

LAW RELATING TO TOURISM IN INDIA

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Introduction

“Traveling – it leaves you speechless, then turns you into a storyteller.” – Ibn Battuta

Indian history dates back to 3000 BC with excavations from Punjab and Gujrat revealing that the Indus Valley civilisation was a highly developed urbanised society. People have travelled and settled across the rivers from time to time setting up civilisations and societies for the harmonious life of people. It is not wrong to say that travel is as old as human civilisation itself.¹ Tourism is a facet of travel which unlike setting civilisations is not of a permanent nature but merely of temporary nature, i.e. for a short duration for any purpose whatsoever. The term tourism commonly refers to transnational travel by a person but may also refer to travel by person from one place to another within the same country. Several international organisations including the League of Nations, United Nations and the Tourism Society of England have tried to define tourism. The League of Nations in 1936 defined the term 'tourist' as someone who travels from one place to another at least for twenty four hours. In 1945, the United Nations defined the term tourist as a person moving from one place to another for any purpose for a period not more than six months. It has been defined in the Tourism Society of England that tourism is a temporary, short term movement of people to destination outside the places where they normally live and work and the activities pursued by them during the stay at each destination.²

Whereas The International Association of Scientific Experts in Tourism defined tourism in terms of particular activities selected by choice and undertaken outside the home.

¹M. L. Lanfant, *Introduction : Tourism in the process of Internationalisation, International Social Science Journal*. Vol23,14 (1980).

²S. Singh, *Indian Tourism: Policy, Performance and Pitfalls, Tourism and the Less Developed World, Issues and Case Studies*7(2001).

Thus, the term tourism refers to the activity of travelling from the place of residence of a person to any other place for any purpose whatsoever.

It was in 1982 that the Indian Government presented its first tourism policy. It could be argued retrospectively about the novelty of the subject, why it was given low priority and belief as a social engineering tool because keeping in mind the public ideology of the people at that time. So it took government many years and until 2002 an updated policy document was presented. There were many who were expecting a clear line of thinking and a plan but the latest policy was a disappointment for them. The policy was based on irreconcilable approach by those international development community and international lobby group of tourism and travel related industries (WTTC). The result was that it started with a shielded idea that tourism is both threat and an engine of growth.

Tourism is composed of three basic elements:³

- a) An element which involves travelling to a selected destination or destinations is dynamic.
- b) An element which involves staying at a destination is static.
- c) An evolving element which results from preceding the two elements, concerned with the effect on economic, physical and social subsystems with which a tourist is either directly or indirectly in contact.

Tourism may be classified under the following basis, namely, on the basis of destination, on the basis of purpose of travel.

On the Basis of Destination

1. ***Domestic Tourism*** - Residents of a country travelling within the country itself.
2. ***Inbound Tourism*** – Non Resident of the country travelling within the host country.
3. ***Outbound Tourism*** – Residents of a country travelling in another country.

On the Basis of Purpose of Travel

1. ***Agricultural Tourism***
2. ***Birth Tourism***

³ J.Tribe, *From Motivation to Actual Travel*, *Annals of Tourism Research*, 19(1992).

3. *Culinary Tourism*
4. *Cultural Tourism*
5. *Geo Tourism*

Historical Background

India is closely related to its glorious traditions and rich cultural heritage for the development of tourism. From all over the world tourists are largely attracted to its magnificent monuments. The natural surroundings, the architectural masterpieces, the music, dance, paintings, customs and languages are what make India a tourist paradise. In ancient India, in the period of Chandragupta – II there were no travel formalities for travelling, and that time between A.D. 401 and 410 the famous Chinese pilgrim Fa Hien travelled without a passport. But in the 3rd century B.C. according to *Kautilya's Arthashastra* a passport or *mudra* was essential for all travelers. Later in the Vedic period, the tourists were accommodated at “*dhams*” or holy place of the country.⁴

When the discovery of the new sea route was made by Vasco-de-Gama there was remarkable increase in the traveler coming to India. Later when Alexander the Great reached he found well maintained roads lined with trees and wells, and rest houses in India.

It was in British period when tourism in India became more organized. For the convenience of dak traveler britishers built Dak Bungalows on the road side. The finest of India's cuisines is as rich and diverse as its civilization. The three famous words “*Aththi Devo Bhava*” in Sanskrit literature means “the guest is truly god” are a dictum of hospitality in India. India is a storehouse of art, paintings; crafts appeared on pots found in the Indus valley civilization as early as the 3rd century B.C. The cave paintings of Ajanta and Ellora date back to the 1st to 5th century A.D. In 19th century to document the wealth of material available the British setup the Archaeological survey of India in the country.⁵

The Government didn't pay much attention to tourism in the early days of independent India, quite rationally. Worldwide, the number of international tourists was still limited and among those tourists there were only few who considered going to faraway places like India. Moreover, the Indian Government had more urgent matters at hand. First public milestone in tourism history was the creation of the Indian Tourism Development Corporation (ITDC), in

⁴A.K.Bhatia, *Tourism in India* 24(1978).

⁵A.K.Bhatia. *Tourism Development-Principles and Practices*, 19-20(2002).

1966. The purpose of this federal organization was to develop tourist infrastructure and services. Albeit reluctantly and after considerable delay similar corporations were established on State level also. The scale of their operations and budgets were small and limited. Moreover, the tourism services offered by them were generally considered indifferent and substandard.

Luxury hotels in the metropolitan, international entry and exit points were setup by the TDCs (the ITDC especially) and private entrepreneurs. These hotels were accommodated by the foreign visitors as well as the local elite, who patronized such hotels throughout the year. However, most of the present Indian tourist destinations were developed through a slow process which started with the arrival of rather 'adventurous' backpacker tourists and their interaction with local communities.⁶ The local populations involved in opening up their towns and villages showed great adaptation and flexibility in identifying and trying ways of catering to the needs and tastes of (foreign) visitors. In collaboration the locals with the visitors created enclaves which were more exotic than India and yet produced exactly the right mixture of goods and services from home: peculiar places which are both island-like and thoroughly Indian. In the efforts made by them they were neither guided nor supported by the government of India. Tourism development was a largely unplanned exercise.⁷

Constitutional Perspective

The framers of the Constitution of India while framing the fundamental rights, took caution as to what fundamental rights have to be applied to foreigners and what rights have to be specifically reserved for the citizens of India. And accordingly, only the specific rights are available to foreign nationals i.e. Article 14, 20, 21, 21-A, 22, 23, 24, 25, 26 and 27.⁸

Supreme Court recently has reaffirmed the right to life and liberty (Article 21) that beside the citizens of India it is available to foreign nationals also in response where police against three Uganda nationals filed an FIR. SC observed

“Article 21 of the Constitution [right to life and liberty] applies to all citizens, whether Indian

⁶Faisali Iqbal Asif and Ashraf Husain S, *Tourism In India*, 6(2006).

⁷B. Mansukhani, *Indian Tourism - Ready To Exhale? In: Express Travel & Tourism*, 11 (2003).

⁸P.M. Bakshi, *The Constitution of India*, 19 (2014).

or foreign nationals. Their right to liberty could not be restrained by the police due to a business dispute.”⁹

In *Maneka Gandhi v. Union of India*¹⁰ it was stated by the court that the right to travel abroad comes under personal liberty guaranteed by Article 21 of the Indian Constitution. The case is considered a landmark case in that it gave a new and highly varied interpretation to the meaning of ‘life and personal liberty’ under Article 21 of the Constitution. Also, it expanded the horizons of freedom of speech and expression to the effect that the right is no longer restricted by the territorial boundaries of the country. In fact, it extends to almost the entire world. Thus the case saw a high degree of judicial activism, and ushered in a new era of expanding horizons of fundamental rights in general, and Article 21 in particular.

Other enactments indirectly dealing with Tourism

The Criminal Courts in India exercise jurisdiction either because a crime is committed by any person, national or foreigner within the Indian territory. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which, he shall be guilty within India.¹¹

The words “every person” under Section 2 of IPC means and includes a citizen of India as well as a non-citizen. Any person irrespective of his nationality, rank, caste or creed is triable by Indian Courts provided the offences with which he is charged have been committed on any part of the Indian territory. Any foreigner who enters the Indian territories accepts the protection of Indian law, and submits to the operations of the laws and to the jurisdiction of the Indian courts. A foreigner cannot be allowed to plead that he did not know that he act he was doing was wrong, because of the act not being an offence in his own country.¹²

A person who was a native from Baghdad was charged for committing an unnatural offence on an East Indian ship, lying at St. Katherine’ dock. The act done would not have constituted an offence in his home country. It was held that he was guilty of the offence and

⁹(2011) 6 SCC 161

¹⁰AIR 1978 SC 597

¹¹Indian Penal Code, 1860, S.2.

¹²R V. Esop, (1836) 7 C. & P. 456.

the fact that the act would not have amounted to an offence in his own country could not be admitted as a legal defence if his act constituted an offence in India.¹³

A foreigner who commits an offence within within India is guilty and can be punished without any limitation as to his corporeal presence in India at the time.¹⁴

While under the Code there are no exceptions to the jurisdiction in favour of any person, certain persons are immune either by virtue of the provisions of the Constitution or under the law of the civilized nations of the world. It is a common understanding between the nations that one sovereign cannot be subject to the law of the other. *Schooner Exchange v. M'Faddon*¹⁵ it was observed that one sovereign being bound by the obligations of the highest character not to degrade the dignity of his nations, by placing himself or its sovereign rights within the jurisdiction of another, can be supposed to enter a foreign territory with an express licence. Ambassadors and some other foreign diplomats enjoy immunity from the jurisdiction of the courts.¹⁶ He does not owe even temporary allegiance to the sovereign to whom he is accredited. He is supposed to be still living in his own country.¹⁷

Liability of Foreigners – If a foreigner initiates an offence in a foreign country which is completed within the territory of India, he can be tried by the Indian Court within whose jurisdiction the offence was completed provided that he is found within Indian territory.¹⁸

The Delhi rape case provoked many protests throughout India and forced the government to introduce new and tougher sentences for sexual assaults on women. Many fast track courts were also put into action to reassure women that the government is concerned to their safety.

Many brutal attacks on foreign visitors in India have reinforced the fear.

The first one being a gang rape by six men on a 39 year old Swiss woman who was attacked in front of her husband in Madhya Pradesh as they camped overnight in a forest during cross country cycle holiday, began on Saturday. The women and the man were cycling from

¹³(1836) 7 C. & P. 456.

¹⁴*Mobarak Ali Ahmed V. State of Bombay*, AIR 1957 S.C. 857.

¹⁵(1812) 7 Cranch 116.

¹⁶Per Brett L.J. in the Parliament Belge (1880) 5 P.D. 197 at 207.

¹⁷*Magdalena Steam Navigation Company v. Martin*, (1859) 2 E. & E. 94 at 111.

¹⁸Chhotalal, (1912) 14 Bom. L.R. 147.

Orchha to Agra. The men held her at gun-point and restrained her husband back as they each raped her.

In another incident, a British woman was attacked in her hotel room in Agra, Uttar Pradesh, home of the Taj Mahal, one of India's most popular tourist destinations, by hotel manager.

In June 2013, an Irish woman filed a complaint with the police in Kolkata against a man who had allegedly raped her after the two met at her 21st birthday party.

In another subsequent case in the same month, a 30 year old American woman was raped by three men near the northern town of Manali by a truck driver and two others who offered to take her from a small village to her guesthouse.

A survey of 1200 tour operators in cities across India was conducted by the Associated Chambers of Commerce and Industry of India, gave the following results:

Around 725 of the tour operators stated that tourist bookings to India were cancelled specifically by women tourists, mainly residents of UK, USA, Canada, Australia etc.

Another study which can hit hard the tourism industry of India is the poll March poll by The Wall Street Journal where more than 76% of the respondents said that India isn't safe for female travelers. Adding to the shame, India occupies number 1 position in the list of top 10 unsafe countries for women according to Rediff and Business insider.¹⁹

Terrorist activities have time and again threatened to disrupt the flow of tourist arrivals in our country. India in the past has faced many terrorist attacks especially in Kashmir which was once an important tourist destination which now has suffered a drastic fall in tourism due to these activities. Another is in Mumbai where a terrorist attack was carried on 26/11 in which many lives were lost.

Moreover it is no hidden fact that many tourists come to India for the purpose to do drugs which are easily available in many parts of India mainly in Goa, Himachal Pradesh and

¹⁹*Indian Express*, December 18, (2012).

Uttarakhand despite being illegal and Controlled by State in Section 10²⁰, Section 12²¹ and Chapter IV²² of Narcotics and Psychotropic Substance Act, 1985.

Various states already have tourism act but there is still none enacted by Central legislature. There are still various provisions of different acts which somehow help tourists and tourism industry in India such as functions of airport authority²³, power of Central Government to declare ancient monument, etc. to be of national importance²⁴, regulation and access to biological diversity²⁵, provisions regarding baggage, goods imported or exported²⁶. The study of Environment (Protection) Act, 1986, Foreigners Act, 1946, Motor Vehicle Act, 1988, Wildlife Protection Act, 1972 and other relevant statutes will be conducted in research study.

Role of Government in Tourism

The government's role has changed from a mere regulator to that of a catalyst, which seeks to attract and foster tourism. India today is competing with other countries in the tourism industry and within India the states are competing with one another to gain revenue from tourism. Thus, the central and state governments have formulated policies to foster such ends. The most comprehensive of plans made for economic development are the five – year plans made by the Planning Commission which have time and again considered tourism as a potent vehicle for economic development. A compilation of provisions in the five years plan.²⁷

FDI: A Development Tool in Indian Tourism Industry

The rich cultural heritage, traditions, festivals, food, architectural monuments, hospitality and services of India are positive strengths for its tourism sector and make it international appeal large and diverse. It has transformed into one of the most popular tourist destination in the world largely as a result of the Governments' "Incredible India" campaign which showed India in a new light to oversea tourists.

²⁰Power of State Government to permit, control and regulate

²¹Restrictions over external dealings in narcotic drugs and psychotropic substances

²²Offences and Penalties

²³Airports Authority of India Act, 1994, s. 12.

²⁴ Ancient Monuments and Archaeological Sites and Remains Act, 1958, s. 4.

²⁵ Biological Diversity Act, 2002, ss. 3-7.

²⁶ Customs Act, 1962.

²⁷India Tourism Statistics Reports on Ministry of Tourism (2000-2015).

However, despite the various campaigns and its rich heritage, several problems have been faced by the tourists in the past few years due to lack of infrastructure. Shortage of capital is a major obstacle for tourism development and many countries increasingly look to foreign investors to provide capital that will help development of their tourism industries. One of the most popular forms of investments by foreign investors is known as Foreign Direct Investment (FDI).

Government Initiatives to Promote FDI in Tourism

There are initiatives taken by the Government to stimulate domestic and international investments in the tourism sector:

1. 100 percent FDI is now permitted in all construction development projects which include construction of hotels and resorts, recreational facilities and city and regional level infrastructure.
2. 100 percent FDI is now permitted in all airport development projects but with the condition that FDI for up gradation of existing airports approval beyond 74 percent is required of Foreign Investment Promotion Board.
3. A five year tax holiday with compliance to some prescribed conditions has been extended to the companies that set up hotels, resorts and convention centers at specified destinations.

For agreements relating to foreign technology, automatic approval is granted if:

1. Up to 3% is paid for technical consultancy Services in the project of the total capital cost.
2. Up to 3% is payable for franchising and marketing/publicity fees of the net turnover.
3. Up to 10% is payable for management fees, including incentives fees of gross operating profit.

Tourism is no longer looked at as a leisure activity, but as major source of employment. A total of \$121 billion or 6.4 percent of the nation's GDP is generated by tourism calculated by The World Travel and Tourism Council of gross operating profit in 2011 which was responsible for 39.3 million jobs, 7.9 percent of its total employment. The GDP of the tourism

sector has expanded 229 percent between 1990 and 2015. It is expected to grow at an average annual rate of 7.7 percent in the coming decade.²⁸

International Cooperation

India being a member of the WTO, G20 Nations, ASEAN and other international organizations has used these forums to seek cooperation between member nations to improve prospects of tourism between one another. India participated in Meeting of Association of South East Asian Nations (ASEAN) – Another meeting was held in Vientiane by Indian Tourism Ministers, Lao PDR, 2013, January; 93rd Session of UNWTO Executive Council in Madrid, In June 2012 in Spain and the 94th Session of UNWTO Executive Council in Campeche, October, 2012 In Mexico. It has also led the G-20 nations to unanimously acknowledge tourism as a major source of income, thereby enabling a smooth environment to promote pro-tourism policies. There were events where India participated to coincide with the visit of INS Sudarshini. India has also held diplomatic talks with Israel and Philippines to promote tourism between one another. India has sought to increase inflow of foreign exchange through promotion of cross border tourism and thus has been one of the major players in recognizing tourism as a global economic activity.²⁹

India and Tourism

Tourism is widely prevalent in India with different states focusing on one or all of the aforesaid types of tourism and the government of India encouraging advertisement and promotion of tourism to India by several plans and policies including *Incredible India*. It is not merely a revenue generator but also an employment generator for diverse sections in the society from specialized to unskilled labour. It is reported in the Economic survey that 6-7% of the world's total jobs directly or indirectly depend upon tourism. In India, tourism directly creates 47.5 jobs in a million jobs and around 86-90 jobs indirectly, which is even greater than the number of jobs created by agriculture sector.³⁰ The amount of foreign exchange earned through tourism has consistently increased in last few years. Also, the number of foreign tourist has increased consistently in this period, indicating the potential of India to tap its abilities in the

²⁸ Available at www.thehindu.com/business/economy/fdi-dips-by-38-to-224-bn-in-201213/article4775276.ece, visited on 23, Oct (2016).

²⁹R.C.Mings, *Assessing the Contribution of Tourism to International Understanding*, *Journal of Travel Research*, 33-38 (2014).

³⁰GOI, *India Tourism Statistics*. Ministry of Tourism, Market Research Division New Delhi (2015).

tourism sector to boost foreign exchange earnings. Foreign tourist arrivals during Jan-Oct 2016 is 6.96 million as compared to Jan-Oct 15 which was 6.30 million a registered growth of 10.5%.³¹ The United Nations World Tourism Organization (UNWTO) in its vision statement has predicted global annual tourism expenditure to hit US\$2 trillion and the number of foreign tourists to reach 1.5 billion by 2020.

The tourist potentials of India are grouped under the following sub- themes.³²

Cultural/Historical

1. Historical Monuments
2. Fairs/Festivals
3. Arts/Crafts
4. Religious

Natural factors

1. Water fronts
2. Parks/Gardens
3. Wild life sanctuaries
4. Physical landscape

Tourism facilities

1. Accommodation
2. Transport
3. Tourist information

Other facilities

1. Leisure/Recreation facilities
2. Sport and other events
3. Health care

Eco-Tourism

Since the Eighth Five Year Plan, some of the new forms of tourism were introduced which were over and above the usual cultural tourism, religious tourism or leisure tourism. Human beings have always had interest in exploring the nature. This is where eco tourism comes in. Eco tourism has been growing rapidly since the last two decades. So out of all new

³¹ Ministry of Tourism, Twitter account, tweeted on 22, Nov(2016).

³²A.VijayaKumar, *Indian Tourism Industry in 21st Century, Challenges and Responses*(2009).

form Eco-tourism is the best way to protect, nurture and develop our flora and fauna, our environment and our hills.³³

The World Conservation Union (IUCN) defined ecotourism as: "...environmentally responsible travel and visitation to relatively undisturbed natural areas, in order to enjoy and appreciate nature (and any accompanying cultural features – both past and present) that promotes conservation, has low negative visitor impact, and provides for beneficially active socio-economic involvement of local populations". The International Ecotourism Society defines ecotourism as: "responsible travel to natural areas that conserves the environment and improves the welfare of local people."³⁴

The Government of India and the State Government should design and propagate such policies which aim at removing factors having a negative impact on tourism inflow and fostering further inflow of tourists. Thus it would not be wrong to say that the government would play a key role in determining the future of tourism industry in India through its law and policy.

The tourism is the only economic sector in the world that has enjoyed continued growth in spite of World recession, inflationary travels and increasing out prices. Tourism is growing throughout the world. It has become the important component of man's life and its potential is endless. Tourism is the largest export item for Great Britain, Spain, Italy, Mexico and Ireland and now is also the largest export industry of India. Although India is a cultural heritage country, it can provide everything to the tourist wants'. But because of certain drawbacks India, as a tourist land, has generally a poor rather negative image among the main tourist generating countries of the world.

So in spite dispute of showing the only false picture to pay proper attention towards the Tourism industry and the overall faults which one making hindrance in the growth of this industry. For example the tour operators complain that what the Government give one hand they takes away with the other. For instance, the central Government allowed Indian operators to import Air condition equipments for coaches concessional duty. But soon after, the state Government hiked road taxes without assigning any reason. It shows that the Government seems to be astonishingly short sighted in its tourist's policy.

³³Ummat R.C,*Foresting Tourism: Why Dither*, 73 (1979).

³⁴Narasaiah Lakshmi. M, *Globalization and Sustainable Tourism Development*, 56(2004).

Reports on sexual assault on Indian women emerge on a daily basis. Every day the India media has a new case to show related to the sexual assault on women, but the December rape drew particular attention internationally. The crime received international attention. In the three months after the Delhi gang rape, foreign tourist numbers dropped 25% from a year earlier, according to the survey by the Associated Chambers of Commerce and Industry in India. The number of foreign women traveler fell even more, down 35%. The new perception that has come up at international level that India isn't safe for women travelers was cited as the main reason for the drop in tourist and the foreign visitor's number. The survey further found that due to rape cases, the tourism industry was hit hardest in the capital city Delhi, followed by Goa, Agra and Jaipur. Now the tourists prefer to plan their trips to other Asian countries, instead of visiting India. No doubt, the issuing of travel advisories against India by four western nations (the UK, US, Australia and Switzerland) has influenced this decision to a great extent.

Tourism in India is witnessing widespread growth on the back of increasing inbound tourism by the burgeoning Indian middle class, rising inflow of foreign tourists and successful government campaigns for promoting 'Incredible India'. India climbed 13 ranks in the World Economic Forum's (WEF) travel and tourism competitiveness index, moving from 65th position in 2013 to 52nd position in 2015. By this unprecedented performance in (WEF) the government at the Centre is now set to promote various tourist destinations globally to attract more football in years to come. It is also planned to promote India as land of Buddha through International budhist conclave under "Incredible India" and is another key move by Ministry of Tourism. Under Buddhist Circuit theme, MoT has already sanctioned various projects like construction of cultural centre at Bodhgaya, Bihar. A 182m "Statue of Unity" is under construction dedicated to Indian freedom fighter leader Vallabhbhai Patel located facing Narmada Dam at Vadodara, Gujrat. The Indian Infrastructure company Larsen & Toubro bagged the contract for its lowest bid Of Rs.2,989 crore on 27 October 2014. Several people and political parties have criticized this over other priorities like women's safety, education and agricultural schemes.³⁵

The development of Infrastructure is what holds the key to India's sustained growth in the tourism. Therefore, Ministry of Tourism is making consistent efforts for quality tourism infrastructure at various tourist destinations. India has easy visa rules which make tourism development easier than many countries. With the focus on sustainability India needs to

³⁵Available at <http://www.statueofunity.in/>, visited on 25/10/2016.

increase room supply, increasing air capacity and upgrade its airports, roads and infrastructure which meet global standards.

CONCLUSION

The term 'tourism' is defined in different ways. It is crucial to note that the tourist has the understanding of coming back to the place of residence after being at the destination and having enjoyed the tourist products, attractions and services. There are different forms of tourism and so also the types of tourists with their own behavioural characteristics. Over the years different concepts have emerged in tourism. Tourism products and services play a vital role. While looking at the future trends a variety of factors have to be accounted for. For example, now there is emphasis on the Alternative or Sustainable Tourism as people are beginning to assert their rights and demand controls. The history of tourism developed mainly through indirect sources in the early period. It was only with the onset of 20th century that statistics and information on tourism began to be directly collected. Trade and pilgrimage played an important role in tourism traffic in the pre-modern times. However, the growth of modern technology, rising incomes and modern entrepreneurs contributed to the emergence of modern tourism.