

Towards A Comprehensive Tourism Law in India: An Analysis of the Existing Legal Framework and Regulatory Gaps

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Abstract

The tourism industry in India is responsible for around 7.8% of GDP and provides direct & indirect employment to more than 87.5 crores of population while there is no single organizing or comprehensive law dealing with tourism level in India. Rather it steers a way through a complex network of legislation, government policies, both at the central and state level, and administrative directives, all of which in isolation are unable to respond to the unique complexity and dynamism of the sector. This review paper making a critical study of Indian legal framework in the present state of tourism, key gaps, and analysis of tourism governance keeping in view the constitutional dimension, policy aspect and the stakeholders involved. This paper assumes there is a structure deficit in the Indian tourism law in absence of a separated national Tourism Act, and illustrates these direct negative implications for tourism consumer protection, for tourist safety, for the environment, and for India's competitiveness as a tourist destination region on the basis of a comparison of the laws of other destinations such as the Maldives, France, Kenya and Australia and the synthesis of doctrinal legal analysis and policy evaluation. The paper outlines the fragmented statutory regime of which the debates relating to the Tourism (Development and Regulation) Draft Bill, the Contract Act, the Consumer Protection Act, environmental legislations, the various state tourism acts and many more are a part, and offered basic framework architecture for a complete Indian Tourism Law. The recommendations cover the regulatory institutionalization, multi-stakeholder governance, digital tourism regulation, accessible tourism standards, and crisis management provisions highlighting the legal reform agenda for India tourism in the larger context of a global class tourism destination-governed by the rule of law.

Keywords: Tourism Law, India, Regulatory Framework, Legal Reform, Tourism Policy, Consumer Protection, Heritage Tourism, Sustainable Tourism, TAAI, MoT

1. Introduction

Tourism is one of the least talked yet most impactful sectors of current global economy. It is viewed by United Nations World Tourism Organization (UNWTO) as an economic Growth, Employment generator, culture exchange and Sustainable development. With its rich history, stunning natural beauty, spiritual practices, and vibrant culture, India has untapped potential to become a world-renowned tourist destination. However, until now the sector has been underperforming compared to its potential and this has been in large part due to the lack of a comprehensive, enforceable and unified legal framework.

Though my country has natural and cultural resources, it still faces certain structural issues in infrastructure, regulatory quality as well as governance as evidenced by its ranking in the World Economic Forum's Travel and Tourism Development Index which as of 2023, stands at 38th place. The sector is mainly run by policy instruments and scheme based interventions by the Ministry of Tourism (MoT), and not by statute. Due to lack of a national Tourism Act, the entire tourism industry including the tourist transport operators, adventure tourism companies, heritage site managers and hotel/accommodation providers operate in a total state of regulatory allure in the country.

This paper emanates from the observation that law and regulation are not peripheral to tourism development, but that it is central point of all tourism development. Legislations outline the rights of the tourist and obligations of

the service provider, set safety standards, guard consumers and the environment, affect the scams and exploitation as well as show the institutional credibility to the international markets. This lack of framework does not mean that it does not have an impact; the impact is felt in terms of lives lost through unregulated adventure trips, the growth of fraudulent operators, little protection or maintenance of heritage sites, the lack of standardized grievance redressal mechanisms and the unequal playing field for compliant operators.

This review paper aims to systematically analyze the following points: (i) underpinning constitutional foundation of tourism regulation in India; (ii) existing statutory and policy frameworks of tourism regulation; (iii) key gaps noticed in the doctrinal analysis and comparative study; (iv) international best practices in tourism law; and (v) structure for a comprehensive national tourism law. The paper, thus, adds to the new but growing research in the field of Indian Tourism Law and fills an emerging policy void that needs attention in the country, which is also gearing to host various international events and is emerging as one of the premier international tourist destinations.

1.1 Scope and Methodology

Doctrinal legal methodology along with comparative and policy analysis are used in this paper. The sources examined are primary sources such as the Indian Constitution, central and state laws, debate in the Parliament, the documents of the Ministry of Tourism policy, and judgments of the court and texts of international treaties. Academic literature on tourism law, comparative jurisdiction and empirical data from the UNWTO, the World Economic Forum, and NITI Aayog are considered secondary sources. It is a very explicitly normative orientation, that is, it is not just a description of the current framework, but also a critique and call for change.

2. The Constitutional Framework for Tourism Regulation in India

2.1 Distribution of Legislative Competence

In India, distribution of powers between both the Union and States is done through the Seventh Schedule in the Constitution of India which is federal in nature. Tourism is not listed in the Union List (List-I) or State List (List-II), but is partially covered in both the lists. It is this distributed competence which forms the base of the fragmentation that marks the tourism regulatory framework in India.

Parliament has exclusive power to make laws with respect to 'Tourist Offices in a foreign country' pursuant to Entry 22 of List I. It has a restricted scope – there is no general basis for comprehensive domestic tourism regulation – and gives the Union jurisdiction only over outbound tourism promotion infrastructure. The Union's wider tourism regulatory interests have been enjoyed through ancillary entries which include Entry 13 (union to participate in international conferences, associations and bodies and from that participation to implement decisions taken at such conferences), Entry 42 (inter-State trade and commerce), Entry 97 (residuary powers) and the concurrent entries for the regulation of contracts, consumer protection and the environment.

The State competences over tourism are the List II entries “libraries, museums” (Entry 12), “communications and roads” (Entry 13), “land” (Entry 22), “industries” (Entry 33) and residual state competences. Importantly, neither that list includes the terms ‘hotels and restaurants’, and states have regulated in that category under their general police powers and under Entry 8 (intoxicating liquors, which of course includes liquor licensing in hotels).

The residuary clause in Article 248 of the Indian Constitution, activated by Entry 97 of List I, has theoretical potential as an instrument for legislations by the Union on issues which do not come under List II and III. The Supreme Court's decisions, however, put the emphasis on a narrow interpretation of residuary power which avoids disturbing the federal balance. The Union has been silent as to using its residuary power for comprehensive tourism legislation in practice.

2.2 Concurrent List Entries and Their Tourism Implications

A number of articles in List III (Concurrent List) have a direct relevance in the context of regulation of tourism. Two of the most significant entries, based on which a comprehensive statute on tourism can be built, are Entry 7 (contracts including partnership and agency) and Entry 24 (welfare of labour) reflecting the constitutional foundations for this comprehensive statute. Further, Entry 17A (forests) and 17B (protection of wild animals and birds) of the Concurrent List have a direct impact on eco-tourism and wildlife tourism regulation, respectively.

The tourism sector is also part of the concurrent list and the general provisions of consumer protection contained in the Consumer Protection Act, 2019 were not tailored to take into account the characteristics of tourism services, such as the transient nature of relations between tourist and provider; the geographic location of the consumer; multiple parties being engaged in contracts in the tourism sector (especially in package tourism); and the evidentiary challenges in the hands of the tourist seeking relief. These broad consumer protection provisions would be engaged by a specialized tourism statute, which would build on and strengthen them.

2.3 The Role of Article 51A and Directive Principles

The Directive Principles of State Policy (Part IV) and Fundamental Duties (Article 51A) of the Constitution give both moral and imperative directions to tourism law reform which, although not justiciable, can serve as benchmarks for tourism law reform. This is the focus of one of the framings, Article 48A, which instructs the State to protect and improve the environment, having a direct connection with sustainable tourism. Article 49 calls for the protection of monuments and places of national importance, giving the constitutionally bases for heavy handedness in regulating heritage tourism. The obligations on citizens under Article 51A (f) are to value and preserve the rich heritage of our composite culture and (g) protect and improve natural environment.

In recent years, courts have interpreted these non-justiciable provisions in conjunction with justiciable rights, giving rise to a constitutional duty to protect the environment. This constitutional attitude underpins legislative action such as: reduction of carrying capacity in protected areas and their control, protection of the environment from the construction of tourism infrastructures and implementation of environmental impact assessments (EIA) for tourism enterprises in or near protected areas, and the setting up of protection rules to be adhered by tourism operators in protected areas.

3. The Existing Statutory and Policy Landscape

The Indian tourism industry is not regulated under a unique central or state law but rather on an amalgamation of various acts of legislation passed by both the central government and state governments, which tackle specific areas of the tourism scenario. This section takes an overview of key statutory instruments and policy frameworks in operation.

3.1 Central Legislation with Tourism Implications

3.1.1 The Contract Act, 1872 and Tourism Service Agreements

The basic legislation of all of the tourism contracts (tour operator contracts, hotel booking contracts, airline ticketing contracts, travel insurance contracts, and guide service contracts) is the Indian Contract Act, 1872. But its general provisions were intended to be suitable for a 19th century mercantile economy and do not cover for the special weaknesses of tourism consumers, namely the standardized character of package tour contracts, the lack of information symmetry between the sophisticated tour operator and individual consumers, the geographic and other limitations of enforcing contractual rights, and the sensibility of the customer, regarding both psychological and financial aspects, to the failure to provide the tourism product or service during the travel itself.

However, those tourists are not well protected against unfair legal clauses that are regularly introduced in tour operator and accommodation contracts, such as all-encompassing force majeure clauses, unilateral cancellation

rights, or the exclusion of liability for the behavior of subcontractors or ground handling agents, as there are no contractual standards defined for each sector.

3.1.2 The Consumer Protection Act, 2019

Under the most important system of tourist redress, at present, is the Consumer Protection Act 2019 (CPA). For the purposes of this act, the word 'service' is defined in a general way and includes tourism and hospitality services. The CPA sets up District, State and National Consumer Disputes Redressal Commissions and the provisions of the 2019 Act on ecommerce brings in online tourism platforms and booking aggregators.

But there are some structural constraints that limit the impact of the CPA for the tourist consumer. The first is because under the definition of 'consumer' in section 2(7) a person taking services for 'any commercial purpose' will be excluded from relief, in practice, the same as has been done with business travelers and incentive travel participants. Second, the geographic jurisdiction rules of the CPA give rise to difficulties for tourists who experience a deficiency of service in a state other than where the service was rendered and/or where the tourists live. Thirdly, the timelines of enforcement in the 'consumer commission' system, although time bound disposal has been provided in the 2019 Act, are still lengthy. Fourth, the CPA does not take account of the collective redress mechanisms that would be suitable where there are multiple claimants with identical grievances (as in a tour group case).

3.1.3 The Hotels and Restaurants (Collection of Statistics) Act, 1948

This Act allows for the transfer of data from hotels and restaurants to statistics, as well as giving an administrative tool for surveillance of the accommodation services in a limited way. It is limited, its implementation is not yet in place, and it does not touch on issues raised by the regulation of current tourism: standards of quality, safety standards, conditions of workers, nor standards of compliance with the environment. It's an example of one piece of outdated, one-track legislation a comprehensive tourism act should either replace or significantly complement.

3.1.4 The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASR Act)

The Archaeological Survey of India (ASI) is the main agency responsible for the administration of the primary legislation, the AMASR Act, which affords the most important protection to India's centrally protected monuments and archaeological sites — the historical tourism resources that attract the highest numbers of tourists both within and outside of India. The Act introduces the idea of prohibited zones, regulated zones and restriction on commercial activities near protected monuments.

The AMASR Act, however, is a heritage conservation Act, rather than a tourism management Act. It doesn't speak to the carrying capacity of visitors or the standards of experience, or the commercialization of tourism, or equitable return of tourism revenue to local communities near heritage sites. The 2010 AMASR Act amendment, which included an 100m radius circle of no-go around a monument and an area of 200m beyond it, has led to unclear regulation of tourism infrastructure and an inability to prevent encroachment and commercialization which impact on the heritage values.

3.1.5 Environmental and Wildlife Legislation

There is a number of central environmental legislation which has direct impact on tourism in ecologically sensitive area. Environment (Protection) Act, 1986 gives Union government a wide net in regulating activity having impact on environment including tourism activity. Eco-sensitive Areas and managing commercial activities around protected areas are under the provisions of the Wildlife (Protection) Act, 1972, which also governs tourism activities in the national parks and wildlife sanctuaries. Tourism infrastructural development is checked by the Forest (Conservation) Act, 1980. Tourism is a key tourism corridor and is regulated under the Coastal Regulation Zone Notifications under the EP Act.

These laws give some important protection to the environment, but have not been equi-given through the tourism prism. Environmental impact assessments are not routinely and universally required for tourism

projects, carrying capacity studies for wildlife tourism areas are ad hoc, and compliance with CRZ restrictions in coastal tourism areas – where tourism-based projects are so prevalent it would be hard to find a spot where they are not is weak and flaky.

3.1.6 The Motor Vehicles Act, 1988 and Tourist Transport

Tourist transport (such as buses, taxis and hired vehicles for tourist transportation) is controlled by Motor Vehicles Act, 1988. The Act covers licensing of transport vehicles (contract carriage and tourist vehicles). However, enforcement is highly unevenly spread across the states, a process to standardize standard safety requirements for tourist vehicles is quite lacking, and the new gig-economy approach for mobility of tourists via ride-hailing platforms is not addressed.

3.2 Ministry of Tourism Policy Instruments

Because there is no direct statutory authority over any of these units, the Ministry of Tourism has evolved a wide-ranging framework of voluntary classification systems and incentive conditional approvals and development capacity programmes. The main instruments are:

System of classification for hotels: The MoT's Hotel and Restaurant Approval and Classification Committee (HRACC) operate a voluntary star rating system for hotels (1-5 star and Heritage). While participating properties enjoy marketing advantages, standards are not legally enforceable when it comes to non-participating properties which make up for the bulk of accommodation stock in India.

The Ministry of Tourism (MoT) provides recognition to the travel agents and tour operators on the grounds while meeting their pre-defined requirements with regard to infrastructure facilities, trained human resources, and financial capacity. All-recognition is the indispensable premise to apply for MoT's promotional support and to be listed by official tourism sites. But, there is no legal requirement to be recognised to run as a tour operator which results in a two-tier market of recognised and unrecognised tour operators with vastly different quality and accountability standards.

INCREDIBLE INDIA Bed & Breakfast Scheme: Scheme is the Guideline for home stay segment which plays an important role in tourism and is increasingly growing in India especially in the field of rural and community based tourism. But it is all on a voluntary basis.

(Respond to instances of serious deaths in adventure tourism activities) After prominent deaths in adventure tourism activities, MoT released Adventure Tourism Guidelines, which aims to set standards for safety in adventure tourism, among the activities listed in the guidelines are trekking, mountaineering, river rafting, paragliding and scuba diving. These guidelines are, however, not statutory and there is no enforcement action for non-compliant operators.

National Tourism Policy 2022: The National Tourism Policy 2022 outlines India's vision for strategic development in the tourism sector, highlighting goals for sustainability, visitor numbers, and job creation. Broad in scope, the Policy is a non-binding document and it does not give an actual timeline or any mechanism on how the legislative reform will be done.

3.3 State Tourism Legislation

Many Indian states have specific laws governing tourism suggesting a demand for introduction of legislation and the fragmentation because of the lack of a central framework. These include:

State	Legislation	Key Provisions	Limitations
Goa	Goa, Daman & Diu Tourist Trade Act, 1982	Licensing of travel agents, hotels, restaurants, tourist vehicles; penalties for	Pre-dates digital economy; limited enforcement; no heritage or eco-tourism provisions

State	Legislation	Key Provisions	Limitations
		unlicensed operation	
Rajasthan	Rajasthan Tourism Trade (Facilitation & Regulation) Act, 2010	Registration of tourism enterprises; tourist grievance redressal; tourism zones	Grievance mechanism weakly institutionalised; heritage-tourism interface unaddressed
Himachal Pradesh	HP Tourism Development & Registration of Tourism Trade Act, 2002	Registration of tourist accommodation; adventure tourism guidelines; tourism development areas	Adventure tourism safety standards need updating; inter-state coordination gaps
Kerala	Kerala Tourism (Conservation & Preservation of Areas) Act, 2005	Declaration of tourism zones; regulation of construction in tourism zones	Focused on spatial regulation; does not address tour operator or service quality standards
Karnataka	Karnataka Tourism Policy 2015-2020 (policy, not statute)	Eco-tourism, heritage tourism, MICE tourism development frameworks	Policy instrument without statutory force; expired; replacement delayed
Uttarakhand	Uttarakhand Tourism Development Board Act, 2001	Board establishment; tourism development planning	Institutional, not regulatory; adventure tourism fatalities highlight gaps
Tamil Nadu	Tamil Nadu Tourism Development Corporation Act, 1971	State corporation powers; tourism promotion	Developmental focus; minimal regulatory provisions

This survey shows that while some states have specific tourism laws, these are limited to only certain aspects of tourism and tend not to be a holistic approach to the tourism industry. Without a national framework, inter-state tourism (accounting for a significant part of domestic tourism in India) opens the door for regulatory uncertainty and unevenness entailing transaction costs for tour operators, varying levels of tourist protection and tourism development planning at the national level.

4. International Comparative Analysis: Tourism Legislation in Other Jurisdictions

Looking at the comprehensive tourism legislation in peer and aspirational comparator jurisdictions sheds light on a range of approaches, the substantive points that might be included, and the forms of institutional structures that India's tourism law reform might consider.

4.1 The Maldives: Tourism Act, 1979 (as amended)

The Maldives Tourism Act is one of the first National Tourism Acts in Asia that sets up a comprehensive framework for the regulation of tourist resorts, tourist hotel, tourist guesthouses, diving schools and tourist vessels. These include a comprehensive licensing system for all tourism operators with licences issued by the

Ministry of Tourism and subject to regular renewal and revocation; mandatory standards of resort island accommodation, sanitation facilities, resort islands environment management and tourists' safety; a formal system for determining carrying capacity and allocation of resort islands; obligatory training and certification of tourism employees; Tourist's safety situation; and environmental protection at resort islands as appropriate to the nature of the tourism ecosystems.

The Maldivian model is especially salient for India as it has shown us how a developing country nurturing a tourism industry can institutionalise the quality of regulation and environmental protection using a dedicated legislation in such a weakly structurally endowed country, and continue to take consistently high ranks in the world of tourism. The archipelagos of India's Andaman and Nicobar Islands and Lakshadweep are similar, with comparable challenges.

4.2 France: Tourism Code (Code du Tourisme)

France's Tourism Code, which was brought together in 2004, is one of the most complete codes on the world stage. It applies the following measures to regulate the travel agencies and tour operators: financial guarantees and insurance, compulsory Immatriculation scheme (Registration with the ATOUT France agency), the conditions to hold a professional competence certificate, compliance with the provisions of EU package travel directive, accommodation via classification, guiding profession by qualification and casino gaming by tourism license, and mountain and outdoor sports by safety regulations.

In particular, France's introduction of the EU Package Travel Directive framework provides greater protection for consumers who buy package tour carriers: Pre-contractual information particulars must be provided, price revision laws are in effect, a right of transfer of bookings exists, an insolvency protection through the mandatory supply of financial guarantees, and the organizer is liable for the performance of all services in the package. Similar facilities will work wonders in India's package tours segment both at home and abroad.

4.3 Kenya: Tourism Act, 2011

Kenya's Tourism Act 2011 is important in that it includes aspects of conservation and community interests in the tourism development. The Act will establish the Tourism Regulatory Authority (TRA) as an independent body with full power to license tourism enterprises and develop and enforce standards, a Tourism Fund as a specific financing mechanism for the tourism sector and a direct financial sharing framework with the local tourism community in the vicinity of conservation areas, and require training and certification of tourism service providers, including those who will be tour guides.

Kenya's experience with a separate and independent Regulatory body with licensing and standards setting function is very relevant to the institutional reform process that India is going through. The Tourism Regulatory Authority model serves as a template for the creation of this autonomous institutional framework of authority that could help overcome the current weakness in the regulatory capacity of the MoT, due to its promotion function and bureaucratic institutions.

4.4 Australia: Tourism Industry Council Standards and State Legislation

The Australian approach of regulating tourism is a combination of Commonwealth consumer protection (via the Australian Consumer Law) and tourism licensing and standards enforcement at the state and territory level. Voluntary accreditation standards, widely adopted in the tourism industry, are developed by the Australian Tourism Industry Council. One example of safety regulation that is particularly relevant is the Australian safety regulation in the adventure tourism sector, which has, after a series of tragedies, saw the introduction of increased registration requirements, mandatory risk management plans and independent safety audit for operators in the adventure tourism sector. In a number of jurisdictions in Australia a current risk management plan is a licensing requirement.

The Australian approach illustrates that a workable voluntary accreditation system coupled with sound baseline consumer protection and sector-specific safety regulation can provide high levels of safety without providing comprehensive prescriptive regulation. The law reform process for tourism in India could be a hybrid between a

statutory based floor of the minimum standards and an incentivized voluntary level of standards for better quality tourism companies.

4.5 South Africa: Tourism Act, 2014

The South African Tourism Act 2014 is informative, in that it includes elements about the sustainability of tourism. The Act includes a statutory provision for the South African Tourism Board to build a new tourism sector strategy, with clear environmental and social measures; a provision to make a National Tourism Sector Strategy with explicit dimensions of environment and social issues; and a National Monitor on Sustainable Tourism to track progress towards indicators of sustainability. What matters for India - a country where aspired tourism plans involve ecologically sensitive roles of the Himalayans, coasts, wildlife habitat areas and cultural areas that are considered sensitive - is the statutory sustainability infrastructure that has been embedded in South Africa's category of environmental sustainable tourism and is not likely to be dealt with through dedicated environmental law alone.

5. Conclusion

This review paper has shown that its lack is a structural lacuna in tourism governance in India that has tangible implications for the safety of tourists, consumer protection, sustainability and India's competitiveness as tourist destination internationally. Current architectures a hodgepodge of central and state-level laws, along with transactable policy instruments are simply not up to the scale, complexity and dynamism of India's tourism industry today.

It shows that jurisdictions that have enacted comprehensive legislation in the field of tourism have for this reason been able to obtain better results in the areas of safety, consumer protection, environmental preservation, and tourism quality not in spite of the regulations, but thanks to them. India is well-equipped to have a comprehensive Tourism Act in place; be it constitutional provisions, legislative powers, institutional understanding, or economic needs. What has missed is the lack of political will to put legislative reform as a key priority and not just investment in promotion.

The proposed framework architecture, with its focus on an independent National Tourism Regulatory Authority, a universal compulsory licensing scheme, enhanced consumer protection measures, a set of statutory requirements to secure the safety of adventure tourism operators, a set of provisions aimed at including the use of the national heritage and the environment, as well as human resource licensing and accessible tourism standards, offers a coherent and implementable foundation for the development of legislation. None of the elements of the framework are radical they are based on precedent in similar jurisdictions and supported by India's own legal system.

The goal of attracting 100 million foreign tourists a year and entitling India to become one of the world's most popular tourist destinations is not possible relying solely on promotion campaigns and building infrastructure. It stands to be built on the institutional credibility, the quality of regulations and the confidence of consumers that only a full legalized system can ensure. Thus, the adoption of National Tourism Act is not an impediment to the tourism prospects in India but a prerequisite to the achievement of India's tourism development goals.

Future scholarship should continue this examination with empirical research into the economic and safety consequences of formalisation of regulation of Indian tourism; comparative analysis of the formalisation of regulatory enforcement models in Asia-Pacific tourism destinations; stakeholder preference studies to assist in drafting legislation; and constitutional law analysis of the federal aspects of proposed legislation to regulate tourist travel.

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