

MENACE OF ECOTOURISM AND THE ROLE OF LEGISLATIONS IN INDIA

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Introduction

Ecotourism is more than a catch phrase for nature loving travel and recreation. Ecotourism is consecrated for preserving and sustaining the diversity of the world's natural and cultural environments. It accommodates and entertains visitors in a way that is minimally intrusive or destructive to the environment; it sustains and supports the native cultures in the locations it is operating in. Ecotourism focuses on local cultures, wilderness adventures, volunteering personal growth and learning new ways to live on our vulnerable planet. It is typically defined as travel to destinations where the flora, fauna and cultural heritage are the primary attractions.

As India is a land of diverse geography and culture and its topography boasts a varied range of flora and fauna and home to numerous rare and endangered species, it is believed that ecotourism will earn good amount of revenue by causing least damage to the environment. There are currently about 80 national parks and 441 sanctuaries in India. Numerous botanical and zoological gardens are working towards the enhancement of the ecosystem. The revenue produced from tourism by using these biodiversity rich areas, helps and encourages governments to fund conservation projects and training programs.

With the object of earning revenue while retaining the nature as it is, newer biodiversity rich areas, under “protected area” status or otherwise, are being rapidly opened for ecotourism in India. But in the absence of coherent policy, regulation and guidelines in India, ecotourism has impacted biodiversity, lives and governance systems of communities. This has resulted in loss of rights and benefits arising from use of biological resources to communities. Women are particularly affected as they confront increasing problems of social evils, finding wherewithal from even distant locations. With this background this paper analyzes the growth of ecotourism and the

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steps taken by the government of India in promoting ecotourism. It throws light on the dark areas of ecotourism along with the status of the policies and legislations governing ecotourism in India.

What is Ecotourism?

Fundamentally, “ecotourism” means making as little environmental impact as possible and helping to sustain the indigenous populace, thereby encouraging the preservation of wildlife and habitats when visiting a place. This is responsible form of tourism and tourism development, which encourages going back to natural products in every aspect of life. It is also the key to sustainable ecological development. Ecotourism is derived from two words: “ecosystem” and “tourism”. Ecotourism is the best option for the people who love nature and its beauty.

The official definition of “ecotourism” by the World Conservation Union (IUCN) is:

“[E]nvironmentally 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.”¹

The Travel Industry defines “ecotourism” as:

“[P]urposeful travel that creates an understanding of cultural and natural history, while safeguarding the integrity of the ecosystem and producing economic benefits that encourage conservation . . . The long-term survival of this special type of travel is inextricably linked to the existence of the natural resources that support it.”²

This means that those who implement and participate in ecotourism activities should follow the following principles:

- Minimize impact;
- Build environmental and cultural awareness and respect;
- Provide positive experiences for both visitors and hosts;
- Provide direct financial benefits for conservation;

¹ *Definitions of Ecotourism*, <http://www.piedrablanca.org/ecotourism-definition.htm> (last visited Aug. 15, 2013).

² *Id.*

- Provide financial benefits and empowerment for local people;
- Raise sensitivity to host countries' political, environmental, and social climate; and
- Support international human rights and labour agreements.

Ecotourism and Conservation Mechanism

Ecotourism is a big business across the world. When the United Nations Environment Programme with blessings of the World Tourism Organization (UNWTO) designated year 2002 as the International Year of Ecotourism, it received vociferous support and sponsorship from the tourism industry and travel associations. The reason for such support was the magic *mantra* that enabled the tourism industry to pacify critics by using the language of conservation while attempting to manage the adverse environmental footprints of tourism while not compromising on profits.

Biodiversity of an ecosystem is a vital issue of an economy. Soil, water, climatic condition, forest cover and biodiversity are crucial in determining the renewable resource flow of an economy. As the uncontrolled economic activities resulted in the raise in global temperature, increased natural calamities etc., need for biodiversity conservation was felt all over the world. At this juncture ecotourism emerged as a tool for sustainable development of the economy, as it is believed that economic development of the country can be done with the adoption of ecotourism, without disturbing the ecosystem in a large scale.

Though the concept gained momentum and most of the developing countries adopted this type of tourism, there was a voice against such activity by the minority, as uncontrolled ecotourism can also be a good cause to ruin the rich biodiversity. With this regard, first initiation was taken at the 5th Conference of the Parties (COP) of the Convention on Biological Diversity (CBD) in Nairobi May 15-26, 2000 to discuss the negative and positive impacts of ecotourism on biodiversity. Though COP noted the drawback of ecotourism as “self regulation of the tourism industry for sustainable use of biological resources has only rarely been successful”, decision of COP states that:

“[T]ourism does present a significant potential for realizing benefits in terms of the conservation of biological diversity and the sustainable use of its components.”

Despite this acknowledgement of the inherent imitations of voluntary approaches, the parties to the CBD subsequently embarked on a process to elaborate voluntary Guidelines for Biodiversity and Tourism Development, which were adopted in the 7th meeting of the Conference of the Parties to the Convention on Biological Diversity at Kuala Lumpur, Malaysia, in February 9-20, 2004. The need to involve indigenous people and local communities in tourism development is mentioned in these guidelines, but only as a voluntary measure. The CBD recognized the difficulty of the communities to compete in a market that is “fiercely competitive” and “controlled by financial interests located away from tourist destinations”.

Need for Ecotourism in India

India is a country of continental dimensions consisting of 4 distinct regions, viz., the great mountain zone, plains of the Ganga and the Indus rivers, the desert region and the southern peninsula. India is thus endowed with every land form-mountains, plains, sea coasts and desert. With the idea of reserving the wholesome environment to the next generation, government of India encouraged the use of these biodiversity rich areas for ecotourism. Number of travel related organizations started exploring the beauty of nature to the nature loving tourists by offering different ecotourism packages like bamboo rafting, wild adventure, tribal heritage, jungle inn etc. There is a silent boom in ecotourism with number of travelers on the rise every year. But due to lack of legislations in the area and efficient supervision of the implementation of the policies made by the government, there are certain basic problems of pollution, destruction and disturbance to the wholesome environment.

To avoid the adverse impacts on the environment, India has consistently included environmental and ecological safeguards in ecotourism by adopting various policies. The government of India has also recognized 3 key players in the ecotourism business, viz., local authorities, the developers and the operators. Without a cordial relation among them it is not possible to mitigate the existing problems. Besides this the visitors and the local community are also responsible for protection or degradation of the earth.

In India, only after careful assessment of carrying capacity, ecological areas for tourism will be opened to ensure that nature's bounty is not destroyed. India tried to ensure that tourism does not impinge on the culture and heritage. In general, a sound and sensitive environmental approach is adapted to tourism development

planning and is integrated with other activities to ensure the following:

- Levels of development are to be compatible with the general capacity of the physical environment and resources.
- Sufficient facilities and services need to be provided to serve tourists and the local population.
- Hotel rooms must be distributed in such a manner that the natural characteristics and qualities of the area are enhanced.
- The three dimensional manifestation of tourism development should be designed carefully and with a sensitivity that merges with the surroundings and enhances the natural beauty.
- Architectural heritage sites and other areas of historic value are to be adequately protected.

Legal Framework for Ecotourism in India

To achieve all these goals, many policies were made, depending on the needs of that area. The objective of a tourism policy is to provide tools for growth of tourism beyond viable, acceptable and sustainable natural, social and economic thresholds. Tourism policy also tries to enable identification and mitigation of impacts and caters to all aspects of the tourism production function, intermediate inputs and the final output, i.e., experiences.

But, as far as ecotourism is concerned, clear planning and control of the sector is a globally identified need. General tourism policies are not congenial for ecotourism and as of now legislations in ecotourism are rare. In the past environmental laws of India were passed with the motto of preventing and regulating pollution and protection of untouched ecologies and sensitive ecosystems. Provisions of these laws were made applicable to ecotourism. Some of such laws are the following:

1. The Wild Life (Protection) Act, 1972:

This Act permits tourism in protected areas along with scientific research and wildlife photography. The character and volume of tourism in protected areas has changed considerably since this law was framed. There are no specific provisions to regulate tourism and tourist activity in and around the protected areas. Hence, there is an urgent need to amend the Act.

2. The Forest (Conservation) Act, 1980:

The law prohibits conversion of forest land for “non-forest” activities³. However, ecotourism is being propagated on the notion that it supports conservation and hence is being allowed in forest areas. Although this Act has the potential to regulate ecotourism, the belief of conservation through ecotourism, has become a stumbling block in the implementation of the Act.

3. The Environment (Protection) Act, 1986:

Under this Act, there are 2 very important notifications that are closely linked to the development of ecotourism, viz.:

- **Coastal Regulation Zone Notification, 1991:** This is an important piece of legislation guiding anthropogenic activities along the coast. However, 20 amendments have been made to the notification over the years which have diluted and rendered many of the protective clauses meaningless.
- **Environmental Impact Assessment Notification, 2006:** The notification has totally omitted Environmental Impact Assessments for tourism projects as against its predecessor, the Notification of 1991, which required Environmental Impact Assessments of tourism projects.

4. Other Provisions:

Besides these legislations, there are no specific legislations or regulations made by the central government to protect ecosystem in India. The only document available with regard to ecotourism policy at national level is the Ecotourism Policy and Guidelines, 1998 which identifies key players in ecotourism as: government, developers/operators and suppliers, visitors, host community, non-governmental organizations (NGOs) and research institutions. It also prescribes operational guidelines for these key players. The policy defines and hence approaches ecotourism with a clear conservation bias. It lays out cardinal principles suggesting the importance of involvement of local communities, minimizing the conflicts between livelihoods and tourism, environmental and socio-cultural carrying capacities.

National Biodiversity Strategy and Action Plan (NBSAP) were made to assess gross impacts of tourism activities in major ecosystems and also to focus on principles in relation to tourism and biodiversity that need to be adopted for the sake of conserving biodiversity. The Ministry of Environment and Forests,

³ Any activity that does not support protection and conservation of forests.

Government of India has rejected NBSAP on grounds of it being unscientific. The preparation of NBSAP was one the most participatory processes in Indian history.

Due to lack of adequate provisions and policies, the authorities are making use of the policies enforced by the government of India to protect the environment, to regulate ecotourism. Few among the other policies are:

• **The National Environment Policy, 2006:**

The policy promotes ecotourism in many fragile ecosystems and overlooks tourism as an impacting agent.

• **The Ecotourism Policy and Guidelines, 1998:**

Drawing from international guidelines prepared by tourism industry associations and organizations, the Ecotourism Policy and Guidelines, 1998 issued by the Ministry of Tourism, Government of India represent interests of global industry players. The policy approach is environmental protection for the sake of profits. The policy outlines all ecosystems of India as ecotourism resources and states that these have been well protected and preserved. Where the policy enlists its principles and elaborates operational aspects for key players in the ecotourism business, the role of communities is considerably reduced to protecting environmental resources and providing services to tourism in the role of “hosts”. An environment protected by communities is a resource for ecotourism when tourists experience the natural beauty. Indigenous and local communities become important “stakeholders” thereby becoming subservient to a process where environmental protection is vested from their control and is being pursued for the sake of supporting economic enterprise. What the policy fails to realize is the cross linkages between ecotourism and the social, cultural, economic and institutional processes of indigenous and local communities. Their lives are very closely linked to the environment they live in, and their customs and traditions bear strong linkages to it.

• **Andaman and Nicobar Islands Tourism Policy:**

This is a rather simplistic document serving very little of its purpose of providing guidelines and principles for implementation. Chhattisgarh does not have an ecotourism policy. Information on ecotourism sites is provided on the official website which states that one of the major objectives of the policy

is to promote economically, culturally and ecologically sustainable tourism in the state; with ecotourism in the 3 national parks and 11 wildlife sanctuaries.

• **Madhya Pradesh Ecotourism Policy, 2007:**

Salient features include development of infrastructure, promotion of lesser known areas, diversification of tourism activities, building awareness and securing local community and private sector participation. Ecotourism activities will include nature camps, eco friendly accommodation, trekking and nature walks, wildlife viewing and river cruises, adventure sports, angling, herbal ecotourism, urban ecotourism through eco parks, visitor interpretation centers, and conservation education.

Role of Indian Judiciary in Preserving the Wholesome Environment

The Indian judiciary has also contributed in protecting and preserving wholesome environment by giving landmark judgments in various cases.

In *Niyamavedi v. State of Kerala*⁴, the Kerala High Court found that a project for such a park was designed after consulting many experts who gave full support to watching wildlife at close quarters, without interfering with the sanctity of flora and fauna. In the court's eyes the government's decision to establish a park after consultation was a policy decision, which could not to be interfered with.

In *Nagarahole Budakattu Hakku Sthapana Samithi v. State of Karnataka*⁵, the establishment of a restaurant with board and lodging, in the midst of a national park was the main issue. On the basis of an 18 year lease from the government, the lessee, a private company, renovated old building for the establishment of the facility. The Karnataka High Court held that once an area was declared a national park no one has any right on or over the land, unless it is specifically granted. Further, subsequent to the Forest (Conservation) Act, 1980 (FCA), no forestland or portion could be assigned by way of a lease or "otherwise" to anybody. The court noted that the expression "otherwise" denotes that a lease or even an easement is incapable of being assigned. The lease being contrary to laws relating to, wildlife and forest conservation, the court ordered to hand over the possession of the building to state government.

⁴ A.I.R. 1993 Ker. 262.

⁵ A.I.R. 1997 Kar. 288.

An artificial deviation of the flow of a river in forestland, for the purpose of augmenting facilities of a motel, was challenged in *M.C. Mehta v. Kamalnath*⁶. Quashing prior approval for the lease, the apex court referred to the evolution of public interest doctrine under which the state as a trustee has to protect the natural resources for the benefit of the general public. On the facts of the case, the court found that the bank of the river, which was part of protected forest, had been leased out for commercial purpose. The state government committed a patent breach of public trust by leasing out the ecologically fragile land for a hotel. The formulation and application of the public trust doctrine, in the context of protection of forests and preservation of natural resources, is a landmark in the growth of Indian environmental law.

In *Union of India v. Kamath Holiday Resorts Pvt. Ltd.*⁷, the Supreme Court disagreed with the argument that the lease for a snack bar and restaurant was necessary for visiting tourists in the reserved forest. The court observed:

“All current streams of thought lead towards protection of environment and preservation of forest wealth. On the other hand there are demands in justification of other use telling on the forests. A balance would have to be struck in a cool and dispassionate manner.”

In this case, an officer of the central government leased out the site in forest for the snack bar. The apex court was categorical that even if the central government agency grants the lease, prior approval is imperative.

The question to what extent tourist traffic may be permitted into the parks was examined in *Forest Friendly Camps Pvt. Ltd. v. State of Rajasthan*⁸. The Government of Rajasthan has established a tiger project in the vicinity of Ranthambore National Park with a view to attracting tourists. Both the state government and the central government encouraged tourism and helped setting up of various hotels and resorts around the park area. Though there were hardly any restrictions in the beginning, the government regulated the tourism business in the park by controlling entry of private vehicles. The appellants challenged the roster system and the restrictions on the ground that they would hamper tourism, and consequences

⁶ A.I.R. 2000 S.C. 1997.

⁷ A.I.R. 1996 S.C. 1100.

⁸ A.I.R. 2002 Raj. 2001.

would result in affecting the foreign exchange earnings. The writ petition was dismissed with an emphasis on the following aspects of ecotourism:

- It would be just and fair to maintain a careful balance between the preservation of wild life in forest and sustainable development, in order to ensure the long-term health of both the ecosystem and the tourism economy.
- The policy should be developed to ensure that the tourism activities, which need the nature and biological diversity conservation, include mobilizing funds from tourism.
- The tourism should be based on environmental friendly concept.
- Tourism activities which directly or indirectly contribute to the conservation of nature and biological diversity and which benefit local communities should be promoted.
- It should be seen that tourism activities should be environmentally, economically, socially and culturally sustainable.
- The tourism should be developed in a way so that it benefits the local communities, strengthens the local economy, employs local work force.
- To ensure all these aspects the policy of tourism should be such where the tourists are not put to inconvenience.

Although tourism helps in mobilizing funds for development of the national economy, however, one is compelled to warn that tourist activities should never go beyond the boundaries of being environment friendly. The court laid emphasis on sustainable development, which has to be accepted as a viable concept for eradicating poverty, helping the local people and improving the quality of human life, while maintaining the equilibrium of the ecotourism. In other words, society has to prosper, but not at the cost of the environment. This concept will have to be accepted in the field of ecotourism.

Conclusion

To be with nature and enjoy its creations in the most natural way without endangering it is known as ecotourism. Ecotourism in the Indian context has significant implications for nature and culture conservation, rural livelihoods and conservation education. Every visitor and the citizen of India are responsible for the protection of biodiversity rich ecosystem of India. As, each one has to be sensitive

to the environment and local traditions, there should be a set of guidelines for the successful development of ecotourism. In addition, NGOs and scientific and research institutions also have to play a key role in the development of ecotourism. Along with that, a management plan for each ecotourism area should be prepared by professional landscape architects and urban planners, in consultation with the local community as well as others directly concerned. Integrated planning should be adopted to avoid intersectoral and cross-sectoral conflict. Moreover, involvement of the local tribes by giving preference, in such activities is must in conserving our ecosystem.

