campaign, Prime Minister Modi was often heard announcing that he would abolish the income tax when he came to power. As regimes and influences shift, the framework will potentially evolve further. For the moment, interest in SEZs remains low, and the baton has passed on to other "infrastructures of growth."

What emerges from this critical analysis regarding "the state" is that it is not a coherent "cunning" entity (Randeria 2003), or "vertical and encompassing spatiality of power" (Ferguson and Gupta 2002). It is also not more specifically a "speculative" (Goldman 2011) or a "land-broker" (Levien 2012) state. "The state" is instead rife with contestation and meanings that diverse actors occupying its offices bring to it. It is an arena of competing ideologies and interests that influence decision-making processes, influenced in turn by historical legacies and political contingencies. This is not to suggest that dominant ideologies of liberalization do not influence this arena, but their interpretation and effect on policy are contingent and not given factors. Legality and rule of law itself are established as unsettled and contested terrain in the wake of the SEZ experience.

What is gained by this view of the state and legality? A nuanced possibility for intervention through legality and the state, albeit ultimately contained by the 'class compromise' character of social democratic states (cf. Sandbrook et al. 2007). This becomes particularly relevant as evidence from Latin America points to a disappointment with their egalitarian progressive possibilities and the turn among some academics towards 'autonomista,' and other forms of community-based organizing (see Gutierrez 2012; Reyes 2012) that indicate an implicit abandonment of the state as an arena of political engagement and possibility. On the other hand,

under conditions of a consolidating Hindu-right regime in India, it also raises questions regarding a more nuanced reading of the state. Jaffrelot (2012) demonstrates the 'saffronization' of Gujarat's administration and judiciary and its implications for the victims of the 2002 violence. Would concurrent structural transformation at the central level be effective in infrastructure and development policy, or would historical legacies create internal forces of resistance as this study demonstrates, even as resistance on the streets and villages by those threatened with dispossession remains steadfast? Under what conditions could a coherent ideological take-over of 'the state' successfully emerge?

References

Ferguson, J. and A. Gupta. 2002. "Spatializing States: Toward and Ethnography of Neoliberal Governmentality." *American Anthropologist*. 29(4): 981-1002.

GoI 2012a. 'Harmonized list of Infrastructure sub-sectors.' *http://pib.nic.in/newsite/erelease.aspx?relid=80634* (accessed May 5, 2014).

Goldman, M. 2011. 'Speculative Urbanism and the Making of the Next World City.' *International Journal of Urban and Regional Research*. 35(3): 555-81.

Gutiérrez, R. 2012. 'The Rhythms of the *Pachakuti*: Brief Reflections Regarding How We Have Come to Know Emancipatory Struggles and the Significance of the Term *Social Emancipation*.' *The South Atlantic Quarterly*. 111(1): 52-64.

Jaffrelot, C. 2012. 'Gujarat 2002: What Justice for the Victims? The Supreme Court, the SIT, the Police and the state Judiciary.' *EPW*. XLVII(8): 75-87.

Larkin, B. 2013. 'The Politics and Poetics of Infrastructure.' *Annual Review of Anthropology*. 42: 327-343.

Levien, M. 2012. 'The Land Question: Special Economic Zones and the Political Economy of Dispossession in India.' *The Journal of Peasant Studies*. 39(3-4): 933-969.

Randeria, Shalini. 2003. 'Cunning States and Unaccountable International Institutions: Legal Plurality, Social Movements and Rights of Local Communities to Common Property Resources.' *European Journal of Sociology*. 44 (1): 27-60.

Reyes, A. 2012. 'Revolutions in the Revolutions: A Post-counterhegemonic Moment for Latin America?' *The South Atlantic Quarterly*. 111(1): 1-27.

Sandbrook, R., M. Edelman, P. Heller and J. Teichman. 2007. *Social Democracy in the Global Periphery*. Cambridge University Press: New York.

Zerillo, F. 2010. 'The Rule of Soft Law: An Introduction.' *Focaal - Journal of Global and Historical Anthropology* 56: 3-18.