UNIT 16 TOURISM LEGISLATION

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16.0 OBJECTIVES
After going through this Unit you will be able to:

- appreciate the relevance of tourism legislation,
- understand what all can be incorporated under tourism legislation,
- comprehend the demand for tourism legislation,
- know about the different Acts and Regulations that have a bearing on tourism in India, and
- learn about the various recommendations that have been made in this regard.

16.1 INTRODUCTION

Tourism, as we understand, is a diverse activity with different sectors, different types of destinations, different types of tourists and different types of problems. The World Tourism Organisation has started the Tourism Legislation Information Service on its website. Its documentation centre had by 1998 collected more than 2000 items of laws and regulations governing the main areas of tourism activities in over 140 countries. There is no one thing as such which can be described as a tourism legislation because of the varied nature of tourism itself. However, laws are pervasive in the tourism industry in order to regulate, permit, promote, empower or ban the commercial/leisure activities of both service providers as well as tourists. There are also laws to recognize the rights of the tourists as well as contract laws to determine the relations within the industry segments. In fact, travel and accommodation were two sectors where legislation has been there for a long time, but now new and new areas that require to be incorporated under tourism legislation have emerged and there has been a demand for a comprehensive tourism legislation.

In this Unit, the last Unit of this course, we have attempted to familiarize you with the debate that has emerged in the area of tourism legislation. Here, we are not discussing the provisions of various laws that have a bearing on tourism for that will be a full course in itself.

16.2 TOURISM LEGISLATION

According to Ronald A. Kaiser (Travel and Tourism Law, 1994), tourism law creates and defines seven basic concepts:

1) Travel is a legal right,
2) Reliable and safe transportation must be readily available,
3) Safe and adequate accommodations must await the traveller,
4) All travellers should have access to such accommodations,
5) Travel and accommodation costs must be reasonable,
6) Regulation of the travel and tourism industry is necessary, and
7) Redressal mechanism for transgressions of rights and regulations is necessary.

Though, countries like the United States may be quite advanced in relation to tourism law, the WTO commented that “all countries – developed, developing or underdeveloped were underdeveloped in so far as tourism legislation is concerned”. A crucial question to be asked here is what all should tourism legislation incorporate of and for whom?

In general terms, tourism law would seek to define in clear and unambiguous terms the rights and responsibilities of the various segments of tourism vis-à-vis the user as well as the service provider. Till date the types of tourism legislation that have been created or introduced in various countries can be classified into the following functional areas:

1) Those related to the protection of tourists,
2) Those related to border controls,
3) Those related to quality of services,
4) Those related to protection of environment,
5) Those related to conservation of historical sites and monuments,
6) Those related to economic development,
7) Those determining the relationship of various segments of the tourism industry, etc.

Another way in which we can categorise tourism legislation is to arrange there legislations industry-wise, i.e., legislation related to hotel industry, aviation industry, travel industry, etc.

However, more and more areas are being added like tourist safety, health and hygiene, protection of privacy along with various environmental legislations and regulations that have emerged over the years. There is also talk about having tourism legislation enacted to check the negative impacts of tourism, protection of host population’s interests and so on.

### 16.3 SOURCES OF TOURISM LAW

The existence of what we term as tourism laws today can be traced back in history from the most ancient times in practically all the civilisations. Many ancient texts refer to traveller’s accommodation and facilitation, laws about the functionings of sarais, state officials responsibilities towards travellers, tariffs, etc. However, today we have more complex laws that have emerged not only because of the complex nature of the industry but also because of varied government attitudes, existence of varied government departments, tourism awareness and so on. Tourism laws are derived from a variety of sources. For example, in United States 51 different sources (states and federal government) contribute towards tourism law. These include federal and state constitutions, common law, administrative law, treaties and statutes. Similarly, in India the Union list, Concurrent list and State list, all have elements related to tourism though tourism is not specifically referred to anywhere. For example, emigration laws, aviation, archaeological sites and monuments, shipping, highways etc. come under the union list; protection of wild animals and birds, forests, etc. form part of the concurrent list whereas domestic pilgrimage, theatres etc. form part of the state list. Different laws have come up at different intervals of time as regards these themes.

There is no such law that encompasses all aspects of tourism though the demand for one has been picking up. It has been argued in fact that “legislation on tourism seeks to define in clear unambiguous terms the rights and responsibilities of its various segments vis-à-vis the user and vice-versa and to provide for legal protection of the rights and enforcements of the responsibilities thus defined” (Mishra and Ravindran, 1998).
This means that practically all aspects related to tourism should be governed by one tourism legislation. Currently, there are various legislations that directly or indirectly affect tourism. These can be categorised under the following heads:

1) Laws related to **trans-border movements** like customs, visa regulations, foreign exchange regulations, immigration laws, etc.

2) Laws related to **transportation** like airline regulations, railways, road and water transport, fares and tariffs, etc.

3) Laws related to **accommodation** like classification/grading/rating of hotels, etc.

4) **Consumer Protection Laws** related to health, hygiene, service quality standards, etc.

5) Laws related to **land use, infrastructure development**, etc.

6) **Labour laws** related to employees’ working conditions, wages, etc.

7) Laws regarding the **functioning of tourism organisations** at various levels.

8) **Conservation related laws** on environment protection, monuments and historical sites, etc.

9) Laws related to **human resource development**.

10) Laws for **regulating the service providers**, etc.

Different countries have their own provisions on these laws whereas there are areas of international operations where common provisions are followed.

**Check Your Progress – 1**

1) Mention the functional areas of tourism legislation.

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2) What can be the sources for tourism law?

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**16.4 WHY TOURISM LAW**

Sitikantha Mishra and G. Ravindran in a paper on “An Overview of Tourism Legislation in India” presented in a Workshop on Tourism Legislation in India in January 1998, mentioned that:

“The emergence of tourism as an important activity has brought into focus the need for harmonious relationship between the tourists and the providers of the tourist services. A number of problems of tourists have their roots in the absence of any standard norms regulating the trade. Once the standards of quality of services are laid down and revised periodically as per market exigencies, everyone would be clear about whether in a particular case the services were deficient or not. This will lead to an overall improvement in the quality of services and minimisation of disputes between the tourists and the providers of services. The economic importance of tourism and the present stage of its development has also brought into sharper focus the need for appropriate central legislation to coordinate and control the activities of the industries on professional lines and ensure observance of high ethical standards commensurate with the needs/demands of an international activity. This is especially so because global tourism is becoming highly competitive in the neighbouring destinations/countries.”
A crucial question regarding enactment of tourism legislation is that from whose point of view the legislation is to be made:

- From the point of view of tourism industry?
- From the point of view of international tourists?
- From the point of view of the standards maintained in the highly developed world?
- From the point of view of domestic tourists?
- From the point of view of national interests?
- From the point of view of destination interests?
- From the point of view of host population?

The emphasis in this regard is generally on the quality of services, standards to be maintained and minimizing disputes between service providers and tourists. There are many grey areas like child labour, sex tourism, condition of small service providers, etc. that also need to be addressed in the broader gambit of tourism legislation. In fact, the advocacy of tourism legislation should not be a panic reaction to the interest of the rich and dominant nations. Further, a legislation has to be strongly backed up by awareness generation or else mere formulation of legislation and its imposition will serve no purpose. In many areas particularly among the business organisations operating in the tourism sector, there is also a need for a code of conduct not only in their dealings with each other but also vis-à-vis the tourists and the host population.

Besides awareness any legislation needs constant monitoring also. This needs efforts in a direction where the law is adhered to, rather than waiting for some law to be violated and then take action on it. This is vital because of the nature of the tourism services and impacts. Preventive measures must be incorporated in the law itself in order to make them more effective as far as their operational aspect is concerned. For example, there may be a law that polythene bags or any kinds of non-biodegradable waste is not to be thrown in the eco-sensitive areas and such an action would invite penalties. The law may exist but unless the tourists, tour operators, and other service providers are sensitised on the importance of this law, the law may not serve any meaningful purpose.

Having a common tourism legislation is not an easy task for any nation because of the varied laws that already exist in relation to different activities and situations that have a bearing on tourism operations and activities. Yet efforts in this direction have to continue with a caution that tourism legislation takes into account an overall view and is not merely a tool for the protection of industry’s interests only.

### 16.5 THE INDIAN SCENARIO

There are variety of laws in India which are directly or indirectly related to tourism. Some of these are as follows:

1) Environment related

- The Indian Forest Act
- The Wildlife Protection Act
- The Forest Conservation Act
- The Air Prevention and Control of Pollution Act
- The Environment Act
- The National Environment Tribunal Act
- Coastal Zone Regulations, etc.
2) **Monuments**

- The Ancient Monuments Act
- Regulations made by the Archaeological Survey of India
- Guidelines issued by the Ministry of Culture, etc.

3) **Accommodation**

- The Sarais Act
- Department of Tourism Regulations for Categorisation of Hotels, etc.

4) **Protection of Tourists and Health**

- Indian Penal Code
- Consumer Protection Act
- Prevention of Food Adulteration Act, etc.

Similarly, the transportation system is governed by various laws, rules and regulations. However, these laws and regulations vary statewise. For example, the taxation on tourist coaches, their permit fee, etc. varies from state to state. Hence, the Tourist Transporters Association keeps demanding for similar tariffs and rates and a common licence for operating at an all India level. Similarly, the rate of sales tax and many other taxes that are imposed for tourism services vary from state to state. Few states like Jammu and Kashmir, Goa and Himachal Pradesh have enacted tourism legislation for regulating and controlling the tourism industry. These acts carry provisions like registering of tourism related businesses with state tourism departments for tour operators, travel agencies, hotels and guest houses, etc. They also give approvals to tourist guides and in some cases a tourist police force has also been introduced.

The Ministry of Tourism has been debating for a long time now in drafting a Central Tourism Legislation in the country and has initiated some measures to assess the feasibility in this regard. Globalisation of the Indian economy and the provisions of GATS have had a profound impact in this area and different types of recommendations are being made.

There is definite need to address the various concerns related to tourism legislation. For example, the **Second Workshop on Tourism Legislation in India** made the following recommendations:

1) Tourism and related activities may be brought on the Concurrent List of the Constitution of India.

2) There should be legislation to regulate the existing travel and tourism business and to permit the setting up of new travel and tourism business. Such businesses will be in the forms of Travel Agents, Tour Operators (inbound and out-bound), Excursion Agents, Railway Booking Agents and Tourist Transport Operators.

3) The legislation should provide for the setting up of an Apex Body with legal authority to frame rules to regulate the operations of the travel agencies including binding of such agencies with a view to protect the interests of the consumers.

4) As there was already sufficient legislation under the general Central and State laws, there was no need for any further legislation on tourism in so far as the hotel and restaurant sector was concerned. Instead, there should be more emphasis on inspection/supervision of hotels and other tourism related establishments. However, in order to bring uniformity in the matter of applicable laws all over the country, the existing Central and State laws should be studied by legal experts who could also be asked to suggest suitable modifications in them so as to develop a model law which could then be recommended to the State Governments for adoption.

5) Any land being used or proposed to be used for tourism-related activities, as approved by the Government of India, Ministry of Tourism should be exempted from the provisions of Urban land Ceiling Act.
6) In view of its being the highest net foreign exchange earner, international Tourism should be declared as an export-oriented industry so that all incentives and concessions available to the export-oriented industry are provided to the international tourism industry.

7) There should be legislation to facilitate single-window clearance for hotel/tourism projects.

8) The proposed Tourism Finance Corporation should provide loans to the tourism industry at a concessional rate of interest as is available to the export-oriented industries.

9) With a view to sustain tourism it is desirable that there should be legislation to protect the environment and ecology. The proposed legislation should have provision for the constitution of a Committee on Ecology and Environment under the Ministry of Tourism, Government of India. This Committee should identify compact tourism development areas having regard to its ecology, bio-systems and antiquities creating tourism development entities.

10) It is essential to maintain ecosystems and ecological processes required for the functioning of the biosphere.

11) Protection should be provided to local cultural tradition and crafts by harmonising the tourist activities with local tradition.

12) Optimal use should be made of trans-boundary natural resources (for example national parks) and effective protection of trans-boundary environmental interferences.

13) Tourism activities on or near beaches should be allowed and regulated keeping in view the interest of environment.

14) Provision of arrangements for sewage/waste water treatment should be made compulsory not only to save water but also to make it re-usable for growing plantation and horticulture.

15) To prevent litter pollution from beach hotels, disposal of litter by deposit into municipal drainage system or its burial in deep pits which can then be covered up should be made obligatory for the hotels.

16) To control noise pollution near monuments of tourist importance and places of pilgrimage; vehicular traffic which is the main source of noise pollution should be restricted up to a specified distance from the monuments.

17) The use of radio, transistor, gramophone or any other form of music, blowing of horns, etc. should be prohibited in the case of visits to national parks and sanctuaries.

18) Planned promotion of tourism to national parks and game sanctuaries should be encouraged as this will lead to regulated viewing of different species of wildlife, through legitimate tourist activity which in turn would prevent any large-scale poaching.

19) To maintain aesthetics, infrastructure around cultural monuments should blend with the overall environment of the area.

20) As there was always a carrying capacity beyond which no further development could take place without seriously disturbing the environment of the area and social values suitable ratio should be prescribed between the construction area and the open space to ensure balanced development in beach resorts, national parks and sanctuaries, areas around monuments, etc.

21) To protect cultural environment, infrastructure such as public conveniences near cultural and historical monuments should be allowed at some distances from the monuments. Suitable guidelines regarding land-use can be issued for adoption by State Government.

22) Special Area Development Authorities should be set up for hill and desert areas to ensure planned development keeping in view environment and ecology of the place. Alternatively, the Committee on Ecology and Environment may look after this work also.

23) Forts, palaces and other buildings of intrinsic values may be given suitable incentives for their upkeep and preservation.

24) Suitable safeguards should be prescribed for the protection of marine national parks to save sea life and corals.
25) Suitable guidelines for adoption and implementation by the State Governments should be issued for the protection of the tourists from harassment by hawkers, beggars and urchins at places of tourist interests.

26) In the case of rail transport, Central legislation was already available in the form of Indian Railways Act, 1980. This Act is proposed to be replaced by a comprehensive legislation shortly. The Indian Railway Act contains adequate provisions to safeguard the interests of all passengers including tourists. Hence, no separate legislation is required.

27) A special chapter on tourist transport should be incorporated in the Motor Vehicles Act which is likely to be amended shortly.

28) In addition to all-India permits there should be zonal permits for a group of 5 or 6 States. All India permit holders may base and operate their vehicles from any part of India. Zonal permit holders may base and operate their vehicles from any place within their respective zones only. The road and passenger taxes for all types of vehicles may be collected at a single point and such vehicles should be allowed to move freely all over India or within the respective zone.

29) On the analogy of the practice prevalent in some of the foreign countries, Tourist Transport Operators approved by the Department of Tourism may be permitted to rent out cars to tourists on self-driven basis.

30) Apart from road transport, roads were also an equally important part of the transport infrastructure. It is, therefore, desirable that roads are continuously well maintained to ensure smooth driving. Hence, wherever considered necessary, the maintenance and even construction of roads on important tourist routes can be entrusted to private or joint sector companies who should be allowed to charge toll tax.

31) Road and passenger taxes for tourist transport should be related to tourist promotion objectives rather than commercial consideration. Also there should be uniformity of rates charged by different States and Union Territories.

32) Insurance cover and compensation for the tourists should be provided for and compensations in the case of loss of life, bodily injury or loss of baggage enhanced.

33) Provisions for penalising and/or prosecuting the surface transporter for various acts of omission, commission and offences may be made.

34) Minimum educational qualifications for the drivers of tourist vehicles should be prescribed.

35) Tourist-oriented wayside amenities may be developed.

36) There should be suitable legislation to prevent undesirable ribbon development along the highways, especially along routes frequented by tourists.

37) Proper display of internationally recognised road signs should be ensured.

38) To ensure safety on the Highways, “Traffic and Medical Aid Posts” may be set up on important routes.

39) Shops approved by the Department of Tourism should be required to display their prices.

40) A foreign tourist making payment in foreign exchange should be exempted from sales tax.

41) Tourist Guides should be properly trained and provided adequate remuneration.

Incorporating all these into a tourism legislation is not an easy task. Besides, there are many other aspects like media projections, tourism education, etc. that also need attention as far as legislation is concerned. Tourism legislation would be effective only if it is able to provide a comprehensive framework for all its segments and issues linking them with sustainable tourism development.

Efforts in this direction are being made in many countries. For example, the Latin American Confederation of Tourist Organisations has come out with a preliminary report on tourism legislation in the American region. This in fact is a step further whereby tourism legislation can be enacted not only for one country but for the countries of American region as a whole (for details of these proposals see http://www.world-tourism.org/omt/legislac/cam27-4i.htm on the internet).
Check Your Progress – 2

1) Mention the arguments given in favour of having a common tourism legislation.

2) Mention some of the Acts in India that have a bearing on tourism.

16.6 LET US SUM UP

Very few countries in the world have what can be termed as tourism legislation. In most of the countries there are various laws that have a bearing on tourism operations and activities. The various types of tourism related laws, enacted in different countries, relate to protection of tourists, border controls, quality of services, protection of environment, conservation of historical sites and monuments, tourism industry regulations and the relationship between the various segments of the travel and tourism industry. These laws are derived from different sources. Generally, the demand for tourism legislation was voiced from the point of view of tourism industry or for protecting the interests of international tourists as regards their safety or establishing standards of services. However, voices have also been raised demanding legislation for sustainable tourism development, protecting the interests of the host population and economic benefits for the local population.

There are many laws in India which affect tourism operations and activities and as tourism professionals you must familiarise yourself with these laws. Various attempts have been made by the tourism ministry in India to work out the feasibility of having a tourism legislation. However, these efforts are still in the infancy stage and anything concrete has yet to emerge in this regard.

16.7 CLUES TO ANSWERS

Check Your Progress – 1

1) The functional areas of tourism legislation includes transportation, accommodation, border controls, etc. See Sec. 6.2 for your answer.

2) There are a variety of sources for tourism law like laws related to cross border movement, transportation, labour, conservation, HRD, etc. See Sec. 16.3 for your answers.

Check Your Progress – 2

1) There has been a constant debate on the question of tourism legislation. The general arguments given in this favour includes establishing standards in services, tourist protection, protection of the industry, etc. However, the tourism legislation should not be confined to these aspects alone. But there is a need to take into account the interests of the host population, protection of ecology and environment at the destination, etc. See Sec. 16.4.

2) Some of the Acts have been mentioned in Sec. 16.5.