

**STUDY ON ECONOMIC & LEGAL ASPECTS OF
SPECIAL ECONOMIC ZONES – SET UP IN GUJARAT
UNDER THE SPECIAL ECONOMIC ZONES ACT, 2005**

**SYNOPSIS OF THE THESIS FOR
*DOCTOR OF PHILOSOPHY IN LAW***

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The study has been undertaken with intent to study the economic & legal aspects of the Special Economic Zones set up in Gujarat under the Special Economic Zones Act, 2005.

1. Introduction

Exports, Foreign investment, exchange earning alongwith employment generation can be the motives of any country's economy. Various countries came up with different export promotion policies to boost the exports. One of them is Export Processing Zone (EPZ) also called as Free Trade Zone (FTZ) was the prime medium to achieve abovementioned goals in earlier days. Aggarwal Aradhna (2004) defines EPZs as special enclaves, separated from the Domestic Tariff Area (DTA) by fiscal barriers and are intended to provide an internationally competitive duty free environment for export production at low cost and benefitted usually from modern and efficient infrastructure, general fiscal and non-fiscal concession to firm and better governance due to single window facilities to ensure corruption and red tape free business environment. First EPZ was set up in Shannon, Ireland in year 1959. After 1960 many countries started setting up of zones in their respective countries to boost the exports and rejuvenate the economy. In Asia, Kandla (Kutchch, Gujarat) was the first EPZ set up by the Indian Government in year 1965. Looking at the success of EPZ many Asian countries also started implementing the said policy. Shenzhen EPZ in China was the example of first successful EPZ in the world set up in year 1980. In present scenario EPZ is popularly known as SEZ which is bigger in size and having many benefits unlike conventional EPZ. SEZ is delineated area especially set up for export promotions, generating employment, earning foreign exchange, attracting foreign investment. In Custom law, it is considered to be as Foreign Territory for the purpose of tax. There are mainly three

types of SEZs namely Multi-product SEZ, Sector Specific SEZ and Free Trade & Warehousing Zone (FTWZ).

2. Statement of the problem

As we have seen that India embarked on journey of SEZ model looking at the success of Chinese SEZ. An exclusive law for SEZ also passed in year 2005 for better governance of SEZs in India. After the SEZ Act, 2005, till date 330 SEZs have been notified by the central government. There are many advantages of having SEZs in the country and but presently it has been failing to meet the expectations in terms of growth in exports, employment, investments. There are several negative aspects of SEZs alongwith positives ones. This study will analyze the economic and legal aspects of SEZs in Gujarat.

3. Significance of the study

SEZ is the burning topic at the International, National and State level because of numerous reasons. SEZ is meant to boost the exports, generating employment, attracting investments and help the economy to grow but it has started causing some side effects also namely improper land acquisitions, revenue loss, labour exploitation etc. Most importantly it has failed to achieve the desired goals in terms of exports, employment, investments etc. Central/State Governments and private companies blindly started following the concept of SEZ and setting up of SEZs and ultimately facing the present consequences. Many of private players have applied for de-notification of SEZs and shown inability to take SEZ project further because of government's volatile policies regarding SEZ. Thus there are various issues which need to be analyzed with the help of the scientific study.

4. Objectives of the study

Followings are the main objectives of the present study.

- To evaluate economic impact of SEZs in Gujarat.
- To evaluate compliance by SEZs in Gujarat under SEZ Act, 2005 & SEZ Rules, 2005
- To do comparative analysis of SEZs in Gujarat with SEZs in other states
- To evaluate government's policies regarding SEZs in India and Gujarat.

5. Hypothesis of the Study

Followings are the hypotheses of the present study.

- Special Economic Zone has promoted economy of Gujarat.
- Special Economic Zones in Gujarat are complying all legal requirements as per the SEZ Act, 2005 and SEZ Rules, 2006.
- SEZs in Gujarat performing better compared to SEZs in other states.
- Government policies are supporting Special Economic Zone to grow.

6. Research Methodology

Present research is purely a doctrinal study. It is descriptive and analytical by nature. The research is based on primary and secondary sources. Relevant material from primary sources is collected from statutory provisions of the relevant legislation. Researcher filed Right to Information applications in various government offices to collect some crucial information which was not available in public domain. Qualitative and Quantitative analysis will be done looking at different aspects of SEZ operation. The researcher has used other secondary sources like books, journals, reports, thesis,

dissertations, articles, newspaper, web resources, databases, scholarly commentaries, policy papers, governments notifications & circulars etc. for the present studies.

Notified SEZs in Gujarat

There are 417 formally approved, 32 in-principally approved, 330 notified and 205 exporting SEZs in India as on May 10, 2016. Gujarat stands fourth in terms of notified SEZ and in exporting SEZs, rank is fifth. There are total 18 notified SEZs in the Gujarat.

Sr. No.	Name of SEZ	Type	Notified
1	Kandla Special Economic Zone, Kutchch	Multi-product	November 2000
2	Surat Special Economic Zone, Surat	Multi-product	November 2000
3	Surat Apparel Park, Surat	Apparel	January 2005
4	Reliance Jamnagar Infrastructure Ltd., Jamnagar	Multi-product	April 2006
5	Adani Port & SEZ Ltd., Kutchch	Multi-product	June 2006
6	Zydus Infrastructure Pvt. Ltd., Ahmedabad	Pharmaceuticals	September 2006
7	Gandhinagar Electronic Park SEZ (GIDC), Gandhinagar	EHTP/ITES	December 2006
8	Ahmedabad Apparel Park, Ahmedabad	Apparel	April 2007
9	Synefra Engi. & Construction Ltd., Vadodara	Hi-tech Engineering products	July 2007
10	Dahej SEZ Ltd. Bharuch	Multi-product	December 2007

11	E-Complex Pvt. Ltd., Amreli	Engineering Goods	January 2008
12	Jubilant Infrastructure Ltd., Bharuch	Chemicals	February 2008
13	Aqualine Properties Pvt. Ltd., Gandhinagar	IT/ITES	July 2008
14	Tata Consultancy Services Ltd., Gandhinagar	IT/ITES	September 2008
15	Sterling SEZ & Infrastructure Ltd., Bharuch	Multi-product	September 2008
16	Larsen & Toubro Ltd., Vadodara	IT/ITES	November 2008
17	Euro Multivision Pvt. Ltd., Kutchch	Non- conventional Energy	April 2009
18	GIFT SEZ Ltd, Gandhinagar	Multi-services	August 2011

The researcher has taken those SEZs which have completed at least five years from its notification and operational so that its progress can be analyzed and interpreted accordingly. Thus the researcher has taken total 17 SEZs from Sr. No 1 to 17 for his study.

6.1 Data Analysis & Interpretation

For the present study secondary data has been used extensively. Following are the sources for data.

Main source of primary data is exclusive law for SEZ i.e. The Special Economic Zone Act, 2005 and for its implementation The Special Economic Zone Rules, 2006 and

secondary data collected through Right to Information Applications filed in following governments offices.

- 1) Department of Commerce, Ministry of Commerce & Industries, Govt. of India.
- 2) Department of Revenue, Ministry of Finance, Govt. of India.
- 3) Department of Information Technology, Ministry of Communication & Information Technology, Govt. of India.
- 4) Ministry of Labour & Employment, Govt. of India.
- 5) Comptroller & Auditor General of India, Govt. of India.
- 6) Industries Commissionerate, Govt. of Gujarat.

Followings are the other sources of secondary data.

- 1) Articles published in National & International Journals.
- 2) Books.
- 3) Working Papers
- 4) Policy papers/articles
- 5) Scholarly commentaries
- 6) Magazines
- 7) Newspaper articles. (Hard Copy and Online).
- 8) Central & State Government websites.
- 9) Government notifications, circulars, clarifications.
- 10) Databases like www.indiastat.com

Data has been analyzed by using simple statistical tools like chart, figure, table, percentage, ratio etc.

6.2 Scope of the Study

Present study has analyzed Economic & Legal aspects of SEZs and the researcher has confined his study to all notified SEZs of Gujarat region only. Gujarat is one of the top five states in India which has made significant effort in flourishing SEZs in the state.

7. Scheme of Chapterization

The present study has been divided into five chapters. In the Chapter 1 of the study, the researcher has discussed background of SEZs, followed by SEZs in world, India and finally in Gujarat. He has also discussed objectives, hypotheses of the study, literature review and research methodology in the same chapter. Chapter 2 deals with various legal provisions regarding SEZ in India. Chapter 3 describes the profile of all selected notified SEZs in Gujarat on which entire study is based upon. All collected data have been analyzed and interpreted in Chapter 4. Study ends with concluding remarks in Chapter 5.

The gist of each chapter is as follows

Chapter 1 :- Introduction

First chapter begins with background of Special Economic Zones followed by SEZs in World, India & Gujarat. Chapter explains statement of the problem, objectives of the study, research questions and hypothesis of the study. In-depth review of literature has been done looking at all aspects finding the gap in it for the further research purpose. Research Methodology adopted for the study has been explained followed by limitations of the study. Finally scheme of chapterization is outlined at the end.

Chapter 2 :- Legal Provisions Regarding Special Economic Zones in India

Chapter deals with various legal provisions regarding operation of SEZ in India. It covers exclusive legislation for SEZ, SEZ Act, 2005 & SEZ Rules, 2006 followed by allied laws, Income Tax Act, Custom Act, Excise, Service Tax, Banking, Labour Laws, Environment laws.

Chapter 3 :- Special Economic Zones of Gujarat – Profile

Brief profile of all notified and selected SEZs is given in this chapter covering background of company, product/service, operation and present scenario of particular SEZ.

Chapter 4 :- Data Analysis & Interpretation

Data collected from various sources has been analyzed and interpreted accordingly. This chapter shows various economic and legal aspects of SEZs in Gujarat and their interpretation.

Chapter 5 :- Conclusion & Recommendations

This chapter concludes with outlining various economic and legal aspects of SEZs operation in Gujarat. Researcher has made recommendations looking at present working condition of SEZs in Gujarat. Limitation of the present study is outlined and future scope of study in the present area is indicated. All list of references, statues, rules, list of SEZs in India, Gujarat, RTI Application/Appeals are in the appendices.

8. Conclusion

Looking at the above discussion the researcher has arrived at the following conclusions.

Promotion of economy in Gujarat

- There is insignificant growth in overall investment. Multi-product SEZs and IT/ITES SEZs are leading in attracting investment. Investment in IT/ITES has achieved four folds growth. Investment in Gujarat is very low in comparison to national average.
- Gujarat constitutes significant part in exports from SEZs in India. In year 2013-2014, Gujarat had 45% share in total exports from SEZ in India. Gujarat's average growth rate of exports in last five years is 17.71% against national average of around 25% which is considerably good. It is pertinent to note that Gujarat is leading in exports because of only one SEZ namely Reliance SEZ at Jamnagar district which is having 83% share in Gujarat's total exports from SEZs. It raises question against performance of other functional SEZs in Gujarat. Data also reveals that Reliance is heavily dependent on imports.
- There is considerable growth in imports which shows higher dependency on imports. Average growth rate of import is 15.72% against the exports which is 17.71%. There are not significant net exports earnings from SEZs.
- Some SEZs are having huge imports than exports showing negative earnings. Except KASEZ other SEZs are showing insignificant or negative foreign exchange earnings.
- Domestic procurement data have not been provided under RTI application which would have helped us to understand domestic industry linkages resulting in overall economic growth indicator.

- In last six to seven years significant no of units existed from SurSEZ due to operational and policy level difficulties. Other SEZs have not provided any information regarding existed units under RTI application thus it is difficult to arrive at any conclusion for this part.
- As per the report of Comptroller and Auditor General of India, despite a huge growth in exports from SEZ after the Act came into force there is still no revenue outcome analysis at the economic and the Government levels. DTA sales are considered towards calculating Net Foreign Exchange Earnings. Goods sold to DTA do not fetch any foreign exchange ultimately defeating purpose of setting up of SEZs in country.
- In last five years SEZs created employment of average 8.74% for direct employment and 12.25% indirect employment. This shows slow pace of employment generation. SurSEZ and Syenfra have created significant no of jobs surpassing their proposed figures for employment generation. Some SEZs have not provided information regarding employment generation. No proper bifurcation is available for male and female employee. Some SEZs have employed very less or negligible no of female worker in the SEZs.

Looking at present situation, SEZs in Gujarat is not meeting the expectation set. So we can say that SEZs in contributing significantly in economy of Gujarat.

Compliance of legal requirements

- After five years of SEZ Act, 2005 central government notified Development Commissioner as enforcement officer in respect of any notified offence or

offences committed in SEZ. Now DC will be acting as enforcement officer in addition to administrative duties which is not a desirable scenario.

- Till date no officer/agency has been nominated u/s 20 of SEZ Act, 2005 to see compliance of any central acts. None of the SEZs have provided information regarding this. There is no notification available for notifying officer/agency to see compliance of central acts as notified for enforcement u/s 21 of SEZ Act, 2005.
- No designated court has been established u/s 23 of SEZ Act, 2005 to try all suits of a civil nature and notified offences. Many SEZs have not provided information regarding this matter. Some provided information and stated that no court has been established so far. It is pertinent to note that even in centrally established SEZs, no court has been established till date.

SEZs in Gujarat complying law & regulation barring some which is relevant for SEZs in other states also.

Performance compared to other states

- Good numbers of SEZs have been de-notified and some are under process of de-notification which shows SEZs being unattractive destination for investors. Some functional SEZs are also requesting for de-notification like Surat Apparel Park, Ahmedabad Apparel Park.
- Gujarat is leading in terms of total exports from SEZs in India but reason behind this is Reliance's SEZ big share. This raises question before the other SEZs in Gujarat.

- Case of reference of dispute u/s 42 is nil. No case has also been noticed in centrally established SEZ namely MEPZ SEZ, VSEZ, Falta SEZ.

Gujarat is having major role in total exports from SEZs in India but that is because of only one SEZ viz. Reliance. This leads to uncertainty about performance of other SEZs in the state. De-notification of SEZs raises big question about its future.

Government's policy to support SEZ

- No information provided by Office of the Industries Commissionerate, Gandhinagar Govt. of Gujarat which shows reluctance in sharing information regarding SEZs operation in the state.
- No information is available regarding total revenue loss due to SEZ operation. Ministry of Finance transferred the RTI application to all over the Income Tax offices in the country which itself not provided proper information or rejected the same. Ministry of Finance does not have proper mechanism to calculate revenue losses due to SEZ operation. The researcher has received information regarding duty forgone viz. Custom and Central Excise for India SEZs which is not helpful to calculate state level analysis.
- Govt. of India does not have proper mechanism to carry out cost benefit analysis of SEZs operation in the country which can be implemented at state level.
- In last six to seven years significant no of units existed from SurSEZ due to operational and policy level difficulties. Other SEZs have not provided any information regarding existed units under RTI application thus it is difficult to arrive at any conclusion for this part.

- There is less number of cases under penal action taken under Rule 54 of SEZ Rules, 2006 which deals with monitoring of performance of SEZs. Many SEZs have not provided information regarding this thus no conclusion can be derived.
- No cases of revival of sick units reported under Rule 72 of SEZ Rules, 2006. Some SEZs have not provided information under RTI application.
- All labour laws are applicable to SEZs. SEZs have not provided information regarding labour laws violation. As per information received under RTI, in some of the old centrally established, no case of labour laws violation noticed.
- Many SEZs have not provided information regarding labour dispute in the SEZs so no further analysis can be done. In two SEZs no case of labour dispute has arisen.
- Most of SEZs have not replied regarding implementation of Green SEZ guidelines in SEZ. Reliance has very well planned to implement this policy. Even India's oldest SEZ, KASEZ is in nascent state in implementing the policy.
- None of SEZs have provided information regarding training facilities provided in the SEZs. SurSEZ is having Jewellery Training Centre which will help to train manpower for gems and jewellery units in the SEZ.
- None of the SEZs have provided information regarding facilities available in the SEZs.
- There are not major issues regarding land acquisition for setting up of SEZs in the state except Adani SEZ in Kutchch. As per the latest report titled "Best Practices to Improve the Business Environment across India" release in May 2014 by the Department of Industrial Policy and Promotion, a wing of Ministry of Commerce and Industry, Gujarat scored high on its land acquisition practices.

- There are not much environmental issues arisen because of SEZ operation except Adani SEZ issue which has recently got the clearance from the Ministry of Environment & Forest with certain conditions.
- SEZs in Gujarat are very well geographically located covering all major part of the state except few districts/region where SEZs should have been set up.
- Above all there is no transparency in operation of SEZs in the state.

It seems that present government policy is not favourable for proper and speedy development of SEZs in the state as well as in the country. Progress is completely stagnant and discouraging.

9. Recommendations

Followings are some recommendations regarding further development of SEZs in the Gujarat. These are also rightly applicable to SEZs in other states also.

- Though Gujarat is having huge share in total exports from India's SEZ but main effort behind this scenario is only one SEZ i.e. Reliance SEZ. Performance of other SEZs needs to be evaluated timely to avoid any future failure which will cost the economy greatly.
- There are SEZs which are highly dependent on Imports to make their final product which results in negative net export earnings. Government should make all effort to support domestic industries with which SEZs can have good linkages for making final products. If there will be strong linkages then SEZs will have to rely less on imports and they can procure capital goods/raw material locally and help the economy to grow in true sense. Domestic Industry Linkages will ultimately help to achieve have positive net foreign exchange earnings.

- SEZs in Gujarat have marked average growth of 8.71% in generation of direct employment in last five years. SEZs are not able to carry out project in full-fledged manner due to operational and government policy issues resulting in low employment generation. Government should intervene in this matter and assist SEZ developer, units by way of liberalizing the policy esp. fiscal policy.
- Central Government should come out with a sound mechanism to assess the net benefit coming out of operation of SEZs. CAG in its report stated that despite a huge growth in exports from SEZ after the Act came into force there is still no revenue outcome analysis at the economic and the Government levels.
- Each Zonal Development Commissioner of SEZ should compile all important data and send it to Department of Commerce, Ministry of Commerce, Govt. of India periodically. It has been found through the RTI application that Department of Commerce itself not maintaining crucial data which they are supposed to maintain and to be disseminated to the public at large at regular interval. Department of Commerce's dedicated website for SEZ, www.sezindia.nic.in itself not updated and not containing any kind of important data.
- Some legal provisions have not been implemented even after ten years of implementation of act and rules regarding SEZ. Followings are the few.
 - a. Agency/Officer has not been nominated u/s. 20 (Agency to Inspect) of SEZ Act, 2005. Nominated Agency/Office will see that SEZs are complying with the central government's laws or not. It will prepare the compliance report and submit it to government.
 - b. Designated Courts have not been set up u/s. 23 of SEZ Act, 2005. Designated Courts will hear the cases of civil nature and notified offences. Reply of RTI Application reveals that no court has been established by any of the states in

India. If it is not feasible to establish court for each SEZ in the state, then geographic area wise i.e. North, South, East, West, court can be established.

- Central Government should appoint independent person/agency as single enforcement officer/agency u/s 21 of SEZ Act, 2005 rather than giving power to Development Commissioner who is overall in charge of administration of SEZ.
- Central govt. should come up with concrete steps to promote the SEZs esp. in terms of providing fiscal benefits. Many companies discontinued the SEZs projects because of applicability of Minimum Alternate Tax (MAT) and Dividend Distribution Tax (DDT) under Income Tax Act. Govt. should restore the benefits again to SEZ so that they can carry on their abandoned projects at the earliest. Till date 3 SEZs have been de-notified and 5 SEZs are under process to be de-notified mainly because of fiscal benefit issues. Over 90 percent SEZ's land are lying vacant: Govt.¹ Commerce Ministry working out policy initiative to revitalize SEZs.²
- There should be proper tuning between Ministry of Commerce & Industry and Ministry of Finance for development of SEZs in the state and all over the India. Both ministries should do periodic cost-benefit analysis so that we can have proper picture of growth of SEZs. As we have seen that Ministry of Finance is not maintaining any type of proper data pertaining to loss occurred due to SEZs operation. On the contrary, they are claiming that there will be big revenue loss due to SEZs operation on the basis of sheer assumption. They should come out with proper mechanism to assess revenue loss occurred to due to SEZs operation and then have words with Ministry of Commerce with regards to profitability of SEZs.

¹ ----- (2015), "Over 90 percent SEZ's land are lying vacant: Govt.", *The Economic Times*, December 10, 2015

²----- (2015), "Commerce Ministry working out policy initiative to revitalize SEZs", *The Economic Times*, December 7, 2015

- Gujarat SEZ Act, 2004 should be scrapped to follow one single central law SEZ Act, 2005 and SEZ Rules, 2006. Gujarat SEZ law has been challenged by the person named Shabbir Ali Khalifa from Kutchch district of Gujarat. Khalifa's lawyer said that the state government was incompetent to enact such legislation that would govern the activities and exempts customs and other duties on import/export in non-domestic tariff areas. The state government cannot make legislation to govern foreign trade and foreign exchange, he argues, adding that since the centre came out with legislation, the state's law becomes infructuous. Parliament holds exclusive authority to form laws on this subject. The petition contended that after the Centre came up with a law, its law, its law prevails uniformly across the country and all SEZs are under the supervision of the Union government. But the state government's SEZ laws are still in existence, which is 'gross encroachment on central government's legislation.'³
- It has been noticed that there is not much transparency in operation of SEZs. They don't disclose even basic information of export, import, investment, employment figures. Only whenever there is growth in Export, they will highlight the figure. To bring the transparency in working on SEZs, every SEZs should have separate website for their SEZs and put all information on that on regular interval. Only few SEZs are having their websites. Many SEZs are having its details on its parent company's website and information available is very limited and not useful for any kind of analysis. Each SEZs must publish important information like export, import, investment, employment, foreign exchange, DTA Sales, sub-contracting, training details, labour disputes details etc. on quarterly and annual basis.

³ ----- (2013), "Gujarat's SEZ laws challenged in HC", *The Times of India*, January 19, 2013 retrieved from <http://timesofindia.indiatimes.com/city/ahmedabad/Gujarats-SEZ-laws-challenged-in-HC/articleshow/18082205.cms> on March 2, 2014

10. Limitations of the study

No study can be without any limitations; this present study is also having followings limitations.

- Updated information is not available with various governments' websites, offices. There is mismatch regarding information available with central and state government. As per study done by Nicola A. V. Virgill (2009) Data on EPZ is scant. The International Labour Organization is the organization which currently and systematically collects data on export processing zones. Additionally, because there are different ways allowed under international trade and national statistics rules for accounting for EPZ exports, no consistent measure exists for EPZ exports. This analysis could be improved however through case study methodology.
- The researcher could not visit specified SEZs taken as sample size for his study in absence of permission from Industries Commissionerate (IC), Govt. of Gujarat. The researcher planned interview with SEZ Developers, SEZ Unit holder and personnel of the units. He requested IC to issue recommendation letter in favour of him so that he could visit SEZs in Gujarat without any trouble and get co-operation from the organizations. One cannot enter in SEZ without due permission from the authority mainly from Industry Department of State, Development Commissioner of SEZs. Malhotra Shavin (2008) during his Ph.D. thesis found that zone officials and tenants reluctant to respond the surveys. First zone official showed interest in the survey but suddenly they changed their views having knowledge of scope of the study. The administrators seemed unwilling to share any financial information on the zone and refused to offer any help in carrying out the survey.

- Labour conditions have not been studied properly due to permission issues for visit. The researcher tried to study some aspects of human development with the help of information obtained under RTI Act. Personal interview in SEZ with various stakeholders would have helped him to understand the impact of SEZ on human development.
- The researcher filed RTI Applications in state and central government departments asking various information regarding SEZs as shown in RTI applications but unfortunately they are not maintaining most of the information which they are supposed to have/maintain. They just transferred his application from one office to other office and that office to another one as per the procedure laid down in the RTI Act. He received some information about SEZs due to Ministry of Commerce's effort. He has not received any kind of information from the Office of the Industries Commissioner, Gandhinagar, Govt. of Gujarat under RTI application and he has filed second appeal under the RTI Act but no reply has come yet. Till date he is waiting for reply from other govt. offices which would have helped him greatly to evaluate performance of SEZs in the state. This entire exercise helped him to the certain extent but not in significant way.
- Major statistical tools could not be applied as required data for that not available and have not been provided by the concerned government.

11. Future Scope of the study

As we seen in the above discussion that there are various economic and legal aspects of SEZ in India and Gujarat, which can be studied accordingly. The researcher has outlined almost all economic & legal aspects of SEZs with the help of extensive literature review. Researcher emphasized on secondary data for the present study

which can be enhanced by empirical study in future. So far no significant study has been done with regards to SEZ in Gujarat, so there is a very wide scope to do further study the impact of SEZs in Gujarat by looking at different aspects.

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Notes



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