

Volume 6 Issue 2 July 2018  
Special Issue on Human Rights and  
Democratisation

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# Kathmandu School of Law Review

ISSN 2091-2110

Volume 5

Issue 2

November 2017

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Kathmandu School of Law Review

Volume 5, Issue 2, November 2017  
ISSN 2091-2110



KSL



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# An Appraisal of Tourism Law: Eclectic in Nature

Narayan Prasad Giri\*

## Abstract

*The research is limited in studying the multifaceted aspects of tourism law, focusing especially on its eclectic nature. The researcher has endeavored to explore what tourism law is like and how it deals with the multi-disciplinary aspects of tourism. Prior to exploring the multi-disciplinary nature of tourism law, the researcher considered it better to outline the understanding of tourism itself. The article also discusses relation between tourism law and aspects fundamental and crucial to the understanding of tourism. The researcher opines that the relevance of tourism law can be traced in every aspect of life and every subject of knowledge, thus the research charts out how the diverse characteristic of tourism law can help in ascertaining its eclectic nature.*

## Introduction

Life is a journey. How often have we heard this phrase or used it ourselves? The impulse to travel is arguably hard-wired into the human psyche. In ancient times, travel was motivated by the desire for exploration, discovery and self-enrichment, and times have not changed much. A longing to explore, to discover, and to become enriched still drives many people to travel. The desire to travel has made the travel and tourism industry the largest service sector industry in many countries in the world.<sup>25</sup>

As tourism has penetrated almost every aspect of the human society, creating significant impacts economically, sociologically and environmentally, it is of paramount importance for us to have a better understanding of tourism. Previous definitions of tourism do not seem to completely cover all of its aspects as the field is vast and broadly interrelated with many other disciplines. Due to its interdisciplinary nature, tourism cannot be defined from any single perspective, such as economical, sociological or technical. This also implies that it has become increasingly difficult to provide a commonly agreeable definition for tourism.<sup>26</sup>

The term 'tourism' generally encompasses the activities undertaken during travel from home or work for pleasure and enjoyment of certain destinations as well as the facilities that cater to the needs of the tourist.<sup>27</sup> It involves the activities of

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<sup>25</sup> Nejdett Delener, 'Current trends in the global tourism industry: evidence from the United States', *Journal of Global Business and Technology*, August 2010, para 1, available at [http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S0034-76122010000500006](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0034-76122010000500006), accessed on 16 February 2017.

<sup>26</sup> Jintao (Emily) MA & Rob Law, 'Components of Tourism Research: Evidence from Annals of Tourism Research', 25 Jun 2012, available at [http://www98.griffith.edu.au/dspace/bitstream/handle/10072/37913/68576\\_1.pdf;jsessionid=D401540696AF9F14CD15D20B209D6BED?sequence=1](http://www98.griffith.edu.au/dspace/bitstream/handle/10072/37913/68576_1.pdf;jsessionid=D401540696AF9F14CD15D20B209D6BED?sequence=1), accessed on 16 February 2017.

<sup>27</sup> Terry Davies Sarah Cahill, 'Environmental Implications of the Tourism Industry', Discussion Paper 00-14, Resources for the Future, March 2000, para 1, available at

people like travelling and staying in a place away from their home environment for leisure, business or other purposes. Mathieson and Wall define tourism as follows -

The temporary movement of people to destinations outside their usual places of work and residence, the activities undertaken during their stay in those destinations, and the facilities created to cater to their needs.<sup>28</sup>

A quote in the Tourism Management Tutorial reads, “no matter why and where you travel. There is always something wonderfully new to be found.”<sup>29</sup> This quote is a representative of the broad nature and the scope of tourism.

### Emerging Trends in Tourism

Tourists are becoming more interested towards environmental protection. Consumers are increasingly considering environmental quality as well as the quality of services as factors in their selection of tour destinations. A rising number of consumers want a high standard of environmental conservation coupled with simple, efficient and pleasant service. It appears that many tourists now prefer unspoilt and uncrowded destinations.<sup>30</sup>

A related trend is that before they travel, many tourists inform themselves about environmental problems at individual sites. They want destinations to be clean and environmentally sound. Tourists will most likely avoid places that are perceived to fall short of this image. This information is readily available and verifiable online.<sup>31</sup>

Environmental degradation can lead not only to a decline in tourism rate but also to changes in the types of tourists that travel to a site. Examples of this cycle are found in the Mediterranean, where the pattern has led to continued degradation and urbanization of beach resorts.<sup>32</sup> Interest in cultural tourism seems to be expanding too.<sup>33</sup> Consumers are seeking more active and educational holidays.<sup>34</sup> Visits to protected areas are on a rise.<sup>35</sup> Thus, the tourism industry is expected to take more responsibility for sustainable development.<sup>36</sup>

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<https://www.csu.edu/cerc/documents/EnvironmentalImplicationsTourismIndustry2000.pdf>, accessed on 16 February 2017.

<sup>28</sup> ‘Tourism Management–Introduction, ‘Tourism Management Tutorial’, *Tutorials Points*, available at [https://www.tutorialspoint.com/tourism\\_management/tourism\\_management\\_introduction.htm](https://www.tutorialspoint.com/tourism_management/tourism_management_introduction.htm), accessed on 16 February 2017.

<sup>29</sup> ‘Tourism Management- Management-Trends and Future, ‘Tourism Management Tutorial’, *Tutorials Points*, available at [https://www.tutorialspoint.com/tourism\\_management/tourism\\_management\\_trends\\_and\\_future.htm](https://www.tutorialspoint.com/tourism_management/tourism_management_trends_and_future.htm), accessed on 16 February 2017.

<sup>30</sup> Arthur Pedersen, ‘Managing Tourism at World Heritage Sites: A Practical Manual for World Heritage Site Managers’, UNESCO World Heritage Centre, 2002, p.25, para 2, available at [http://whc.unesco.org/documents/publi\\_wh\\_papers\\_01\\_en.pdf](http://whc.unesco.org/documents/publi_wh_papers_01_en.pdf), accessed on 28 February 2017.

<sup>31</sup> *Ibid*, para 3.

<sup>32</sup> *Ibid*, para 4.

<sup>33</sup> *Ibid*, para 5.

<sup>34</sup> *Ibid*, para 8.

<sup>35</sup> *Ibid*, para 9.

<sup>36</sup> *Ibid*, para10.

Specialty tourism firms organise trips for clients wishing to participate in a specific activity such as watching bird, viewing wildlife, enjoying photography or archaeology and visiting historical and cultural tour sights.<sup>37</sup> Eco-tourism is one of the most frequently cited categories of the ‘new’ tourism. The idea of sustainability is found in all the market segments and definitions of the ‘new’ tourism.<sup>38</sup>

In the context of Nepal, about 80 percent of the population lives in rural areas. Thus, no significant progress can be achieved without developing rural tourism. The poorest and the neediest people are also in the rural areas. In order to improve local tourism, international tourism and tourism industry as a whole, rural tourism has to be prioritized.<sup>39</sup>

Tourism can offer business opportunities to rural residents in activities that cater to the tourism trade. Such locally-operated businesses, which may be seasonal, can provide local residents with valuable opportunities to develop business skills and can give local crafters, farmers, and food processors, among others, outlets to sell their products to local retail establishments. Farmers growing fresh produce can take advantage of tourism to establish direct marketing channels for ready-to-eat products, which may also serve as outlets for processed foods such as jams, jellies, bread, and preserves.<sup>40</sup>

In addition to these changes, a growing awareness among public and private stakeholders regarding the potentials and constraints of rural tourism development further provide a good base for development.<sup>41</sup> Greater production and integration of knowledge into rural tourism seems to be a good step towards realising the potential of rural tourism for sustaining rural communities.<sup>42</sup>

### Key Competencies Needed for Employability in Tourism

Key Competencies Framework are provided and recommended (for tourism) in form of following eight ‘Employability Skills’:

1. Sound communication
2. Appreciative teamwork
3. Problem-solving
4. Initiative and enterprising

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<sup>37</sup> Ibid, p. 23, para 1.

<sup>38</sup> Ibid, para 5.

<sup>39</sup> Felipe Ludena Vaquerizo, ‘Rural Tourism Development In Nepal’, Bachelor’s Degree Programme in Tourism, Thesis, Tampere University of Applied Sciences, November 2013, p. 5, para 2, available at [https://www.theseus.fi/bitstream/handle/10024/67910/Ludena%20Vaquerizo\\_Felipe.pdf?sequence=2](https://www.theseus.fi/bitstream/handle/10024/67910/Ludena%20Vaquerizo_Felipe.pdf?sequence=2), accessed on 28 February 2017.

<sup>40</sup> Dennis M. Brown, ‘Rural Tourism: An Annotated Bibliography- Research on Rural Tourism’, Economic Research Service of U.S. Dept. of Agriculture, Washington DC, 2015, para 8, available at [https://pubs.nal.usda.gov/sites/pubs.nal.usda.gov/files/rural\\_tourism.html](https://pubs.nal.usda.gov/sites/pubs.nal.usda.gov/files/rural_tourism.html), accessed on 28 February 2017.

<sup>41</sup> Henrik Halkier, ‘National trends in rural tourism: Denmark’, in C. Fredricsson, & L. Smas (eds.), *Small-scale Tourism in Rural Areas: Trends and Research in the Nordic Countries*, Nordregio Working Paper No. 3, Vol. 2013, pp. 23-24, p. 22, para 6, available at [http://vbn.aau.dk/files/78867358/Halkier\\_2013\\_Rural\\_tourism\\_DK\\_Nordregio\\_WP2013\\_3\\_1.pdf](http://vbn.aau.dk/files/78867358/Halkier_2013_Rural_tourism_DK_Nordregio_WP2013_3_1.pdf), accessed on 28 February 2017.

<sup>42</sup> Ibid.

5. Planning and organising
6. Self-management
7. Learning
8. Technology<sup>43</sup>
9. Interpersonal skills<sup>44</sup>

Medlik and Middleton coin phrase tourism products as “a bundle of activities, services, and benefits that constitute the entire tourism experience.”<sup>45</sup> This bundle consists of five components: destination attractions, destination facilities, accessibility, images, and price.

### Key Principles of Tourism Product Development:

A tourism product can be of any type - cultural, educational, recreational, heritage site, or a business hub. Tourism Product Development should –

- Be authentic and should reflect the unique attributes of the destination.
- Have the support of the host community.
- Respect the natural and cultural environments.
- Be different from the competitors, avoiding copying developments blindly.
- Be of sufficient scale to make a significant economic contribution, but not very large to create high economic leakage.<sup>46</sup>

### Fundamental Truths about Tourism

1. Tourism consumes and creates waste.
2. Tourism has the tendency to overconsume.
3. Tourism competes with other resource users.
4. Tourism is multifaceted.
5. Tourism is private-sector dominated.
6. Tourists are consumers, not anthropologists.
7. Tourism is a form of entertainment.
8. Tourism imports clients rather than exports products.

The tourism industry is an incredibly diverse industry, comprising of suppliers and producers of products, a vast array of government agencies.<sup>47</sup> The Overseas

<sup>43</sup> ‘Employability in Hospitality, Board of Studies New South Wales’, *University of New South Wales Official Website*, available at [https://www.boardofstudies.nsw.edu.au/syllabus\\_hscpdf\\_dochospitality-st6-employ-skills-2014.pdf](https://www.boardofstudies.nsw.edu.au/syllabus_hscpdf_dochospitality-st6-employ-skills-2014.pdf), accessed on 01 March 2017.

<sup>44</sup> Available at <http://tr.tirol/sites/default/files/upload/3.%20Competence%20requirements%20of%20tourism%20employees%20-%20the%20industry's%20point%20of%20view.pdf>, accessed on 01 March 2017.

<sup>45</sup> Nilanjan Ray, *Emerging Innovative Marketing Strategies in the Tourism Industry*, IGI Global, 2015, p.107.

<sup>46</sup> Tourism Management-Developing Product, *Tourism Management Tutorial* [https://www.tutorialspoint.com/tourism\\_management/tourism\\_management\\_developing\\_product.htm](https://www.tutorialspoint.com/tourism_management/tourism_management_developing_product.htm) accessed on 09 Fagun 2073

<sup>47</sup> B. McKercher, *Some Fundamental Truths about Tourism: Understanding Tourism's Social and Environmental Impacts*, *Journal of Sustainable Tourism*, Vol. 1, No. 1, 1993 available at <http://myplateoryours.typepad.com/files/some-fundamental-truths-about-tourism-1-1.pdf> accessed on 17 February 2017.

Development Institute (ODI) review identifies three main pathways through which tourism affects poverty reduction as the tourism industry has a direct and an indirect impact on the economy. Firstly, the tourism industry has a direct effect on wages and earnings of workers and entrepreneurs involved in the industry. Secondly, indirect effects occur through the tourism value chain. Tourism draws on inputs from food and beverage, construction, transportation, furniture and many other sectors. Finally, tourism has a wide range of dynamic effects.<sup>48</sup> The tourism industry is multi-faceted and is comprised of a diverse array of interrelated products and services. Tourism demand and activity stimulates the demand for other travel-related products, services and activities.<sup>49</sup>

The principle of the rule of law, in combination with the phenomenon of tourism, is not explicitly recognised by the vast majority of formal Constitutions. A case can also be made, with support of the so-called third generation fundamental rights, such as sustainable development, that the right to tourism is a universal right. Besides, there is a separate branch of law governing tourism, which is a non-autonomous new system of rules.<sup>50</sup> Tourism is an intangible product related to service, facility, pleasure, leisure, among other things, which is not possible to visualise.<sup>51</sup> One of its major components is 'attraction'.<sup>52</sup>

The physical environment plays an important role in influencing customers' behaviour, creating an image, and affecting social and cultural interaction. As a result, a number of service enterprises are developing enticing and innovative environments to better showcase their products and services. An appropriate physical environment helps to produce quality performance; and if the environment is unsuitable then people often leave and seek one that aligns more closely with their tastes and preferences. For this reason, it is important for business firms to identify the desirable behaviours of their customers, then to set goals that reinforce these behaviours, especially in hospitality-centered businesses.<sup>53</sup>

UNWTO has developed an instrument named 'Global Code of Ethics for Tourism.' Article 2 of the Code recognizes tourism as a vehicle for individual and collective fulfilment. The Article states as below:

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<sup>48</sup> Ashley Caroline et al., 'The Role of the Tourism Sector', Report prepared by the Fellows of Harvard College, ODI & International Business Leaders Forum, 2007, pp. 8 – 9, available at file:///C:/Users/Personal/Desktop/report\_23\_EO%20Tourism%20 Final.pdf, accessed on 17 February 2017.

<sup>49</sup> Available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.903.6518&rep=rep1&type=pdf>, accessed on 18 February 2017.

<sup>50</sup> Antonios Maniatis, 'Tourism and the Rule of Law', *African Journal of Hospitality, Tourism and Leisure*, Volume 5 (1), 2016, available at [http://www.ajhtl.com/uploads/7/1/6/3/7163688/article\\_25\\_vol\\_5\\_\\_1\\_\\_2016.pdf](http://www.ajhtl.com/uploads/7/1/6/3/7163688/article_25_vol_5__1__2016.pdf), accessed on 17 February 2017.

<sup>51</sup> 'Features of Tourism Market', available at <http://marketinglord.blogspot.com/2012/10/features-of-tourism-market.html>, accessed on 17 February 2017.

<sup>52</sup> 'The Components of the Tourism and Travel Industry', available at <https://www.linkedin.com/pulse/components-tourism-travel-industry-prince-mdusman-fda-ba-itc-mba-emba>, accessed on 17 February 2017.

<sup>53</sup> Thapa, Dhiraj, 'Hotel Lobby Design: Study of Parameters of Attraction', Degree of Master of Science Thesis, Texas Tech University, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.973.2965&rep=rep1&type=pdf>, accessed on 17 February 2017.

1. Tourism, the activity most frequently associated with rest and relaxation, sport and access to culture and nature, should be planned and practiced as a privileged means of individual and collective fulfilment; when practiced with a sufficiently open mind, it is an irreplaceable factor of self-education, mutual tolerance and for learning about the legitimate differences between peoples and cultures and their diversity;
2. Tourism activities should respect the equality of men and women; they should promote human rights and, more particularly, the individual rights of the most vulnerable groups, notably children, the elderly, the handicapped, ethnic minorities and indigenous peoples;
3. The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism; as such, in accordance with international law, it should be energetically combatted with the cooperation of all the States concerned and penalized without concession by the national legislation of both the countries visited and the countries of the perpetrators of these acts, even when they are carried out abroad;
4. Travel for purposes of religion, health, education and cultural or linguistic exchanges are particularly beneficial forms of tourism, which deserve encouragement;
5. The introduction into curricula of education about the value of tourist exchanges, their economic, social and cultural benefits, and also their risks, should be encouraged.<sup>54</sup>

### **What Is Tourism Law?**

In a nutshell, tourism law refers to either general government regulations or specific travel and hospitality industry laws. Tourism laws refer to a combination of state, federal and international laws that regulate various aspects and functions of the travel industry. For instance, travel law may involve anything from hospitality to employment to public health regulations.

### **Why Do We Need Tourism Law?**

According to the UNWTO, the purpose of travel legislation is to provide a regulatory framework for the proper development and management of tourism activities. Ideally, this will aid in the conservation of natural resources and the preservation of cultural traditions. As an added benefit, travel consumers and organisations receive basic legal protection.<sup>55</sup>

The concerned regulatory authority has to

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<sup>54</sup> Available at <http://cf.cdn.unwto.org/sites/all/files/docpdf/gcetpassportglobalcodeen.pdf>, accessed on 29 February 2017.

<sup>55</sup> Available at <http://www.besthospitalitydegrees.com/faq/what-is-tourism-law/>, accessed on 28 February 2017.

formulate a legal and regulatory framework for the sustainable development and management of tourism, protection and conservation of natural and cultural resources; and, facilitation of the involvement of private sector and local communities in tourism development activities. It reflects the roles and responsibilities of all stakeholders; ensures the rights of international/local tourists; and, ensures the rights and obligations of participating businesses, inbound-outbound tour operators and all other concerned players in the tourism field.<sup>56</sup>

### **Tourism Law and its Scope**

UNWTO noted that achieving successful tourism development and management relies as much on effective institutional factors as it does on development policy, physical planning and impact controls. Tourism related laws are required to set out a policy for developing tourism and to establish functions, structures and the source of funding for national tourism organisation or regional tourism offices. In addition, legislation and regulations are also required for successful implementation of a tourism plan and for the continuing management of tourism.<sup>57</sup>

A Vietnamese code of law defines the scope of its tourism law as follows:

This Law provides for tourism resources and activities; rights and obligations of tourists, organisations and individuals doing tourism business and other organisations and individuals engaged in tourism-related activities.<sup>58</sup>

As the law studies the resources for the tourism industry, the resources may be any product which consists of components of tourism such as attraction, and amenities. It may be an agricultural product or forestry, cultural or natural resources and so on, which may be entertaining to tourists. Similarly, any activities associated with tourism service falls under the tourism law. Furthermore, the law studies the rights and obligations of tourists, agencies, organisations, individuals involved in the tourism industry. Ultimately, the law involves the regulation of all the above subject matters.

As the tourism industry is concerned with diversified sectors, the law also governs those related sectors. Nature of the law is also comprehensive as the tourism industry is itself multifaceted.

### **Eclectic Nature of Tourism Law**

Tourism Law is eclectic and can be divided into two broad parts:

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<sup>56</sup> Available at <http://www2.unwto.org/category/technical-product-target/private-sector>, accessed on 17 February 2017.

<sup>57</sup> Koirala, S P, 'Towards an Institutional Framework for Tourism Development: A Case Study of Pokhara Nepal', Master of Parks, Recreation and Tourism Management Thesis, Lincoln University, New Zealand, 1997, p. 1, available at <http://lib.icimod.org/record/173/files/381.459104KOT.pdf>, accessed on 16 February 2017.

<sup>58</sup> *Constitution of the Socialist Republic of Vietnam*, 1992, Vietnam, art 1, available at [https://www.wto.org/english/thewto\\_e/acc\\_e/vnm\\_e/WTACCVNM43\\_LEG\\_12.pdf](https://www.wto.org/english/thewto_e/acc_e/vnm_e/WTACCVNM43_LEG_12.pdf), accessed on 17 February 2017.



- Firstly, the general laws which apply to this industry often in unexpected ways because of its peculiar characteristics, such as damages for disappointment.
- Second, the industry-specific laws from the ancient common innkeepers and carriers to the labyrinth of local, state, federal and international regulations which now govern this industry.

Travel, by definition, involves cross-border social, cultural and commercial transactions which arguably raise more regulatory challenges for this industry than perhaps any other.<sup>59</sup> As tourism is identified in these elements as temporary, movement, stay & activities concerned; all the activities engaged in the tourism services for the tourists require the law to regulate those activities associated with the tourism industry. The Law may involve the following:

- Statute
- Contract
- Torts
- Criminal Law
- Insurance
- Employment
- Consumer Protection
- Dispute resolution
- Travel agency and distribution
- Passenger Transport
- Travelers' Accommodation
- Food and Beverage<sup>60</sup>
- Planning (land use, precincts, integrated resorts),
- Environment (natural areas, marine inc. fisheries, conservation, coastal, GBRMP, forestry, recreation areas, flora and fauna)
- Land (crown land, national parks, native title, land tenure), Heritage/Culture, Infrastructure, Transport (road, rail, air, sea), Government, Health, Licensing (liquor, business registration, etc.), Building (group title, building codes, occupiers liability, body corporate, disability access), Industry (employment, business operations, tax, tourism services)<sup>61</sup>
- Activities and attractions<sup>62</sup>
- Human rights<sup>63</sup>

<sup>59</sup> Available at <http://athertonadvisory.com/internationaltourismawinstitute.html> accessed on 05 Falgun 2073.

<sup>60</sup> Available at <http://legal.thomsonreuters.com.au/tourism-travel-hospitality-law-2nd-edition/productdetail/106936> accessed on 18 February 2017.

<sup>61</sup> Reid, Sacha et al., 'Legal Basis for State and Territory Tourism Planning', CRC for Sustainable Tourism Pty Ltd, 2010, p.62, available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.903.6518&rep=rep1&type=pdf>, accessed on 18 February 2017.

<sup>62</sup> Available at <http://legal.thomsonreuters.com.au/tourism-travel-hospitality-law-2nd-edition/productdetail/106936>, accessed on 18 February 2017.

<sup>63</sup> Available at <http://digital.law.washington.edu/dspace-law/bitstream/handle/1773.1/696/13PacRimL.PolyJ405.pdf?sequence=1&isAllowed=y>, accessed on 18 February 2017.

- The right to freedom of movement: UHRD Art. 13
  - Universal rights to tourism: UN WTO'S Bali Declaration on Tourism 1996-
    - The right to Leisure- ICESCR (Int'l Covenant on Economic, Social and Cultural Rights), Art. 7
  - Right to tourism- Article 7, Liberty of tourist movements -Article 8 of Global Code of Ethics 1999
- Space travel and tourism law for space tourism.<sup>64</sup>

The law also has the further wider scope of governance of commercial activities like business advisory and documentation work is specifically tailored to the travel and hospitality industries. It includes:

- Travel advertising
- Tour and cruise booking conditions
- Sale and purchases of businesses and franchises
- Agreements to appoint travel agents, resorts, suppliers etc.
- Protection of copyright and trade marks
- Tourism employment and HR support
- Leases, property sales and purchases
- Other litigating activities relating to above performances.<sup>65</sup>

Multitude of areas in law have direct and indirect interface with the phenomena of travel and tourism. These include advertising, booking conditions, air travel, travel insurance, business practices, licensing and compensation for loss of enjoyment. The law covers diversified sector relating to the travel and tourism industry. It also deals with travel agents, tour operators, carriers and tourism industry advisers.<sup>66</sup>

The tourism debate has now clearly established itself within the International Environmental legal system. In recognising the vast, and in many cases irreversible, damage the tourism industry inflicts upon the natural environment, the international legal system has responded and addressed many of the problematic aspects of tourism, albeit in a somewhat ad hoc fashion. In many cases, existing international agreements provide a framework for the further development of rules and guidelines targeting specific issues or problem areas, such as tourism.<sup>67</sup>

<sup>64</sup> Available at <http://drphilcameron.com/content/government-consultant-travel-and-tourism-law>, accessed on 18 February 2017; Breckenridge, Karen D., 'Justice Beyond Borders: A Comparison of Australian And U.S. Child-Sex Tourism Laws', *Pacific Rim Law & Policy Journal Association*, 2004, pp. 408-410, available at <http://digital.law.washington.edu/pace-law/bitstream/handle/1773.169613/PacRimLPolyJ405vb.pdf?sequence=1&isAllowed=y>, accessed on 18 February 2017.

<sup>65</sup> Available at <http://www.tourismlegal.com.au/>, accessed on 18 February 2017.

<sup>66</sup> Available at [https://store.lexisnexis.com.au/product?product=australian-travel-and-tourism-law&meta\\_F\\_and=9780409322842](https://store.lexisnexis.com.au/product?product=australian-travel-and-tourism-law&meta_F_and=9780409322842), accessed on 18 February 2017.

<sup>67</sup> Angela Williams, 'Reconciling Tourism and The Environment: A Task for International Environmental Law?', 2007, p. 69, available at <http://vjel.vermontlaw.edu/files/2013/06/>

## The Core Components of Tourism Law

The tourism products offered to tourists are analysed in following components to taste its relative goodness. These components have to be managed and regulated by tourism law for the development of tourism industry:

### 1. Accessibility:

It is the ability to reach to a place of destination by opting one or multiple means of transportation. The transportation should be timely, convenient, inexpensive and safe. Today, there are various means of transportation like airlines, railways, surface transportation and water transportation.

### 2. Accommodation:

It is a place where the tourists can avail food and shelter on payment. Today, a wide range of accommodations are available, ranging from a basic budget accommodation to elite class seven-star hotel suites.

### 3. Attraction:

It is a place of interest that tourists visit, typically for its inherent or exhibit, for natural or cultural value, historical significance, natural or artificial beauty. The attraction creates a desire to travel to a specific tourist destination. They also offer leisure, comfort, adventure or amusement. For example, Paris draws tourists by offering Fashion as an attraction.

### 4. Amenities:

Amenities refer to the beneficial services offered to the tourists like visitor information centres, telecommunications, roads, drinking water, toilet blocks, garbage bins, etc.<sup>68</sup>

## Sporting and Tourist Activities: Legal Aspects

The outdoors has become, in a few decades, the playground of millions of practitioners. This evolution has been accompanied by the increasingly pronounced presence of law in the organizations and practice of outdoor sports. There has consequently been a significant law-making process in relation to these activities. This, in the first instance, has consisted in the application of classic legal tools (contract law, tort, administrative authority). But rapidly it became necessary to adopt regulations relating to these activities. Sports law was the first to emerge. Today, we observe an increasing number of technical rules specific to outdoor sports and to specific activities. As such, these activities have been submitted to the growing complexity of the legal system and applicable law, which, being difficult to interpret, has become a source that is confusing, contradictory and of very considerable legal insecurity. The adoption of the sports code is an attempt to restore this situation to order.<sup>69</sup> The development of tourism, which supports the conservation of biodiversity, needs to be supported by laws and regulations in order to have a strong legal basis and weight to enforce them.<sup>70</sup> The scope and

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Reconciling\_Tourism\_and\_the\_Environment\_A\_Task\_for\_International\_Environmental\_Law1.pdf, accessed on 18 February 2017.

<sup>68</sup> Available at [https://www.tutorialspoint.com/tourism\\_management/tourism\\_management\\_quick\\_guide.htm](https://www.tutorialspoint.com/tourism_management/tourism_management_quick_guide.htm), accessed on 18 February 2017.

<sup>69</sup> Available at <https://rga.revues.org/1951>, accessed on 18 February 2017.

<sup>70</sup> Available at <http://biodiv.unwto.org/sites/all/files/docpdf/reviewandregulation.pdf>, accessed on 18 February 2017.

impact of tourism and ecotourism will continue to grow and will require international regulation. But the current legal framework is a patchwork of agreements and treaties that concern trade more than tourism and are often in conflict. Although international bodies such as UNEP and the WTTC are moving toward a unified set of guidelines, their implementation will remain problematic due to a lack of systematic measurement and enforcement.

The best way of regulating tourism may be found in strategic plans like the one recently developed by Australia. Such plans base their effectiveness on a regional approach, recognise local ecosystems as their foundation, involve local participation in the planning and decision-making process, and include a long-term funding commitment at the national level.<sup>71</sup> Facilities are a necessary aid to the tourist center. Sea-side resort facilities like swimming boating, yachting, surf-riding, and other facilities like dancing, recreation and other amusements are important for every tourist center. Amenities can be of two types: natural- beaches, sea-bathing, possibilities of fishing, opportunities for climbing, trekking, viewing, and man-made- various types of entertainment and facilities, which cater to the special needs of the tourists.<sup>72</sup> The law regulates owners, entrepreneurs and service providers involved in the tourism and hospitality industry- there are many fields such as transportation, accommodation, food and beverage sector. The nature of tourism predicates that discussions about legislation impacting that tourism planning would need to be undertaken with a range of differing government departments at both local, state and national level. Being engaged with and aware of the legislative and policy movements within these different government departments is a significant challenge faced by STOs, industry associations and lobbyists. The diverse nature of the tourism industry has further impacted upon the ability of the industry to respond to legislative constraints or changes.<sup>73</sup>

### Sales and Marketing

The two principal considerations for sales and marketing in this sector are market share and revenue maximisation. Operations are constrained by finite time and space, so management must constantly seek ways to increase revenue from the existing operation or increase the share of the available market. Examples of revenue maximisation include upselling existing consumers (such as asking if they want fries with their meal; offering dessert), and using outdoor or patio space (even using rain covers and heaters to extend the outdoor season). Examples of increasing market share in the fast-food sector include extending special offers to new, first-time customers through social media or targeted direct mail.<sup>74</sup>

Illustration of upselling- a sales strategy where the seller will provide opportunities to purchase related products or services- is often for the sole purpose of making a

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<sup>71</sup> Available at <https://environment.yale.edu/publication-series/documents/downloads/0-9/99simon.pdf>, accessed on 18 February 2017.

<sup>72</sup> Available at <https://www.slideshare.net/SunilKumar148/tourism-management-book>, accessed on 18 February 2017.

<sup>73</sup> Sacha Reid et al., 'Legal Basis for State and Territory Tourism Planning', CRC for Sustainable Tourism Pty Ltd, 2010, p. 63, available at <http://citeserx.ist.psu.edu/viewdoc/download?doi=10.1.1.903.6518&rep=rep1&type=pdf>, accessed on 18 February 2017.

<sup>74</sup> Available at <https://opentextbc.ca/introtourism/chapter/chapter-4-food-and-beverage-services/>, accessed on 28 February 2017.

larger sale. A popular example of upselling happens when a customer orders a hamburger and they are asked by their cashier “Do you want fries with that?”<sup>75</sup>

### **Government Influence**

The government affects the sector in different ways such as through income tax rates, costs of employee benefits (for example, employer share of pension plan and employment insurance deductions), and support for specific agricultural producers such as dairy and poultry farmers, which can lead to an increase in the price of ingredients such as milk, cheese, butter, eggs, and chicken compared to standard market prices. The governments also impacts the food and beverage sector, in particular with respect to employment standards, minimum wage, sales taxes, liquor, wine, and beer wholesale pricing and corporate income tax rates.<sup>76</sup>

### **The law and the tourism & hospitality industry**

Liability legislation covers the responsibilities of the service provider and the occupier of a property to ensure the safety of visitors. Additional local health bylaws set standards of operation for health and safety under the direction of the medical officers of health. Public health inspectors regularly visit food and beverage operations and such other institutions to evaluate compliance. In some communities, these inspection results are posted online.<sup>77</sup>

### **Importance of Tourism Law**

- Tourism is one of the world's largest and fastest growing industries generating 10.4% of world GDP, 8.1% of world jobs (i.e. supporting 284 million jobs) to the global economy in 2015. Its growth of 3.1 was faster than the wider economy. Despite challenges, the sector is forecasted to continue outperforming global GDP growth in 2016. It also contributed 12.2% of world exports in 2004<sup>78</sup>.
- Tourism and travel offer the best prospects for generating employment and sustainable development, particularly in developing countries.
- There is an increasing recognition by industry, government and international agencies that effective laws and institutions are fundamental to achieving successful outcomes.<sup>79</sup>

The WTTC World 2016 Economic Impact Report shows Travel & Tourism's Contribution to world GDP grew for the 6th consecutive year, with notably high growth in T & T investment. Travel & Tourism forecasts that over the next 10

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<sup>75</sup> Available at <https://blog.vendhq.com/post/64901829028/cross-sell-upsell-psychology>, accessed on 28 February 2017.

<sup>76</sup> Available at <https://opentextbc.ca/introtourism/chapter/chapter-4-food-and-beverage-services/>, accessed on 28 February 2017.

<sup>77</sup> Available at <https://opentextbc.ca/introtourism/chapter/chapter-4-food-and-beverage-services/>, accessed on 28 February 2017.

<sup>78</sup> Available at [www.wttc.org](http://www.wttc.org), accessed on 18 February 2017.

<sup>79</sup> Available at <http://athertonadvisory.com/internationaltourismawinstitute.html>, accessed on 28 February 2017.

years also it looks extremely favorable with predicted growth rates that continue to be higher than growth rates in other sectors.<sup>80</sup>

### Common Tourism Law Problems and Solution

The diversified nature of tourism creates problems to manage thus tourism law tends to bring solution.

On the lee side, Tourism offers well-known advantages. Visitors' fees, concessions and donations provide funds for restoration and protection efforts. Visitors may be recruited as friends of a site thus they can help to generate international support. Tour operators and hotel chains can play a role in the management of a site by making financial contributions, aiding monitoring efforts, or instructing their clients in responsible tourism traits. Tourism can also promote cultural values by supporting local handicrafts or by offering alternative economic activities.

On the downside, tourism spawn's well-known problems. Managing rapid tourism growth is a time-consuming process demanding clear policies, ongoing dialogue with stakeholders and constant monitoring. Tourism activities require environmental impact assessments (EIAs) and procedures for minimizing impacts. At sites with limited budgets and staff, growing tourism can stretch scarce resources and take managers away from protection efforts.<sup>81</sup>

The fragmented nature of the tourism industry is not conducive for regulation that encompasses all aspects of the industry. Therefore, educational efforts aimed at supporting existing regulations and encouraging environmentally responsible behaviour, where no regulations exist, seems most promising as a management scheme. These educational efforts should be framed in accordance with the targeted audience (i.e., tourists and industry sectors). Tourists may be more receptive to educational initiatives that focus on the environmental benefits of altering their behaviour, while industry sectors are more likely to be responsive to educational efforts that emphasise cost savings and an improved public image.<sup>82</sup>

There are many common travel-related problems that are covered by state regulations. For starters, lost or damaged baggage is a chronic travel issue. This becomes a heated problem when the lost item is something expensive such as artwork or a family heirloom. Thus, every airline will have its own regulations, which of course tends to limit their legal and financial liabilities. Every state has its own laws regarding required consumer disclosure notices. This could involve potential risks and limitations of liability.

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<sup>80</sup> Available at <https://www.wttc.org/research/economic-research/economic-impact-analysis/>, accessed on 28 February 2017.

<sup>81</sup> Arthur Pedersen, 'Managing Tourism at World Heritage Sites: a Practical Manual for World Heritage Site Managers', UNESCO World Heritage Centre, 2002, p. 11 available at <http://whc.unesco.org/uploads/activities/documents/activity-113-2.pdf>, accessed on 28 February 2017.

<sup>82</sup> Terry Davies Sarah Cahill, 'Environmental Implications of the Tourism Industry', Discussion Paper 00-14, March 2000, available at <https://www.csu.edu/cerc/documents/EnvironmentalImplicationsTourismIndustry2000.pdf>, accessed on 28 February 2017.

The laws governing tourism tend to be disorganised and non-standardized. However, every Tourism Law attempts to protect travel consumers and organisations.<sup>83</sup> The World Heritage Convention signed on 16 November 1972 states that state party to the Convention recognises its primary duty to ensure the identification, protection, conservation and transmission to future generations of the cultural and natural heritage situated on its territory.<sup>84</sup> The law also has to address the tourism industry as to the demand. This is how the law has to face a challenge to manage the industry and so becomes complex. A pertinent example would be the Tourism Act (2011) of Kenya, which lobbies for the development, management, marketing and regulation of sustainable tourism and tourism related and services and for connected services.<sup>85</sup>

### A Glimpse of Nepalese Tourism Legislation Perspective

The Tourism Act is concerned about the service quality of lodges, hotels, restaurants and bars. It states that they must get registered to be recognized as *tourist class*. The Act has a provision that under this act, government can formulate new rules. Tourism is believed to have a positive effect on world peace. As people travel from place to place with a sincere desire to learn more about their global neighbors, knowledge and understanding do increases.

The tourism policy and plan of Nepal has shown environmental issues and has given high importance for managing environment. Nepal has a unique natural and cultural strength. The present study has shown that tourists perceive Nepali people to be very friendly. They perceive that Nepal provides warm welcome and hospitality to tourists and it has people with a unique lifestyle.<sup>86</sup>

The preamble of Tourism Act 2035 has clearly stated about health, facilities and quality of both international and domestic tourism. This is the main base for the administration of tourism in Nepal. It outlines the establishment process and requirements for travel and trekking agencies, hotels, lodges, restaurants and resorts, mountaineering, guides, and other tourism related activities like rafting, gliding, bird watching etc.

In line with the tourism policy, Nepal has framed and subsequently launched different other legislations with sound plans and programs.

Tourism Policy 2065 (2006) has provisions regarding the different aspects of tourism in Nepal. It has the provisions related to ecotourism, rural tourism, cultural tourism, and so on. Policy further states that natural products and other

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<sup>83</sup> Available at <http://www.besthospitalitydegrees.com/faq/what-is-tourism-law/>, accessed on 28 February 2017.

<sup>84</sup> Arthur Pedersen, 'Managing Tourism at World Heritage Sites: a Practical Manual for World Heritage Site Managers', UNESCO World Heritage Centre, 2002, p. 14, available at <http://whc.unesco.org/uploads/activities/documents/activity-113-2.pdf>, accessed on 28 February 2017.

<sup>85</sup> Available at <http://www.tourismauthority.go.ke/index.php/tourism-sector-regulation/acts>, accessed on 28 February 2017.

<sup>86</sup> Raghu Bista, 'Tourism Policy, Possibilities and Destination Service Quality Management in Nepal', Doctor of Philosophy Thesis, University of Macedonia, available at <https://dspace.lib.uom.gr/bitstream/2159/13466/2/Bista.pdf>, accessed on 22 March 2017.

products and services can be presented as the tourism product. The policy has tried to address multidisciplinary approach in terms of tourism in Nepal.

### **Institutional Arrangements**

The Tourism Council is at the topmost decision making level of Nepalese Tourism administration. Ministry of Tourism and Civil Aviation acts as the Secretariat of Tourism Council, and the Department of Tourism, which is recently established, falls under its jurisdiction. Tourism Development Board has also been established as per the Nepal Tourism Board Act 2053. The Tourism Board Act has established the Board to function as the marketing agency for the development of tourism in Nepal.

### **A Glimpse of Different Plans, Programs, Campaigns, Legislations in Nepal**

Programs and Tourism Year Campaign:

- Visit Nepal Year 1998 with an aim of bringing 500,000 tourists. This is the background for the Development of Tourism Law in Nepal
- Destination Nepal Campaign 2002/2003
- The Tourism Year 2011
- Lumbini Tourism Year 2012
- Tourism Vision 2020
- SASEC Program implemented in 2001

Primary Legislations:

- Tourism Act 2035
- Nepal Tourism Board Act 2053
- Immigration Act 2049

Nepalese Tourism Regulation:

1. Mountaineering Regulation 2059
2. Travel & Trekking Agency Regulation 2062
3. Rafting Regulation 2063
4. (Hotel, Lodge, Restaurant, Bar and Tourist Guide Regulation, 2038)
5. Immigration Regulation 2051
6. Nepal Tourism Board Regulation 2055
7. Casino (2<sup>nd</sup> Amendment) Regulation 2070
8. Immigration Regulation 2051
9. Nepal Tourism Board Rules 2055 (1999)

Directives/Procedures/Standards

1. Mountaineering Royalty Distribution & Mobilization Directives 2070
2. Tourism Industry Service Delivery Directives 2070
3. Home Stay Procedures 2067
4. >100 Foreign Tourist Entry Subsidy Procedures 2068



5. Tourism Leave Procedures 2070
6. One to Seven Star Deluxe Level Hotel & Tourist Resort Standard 2070
7. Internal Procedure Directive 2064

#### Tourism Strategy Plans

1. National Tourism Strategy Plan 2016-2025 Nepali July 2016

#### Other related (Helping Hands) Statutes:

1. Pashupati Area Development Trust Act, 2050
2. Lumbini Development Trust Act, 2042
3. Greater Janakpur Area Development Council Act, 2055
4. Nepal Academy Act, 2050
5. Archives Preservation Act, 2046
6. Foreign Investment & Technology Transfer Act, 1992

### Conclusion

Tourism law is a multidimensional and multidisciplinary faculty of law. It has relations and connectivity with many other subjects of law. There are multitude of sectors including cultural, natural, professional, educational, historical, geographical, anthropological and sociological and others, which can be produced as the tourism product. Any such heritage, which may be ancient or remote and antique, can also be presented as a tourism product. Anything well-managed and so efficiently presented to the tourist keeps the value of tourism high. The law has to address problems in the different aspects of tourism. Tourism is itself of diverse nature. Hence, the law also has to be efficient to deal with such diverse sectors. Tourism law also has to regulate and facilitate the whole tourism sector. There are both problems and prospects in tourism. There are challenges and opportunities in tourism as well. Success to overcome such challenges and problems and convert them into opportunity depends upon the efficiency of policy and the law. The efficiency of law in principle and implementation accordingly brings the expected management of tourism industry. Therefore, the law has to be framed up to be applicable from county (local) to federal level tourism enterprises. The countries have to frame up their laws so as to address their tourism at present so as to suit its eclectic nature. Though, as mentioned above, we have different laws to address the tourism in Nepal, we also have to develop the law in the present context of federal democratic Nepal.