

Environmental legal framework in indian tourism industry tourism essay

[Sport & Tourism](#)



**ASSIGN
BUSTER**

Ashwani Aman & Daya Shankar Tiwari*

Abstract

Tourism and the environment are two independent terms, but could be easily associated with each other. Tourism industry has attained very important place in economy specially due to its rapid and spectacular growth over the last few decades but ironically, with the rapid development of tourism all over the world; a lots of concern has been came into the notice of the world. PATA and WTO in a full time conference at Bali in 1993, has discussed the relationship between tourism and environment. India is one of nations, which have enacted such legislation and has set up a separate Ministry of Environment and Forest to monitor the land use from the environmental perspective. The whole mechanism from district to central level has helped in the enforcement of these laws. Moreover, legislation can be one of the efficient control mechanisms to maintain harmonious relationship between tourism and environment. Similarly Ministry of Tourism is responsible for the inbound tourism in India. The authors will also try to give various suggestions in order to make balance between environmental issues and tourism industry so that an environmental friendly tourism can be developed for making better tomorrow. The paper will pay an special emphasis on the concept of eco-tourism, which is in trend and developing stage. In this paper we will also try to discuss the joint effort of Ministry of Tourism and Ministry of Environment to counter the contemporary problems related to environment and tourism.* Student of 3rd year, BA. LLB, College of Legal Studies, University of Petroleum and Energy Studies,

DehradunINTRODUCTIONThis paper particularly emphasis in determining a

<https://assignbuster.com/environmental-legal-framework-in-indian-tourism-industry-tourism-essay/>

relation between environment and tourism with the ambit of national and international laws, and further will discuss the implementation and adequacy of these laws. Global Environmental crisis has questioned the modernity, its values and scientific development of mankind. The very existence and survival of man and other forms of life have become a matter of deep concern. Today, it is a debate which is not restricted to a defined territory and has emerged as a global concern. Environmental laws are the standards that governments establish to manage natural resources and environmental quality. The broad categories of " natural resources" and " environmental quality" include such areas as air and water pollution, forests and wildlife, hazardous waste, agricultural practices, wetlands, and land-use planning. In the Constitution of India it is clearly stated that it is the duty of the state to ' protect and improve the environment and to safeguard the forests and wildlife of the country'[1]. It imposes a duty on every citizen ' to protect and improve the natural environment including forests, lakes, rivers, and wildlife'. Reference to the environment has also been made in the Directive Principles of State Policy as well as the Fundamental Rights. The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985. International law and regulation plays a very important role in environment. Like many other branches of international law, international environmental law is interdisciplinary, intersecting and overlapping with numerous other areas of research, including economics, political science, ecology, human rights and navigation/admiralty[2]. The current state of tourism and recreation is characterized by the uninterrupted

growth of both planned and unplanned tourism that brings about negative ecological consequences. For example, from 1965 through 1985, the number of available spaces at campsites increased ten-fold, while the number of tourists grew by almost fifty-fold. The number of tourists per year is calculated at more than sixty million. Natural resources are "consumed" by the tourist industry - wooded and hilly areas are used for hiking; rivers and lakes are used for boating; and game preserves are used for hunting. Moreover, tourists visit a wide variety of historical-cultural monuments, as well as natural landscapes and wonders. The protection of natural resources and their legitimate uses cannot be regarded separately.[3] It is obvious that the natural resources available for tourism are limited and shrinking. Thus a conservational and protection policy is the need of the hour. Such a perception of the problem has not found broad support. Issues of environmental protection, as they relate to tourist activities, are given little attention. The small amount of research on these issues bears witness to this fact. Environmental protection is traditionally aimed at preserving natural resources for tourism in specially designated areas, mainly national parks. This area will attract greater attention as the negative consequences of the utilization of specially protected nature sites for tourist purposes become more obvious.

CONSTITUTIONAL AND LEGISLATIVE MEASURES

Stockholm Declaration of 1972 was perhaps the first major attempt to conserve and protect the human environment at the international level. As a consequence of this Declaration, the States were required to adopt legislative measures to protect and improve the environment. Accordingly, Indian Parliament inserted two Articles, i. e 48A and 51A in the Constitution of India in 1976[4],

Article 48A of the Constitution rightly directs that the State shall endeavour to protect and improve the environment and safeguard forests and wildlife of the country. Similarly, clause (g) of Article 51A imposes a duty on every citizen of India, to protect and improve the natural environment including forests, lakes, river, and wildlife and to have compassion for living creatures. The cumulative effect of Articles 48A and 51A (g) seems to be that the 'State' as well as the 'citizens' both are now under constitutional obligation to conserve, perceive, protect and improve the environment. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way[5]. The phrase 'protects and improves' appearing in both the Articles 48A and 51A (g) seems to contemplate an affirmative government action to improve the quality of environment and not just to preserve the environment in its degraded form. Apart from the constitutional mandate to protect and improve the environment, there are a plenty of legislation[6]s on the subject but more relevant enactments for our purpose are the Water (Prevention and Control of Pollution) Act, 1974; the Water (Prevention and Control of Pollution) Cess Act, 1977; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986; Public Liability Insurance Act, 1991; the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997; the Wildlife (Protection)The Air Act defines an air pollutant as any 'solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.' The Act provides that no person shall without the previous

consent of the State Board establish or operate any industrial plant in an air-pollution control area. The Central Pollution Control Board and the State Pollution Control Board constituted under the Water Act shall also perform the power and functions under the Air Act. The main function of the Boards under the Air Act is to improve the quality of air and to prevent, control and abate air pollution in the country. The permission granted by the Board may be conditional one wherein stipulations are made in respect of raising of stack height and to provide various control equipments and monitoring equipments. It is expressly provided that persons carrying on industry shall not allow emission of air pollutant in excess of standards laid down by the Board. In *M. C Mehta vs Union of India*[7], which enlightened the concept of CNG can be considered as the landmark to regulate the transport system which the most important mode of transmission, that to in the capital of the country. In Delhi, the public transport system including buses and taxies are operating on a single fuel CNG mode on the directions given by the Supreme Court. Initially, there was a lot of resistance from bus and taxi operators. But now they themselves realise that the use of CNG is not only environment friendly but also economical. The decision also created a role model for the tourist destination to regulate the transport sector and use environmental friendly and cleaner means of transport. The Wild Life (Protection) Act, 1972 was enacted with a view to provide for the protection of wild animals, birds and plants. The Act prohibits hunting of animals and birds as specified in the schedules. The Act also prohibits picking, uprooting, damaging, destroying etc. any specified plant from any forest. The Act provides for State Wildlife Advisory Board to advise the State Government in formulation of the policy

for protection and conservation of the wildlife and specified plants; and in election of areas to be declared as Sanctuaries, National parks, etc. The Act is administered by a Director of Wildlife Preservation with Assistant Directors; and a Chief Wildlife Warden with other Wardens and their staff. The above mentioned Act also regulates tourism by defining the line between the tourism activities and other environmental protection activities related to wildlife and forest. The Act also restricts the tourist from degrading the environment or other related activities which directly or indirectly affects the environment. The Wildlife Life (Protection) Act, 1972, completely bans killing or hunting of any animal, birds, or other living creatures. Even this Act regulates destroying any plant or tree which is specified under this act. As the wildlife parks, sanctuaries, and reserves are in abundance and serves as major tourist attraction, this Act helps in regulation and protection of these important destinations, which also serves the most number of tourist count. The Forest (Conservation) Act and Rules, 1981, provides for the protection of and the conservation of the forests. The Forest (Conservation) Act, 1986 was passed with a view to check deforestation of forests. The Act provides that no destruction of forests or use of forestland for non-forest purposes can be permitted without the previous approval of the Central Government. The conservation of forests includes not only preservation and protection of existing forests but also re-forestation. Reafforestation should go on to replace the vanishing forests[8]. It is a continuous and integrated process.

11 The Act is intended to save a laudable purpose and it must be enforced strictly for the benefit of the general public. While the Wild Life (Protection) Act 1972 does allow tourists into Protected Areas, it clearly disallows

commercial establishments. The Indian Board for Wildlife, the apex advisory body in the field of Wildlife Conservation in the country, in its XXI meeting in January 2002 resolved " lands falling within 10 km. of the boundaries of National Parks and Sanctuaries should be notified as eco-fragile zones under section 3(v) of the Environment (Protection) Act and Rule 5 Sub-rule 5(viii) & (x) of the Environment (Protection) Rules". Under the Forest (Conservation) Act, 1980, section 2(d), non-forestry activity is prohibited in a forest area, except with the approval of the Central Government. Thus tourism enters the forests though a devious route! In this case, a proviso on explanation of " non-forest purpose" lays down that it does not include any work relating to or ancillary to conservation. Taj Mahal Case In Taj Mahal's case[9], the Supreme Court issued directions that coal and coke based industries in Taj Trapezium (TTZ) which were damaging Taj should either change over to natural gas or to be relocated outside TTZ. Again the Supreme Court directed to protect the plants planted around Taj by the Forest Department as under.

[10]INTERNATIONAL ENVIRONMENT REGIME RELATED TO TOURISM Many academicians in 90s emphasized the behavioral and impact aspects of tourism. As an example, Bull defined tourism as a human activity, which encompasses human behavior, use of resources, and interaction with other people, economies and environments (Bull, 1991). The concept of sustainable tourism was introduced in the late 1980s. It was the tourism industry's reaction to the Brundtland Report[11] on our common future as an outcome of World Commission on Environment and Development (WCED) in 1987[12]. Having in mind the notion of sustainability in WCED, sustainable tourism development can be defined as tourism that meets the need of the

current generations without compromising the ability of future generations to meet their needs (Weaver, 2001). Agenda 21 did not pay direct attention to sustainable tourism development as one of the leading industries. It is because of the novelty of such an industry and the traditional procedures of UN developmental bodies, which normally need sufficient time to consider a new and emerging phenomenon in their agenda of work. As a result of such circumstances, sustainable tourism development was ignored on the working agenda of the international community and thus the appropriate action on this important issue, in which all three pillars of sustainable development are involved, was postponed. The Commission On Sustainable Development as a UN body responsible for the follow up of Agenda 21 addressed sustainable nature based tourism, first in the framework of sustainable development of Small Islands Developing States and then in the context of the working programme of its Seventh Session in 1999. A couple of years back, the environmental instruments of international community, particularly UNEP, recognized the importance of issues and tried to address such need. One of the institutional initiatives of UNEP regarding sustainable (nature based) tourism is the UNEP Draft Principle on Sustainable Tourism, which was initiated in 1995 and after a series of negotiations presented to the Commission On Sustainable Development⁷. With its approval the final draft was published in early 2000. The main intention of the UNEP principle is to provide a framework on which international environmental agreements related to tourism can further develop their work programmes. The time of launching the UNEP initiative coincided with Commission On Sustainable Development⁷ and the adoption of decision 7/3. The content of the principle,

as an international reference document, demonstrates its own capacity to deal with NBT. The principle approach is towards environmental considerations in contrast with decision 7/3 and may be regarded as an environmental approach to tackle nature-based tourism[13]. One of the innovations of the UNEP principle on sustainable tourism is formatting of the titles and categorising issues in a useful and concrete manner. It contains four main groups of subjects and each one examines related sub-titles. However, in the developmental institutions, Commission On Sustainable Development⁷ approved the landmark decision of sustainable tourism in its decision 7/3 in February 1999 (Commission On Sustainable Development website, 1999). Despite many achievements, decision 7/3 fails to address several important issues related to sustainable tourism in general and NBT in particular. The main conceptual shortcomings of decision 7/3 include the lack of a comprehensive clarification of the rights and obligations of the major stockholders, the lack of a comprehensive provision on policy and planning including integrated planning, and environmental and development policies. Other major shortcomings of decision 7/3 are the lack of tools and policies for implementation and coordination mechanisms such as EIAs, monitoring and reporting procedures, carrying capacity issues, CHM, and ESTs. The Second International Conference on Climate Change and Tourism[14], was a milestone event that brought together a wide variety of stakeholders and delivered a clear commitment for action to respond to the climate change challenge. It underscored the need for the tourism sector to rapidly respond to climate change if it is to develop in a sustainable manner, which will require actions to: mitigate greenhouse gas emissions from the tourism

sector, derived especially from transport and accommodation activities; adapt tourism businesses and destinations to changing climate conditions; apply existing and new technologies to improve energy efficiency; and secure financial resources to assist regions and countries in need. The Davos Declaration highlighting these actions is a huge step forward and presents concrete recommendations to the key interest groups involved in tourism. This is indeed necessary, considering that tourism is today one of the world's largest economic sectors, and represents an activity that forms an integral part of modern societies in both developed and developing countries. It is, above all, a vital element in poverty reduction efforts and for the achievement of the UN Millennium Development Goals. In the context of the Davos meeting, the report "Climate Change and Tourism: Responding to Global Challenges", which was commissioned to a group of prominent researchers, encompasses the status of knowledge on the complex relationship between climate change and tourism. The publication notes the vulnerability of the sector to climate change and the impacts of tourism on climate itself. The report provides an excellent basis to address the global phenomenon of climate change, as well as to develop practical tools that can be used by tourism policy-makers and managers to foster the sustainable growth of the industry. The impacts and opportunities pertinent to the tourism sector are also underlined in the 2007 reports of the Intergovernmental Panel on Climate Change and the Global Environment Outlook. The Davos Conference and the London Ministerial meeting held in November 2007, together with the release of this report, are an integral part of the common UN system effort to develop a climate change response

framework, and constituted the tourism input at the UN Climate Summit held in Bali in December 2007. This process is possible thanks to the close collaboration between the World Tourism Organization, the United Nations Environment Programme and the World Meteorological Organization, and we are confident that it will contribute to the establishment of an effective and comprehensive climate change framework for the post-2012 period. The three agencies have joined forces with the aim of ensuring an effective response to the challenges ahead, in the true spirit of the 'Delivering as one' message of the UN family.

CONCLUSION

Tourism and travel is one of the world's largest and fastest growing industries generating 10.4% of world GDP, 8.1% of world jobs and 12.2% of world exports in 2004[15]. Tourism and travel offers the best prospects for generating employment and sustainable development, particularly in developing countries[16]. There is an increasing recognition by industry, government and international agencies that effective laws and institutions are fundamental to achieving successful outcomes[17]. When we particularly take the case of India, we can observe that it is evidently clear that there is no dearth of legislations on environment protection in India. But the enforcement of these legislations has been far from satisfactory. What is needed is the effective and efficient enforcement of the constitutional mandate and the other environmental legislations. The problem also exists for the accountability.[18]

In the area of climate change again the Ministry of Tourism seems more concerned about the potential loss of tourist arrivals than about tourism's negative climate change impacts. Protected Areas (PAs) like national parks, wildlife sanctuaries and biosphere reserves are seeing increasing intensive tourism

development under the guise of " ecotourism". While the Wild Life (Protection) Act 1972 does allow tourists into Protected Areas, it clearly disallows commercial establishments, despite this, a rash of tourism establishments are found cheek by jowl in the immediate periphery of every Protected Area of repute like Corbett, Ranthombore, Bandhavgarh, Kanha, Rajiv Gandhi - Nagarahole, Bandipura, Mudumalai, and Periyar. The Ministry of Environment and Forest's new Notification in 2006, has removed tourism projects from the mandatory list requiring the conduct of EIA and clearance from the Central Government. This is a retrograde step, as the negative impacts environmental, social, economic and political of tourism projects on local communities has been established conclusively. The government should considering the negative and destructive impacts of tourism on the environment and indigenous & local communities and incorporating these in tourism policies and planning frameworks. Mechanisms should be developed that involve local communities and local governments to monitor the impacts of tourism. We ask that research and monitoring for such impact assessment be privileged. The government should also regulate tourism growth taking into consideration ecological and social carrying capacity of locations. For instance, the government of Goa, has shorten Tourist Visas, to eliminate the longer stay, when it understood growing number of tourist are creating disturbance in its ecosystem[19]. By adopting people-centred tourism planning and policy formulation to reduce environmental impacts of tourism. Formulating of policies that are geared to preserving and conserving the natural environments rather than opening them up for relentless exploitation by development activities including tourism; In the light of unchecked

proliferation of tourism into newer and fragile areas, taking steps to check access and growth, including moratoriums wherever required on the entry of tourism and strengthening regulation and laws to ensure the protection of ecosystems and customary rights of indigenous & local communities; in this regard.[20]A regulated mechanism for development and expansion of tourist spot must be prepared. For instance, if we take in the case study of Goa, there was particularly relaxed atmosphere of the people and natural surroundings made it a paradise for backpackers during the 1960s who " were more or less able to adapt to the local way of life, eating local food and living in simple accommodation." 3 As a result, the impact on the environment from these tourists during the 1960s and 1970s was minimal. However, as the reputation of Goa's natural resources became more widely known, tourist numbers began to escalate. By the middle of the 1980s, charter flights were arriving in Goa and with them " a new breed of tourist who had money and demanded western amenities. This quickly caught the attention of foreign investors and tour companies, who wasted no time in building hotels, swimming pools, and even golf courses to meet the tourists' growing expectations and demands." Due to this drastic development and expansion, the result was obvious. The marine environment suffered a substantial loss of mangroves due to land reclamation for development, which resulted in erosion and exposing coastal banks to storm surges. However, government has started taking many strong positive steps in conservation of environment. Specialist environmental courts have also established in some jurisdictions to ensure that judges have the expertise and resources necessary to consider environmental cases. For example, the

Supreme Court of India has established specialised High Court benches known as " Green Benches" to deal specifically with environmental management issues. Often, these courts are combined with specialist administrative bodies, such as an environmental tribunal. The administrative body can hear the matter at first instance and, for some offences, apply administrative sanctions. The specialist environment courts and tribunals may reduce the number of cases brought before the Supreme Courts and High Courts, facilitate more consistent and expeditious environmental decision making and be less expensive. Sanctions may range from administrative penalties (e. g. change of licence conditions, suspension of licence, denial of funding, fines, closures), to civil penalties (e. g. injunctions, suspension of trading, negative advertising, compensation, cleanup, fines), to criminal penalties (e. g. closures, fines, probations or jail sentences). Fines can be structured to accumulate on a daily basis and might be defined within a range set out as a number of penal units. Criteria useful to determine the number of penal units to be posed in a fine may include: the economic benefit derived from the crime, the extent of the damage, the cost of repairing the damage, the violator's history of prior violations, economic impact of the penalty on the violator, the violator's good-faith efforts to comply, and the violator's culpability or wilfulness. Liability can be allocated among defendants. Gathering and cataloguing the type and severity of penalties awarded on conviction for environmental crime would enable the creation of a resource for prosecutors and judges engaged in cases of environmental crimes. These may be especially useful in courts of general jurisdiction where there is limited expertise in environmental matters.

Consideration should be given to establishing specialist environmental courts or tribunals and to the development of sentencing databases and guidelines. The tapping of natural resources for tourism must be done with requisite attention and care so that ecology and environment may not be affected in any serious way. A long-term planning must be undertaken by the Central Government in consultation with the State Governments to protect and improve the environment and to keep up the national wealth. Finally, protection of the environment and keeping ecological balance unaffected is a task which not only the government but also every individual, association and corporation must undertake. It is a social obligation and fundamental duty enshrined in Article 51 A (g) of the Constitution of India.