

Tourism in India: Lessons for Domestic Regulation and GATS

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This paper compiles cases from India on domestic regulatory provisions on tourism enacted by different levels of government (national, state and local). Using the cases of the Goa Children's Act 2003, Kerala Tourism Act 2005, Kumarakom People's Charter on Guidelines for Sustainable Tourism and Coastal Regulation Zone Notification, this paper illustrates the rules under General Agreement on Trade in Services (GATS) that will overrule these important domestic regulations. Many such domestic regulations have been fought for by civil society, people and local governments to safeguard the needs and rights of the local communities, protect vulnerable groups from exploitation, protect the environment from over-exploitation, prevent exploitation of resources and workers, etc. But the rules under GATS will overrule such domestic regulatory provisions by calling them barriers to trade. This paper demonstrates how the application of GATS is a serious negation of decentralisation and democratic decision-making in our country.

Article VI of the GATS on Domestic Regulation gives a clear directive to WTO member countries that domestic regulatory provisions – especially relating to qualification procedures, licensing requirements and technical standards do not constitute unnecessary barriers to trade in services. This statement is worrisome to say the least, as it brings within its ambit virtually every form of regulation – statutory and otherwise that governments might place to fulfil environmental, social or equity objectives. There are two other provisions within the GATS, which seen in the light of the demands made on domestic deregulation, are important to note.

- Article I of the GATS that defines its scope states that the Agreement covers “measures affecting trade in services”¹ where measure is defined as “any measure...whether in the form of law, regulation, rule, procedure, decision, administrative action, or any other form...”². This clearly indicates that the scope of the regulatory measures covered by the GATS is immense and that this includes not only measures that directly regulate trade (like tariff formulae, quota restrictions, licensing requirement, taxation) but also measures that affect trade which are designed to ensure economic equity, environmental protection, consumer protection and even social justice.
- Article I also states that jurisdictionally, commitments made by Member countries under the GATS apply to all levels of government – whether at the national, regional, state or local level.

Below is a compilation of case studies from India of domestic regulatory provisions enacted by different levels of government³ (national, state and local) pertaining to tourism. These cases cut across the economic, social, environmental and political dimensions of tourism development in the country and encompass regulations put in place by the national government, certain state governments and local governments. The objective of these are to highlight the fact that rules on domestic regulation being developed under the GATS will potentially curtail powers of governments – most of all at the local level - to regulate judiciously and meaningfully on issues related to tourism development. GATS' application to local governments and disciplines on domestic regulation are a serious negation of decentralisation and democratic decision-making in this country. In the Uruguay Round, India opened up its tourism sector under the GATS by permitting 51% equity investment to foreign hotel and restaurant owners. In the new round since 2000, India has opened up all sub-sectors in tourism under the GATS with no specific or definite restrictions or limitations written down in the commitments schedule.

The Goa Children's Act 2003

The State of Goa, known for its beaches and warm friendly people, has been one of India's most popular tourist destinations. Over the years, unregulated growth of tourism has had several adverse impacts in Goa: exploitation of children for sexual and non-sexual purposes is one of the most serious. Recognising the need to protect children and regulate tourist activities, the state government of Goa promulgated the Goa Children's Act in 2003. The Act is one of the first to incorporate vital points of the UN Convention on the Rights of the Child (UN-CRC) and covers issues like education, health and nutrition, children's homes, child labour, child abuse, child sexual trafficking, children in different circumstances, girl child, differently-abled children, exploitation of children in tourism and the children's court.

The Goa Children's Act, 2003 is the first of its kind that recognises exploitation of children in tourism destinations by tourists as well as by the tourism industry in the form of sexual exploitation and child labour. The Act contains specific

provisions that address sexual abuse of children in general and tourism related paedophilia in particular. The Act is unique because it not only recommends punitive measures for offenders but in places responsibility on different sections of society to play a role in protecting children and preventing their abuse. Thus, hotel owners, photo studios, cyber cafe operators, the police, the tourism department and all others involved in the travel and tourism trade are expected to be sensitive to the situation of any child they may come across in the performance of their duties.

The Act has several pertinent provisions to ensure the safety of children involved in tourism-related activities. Many of these are responsibilities and duties placed on constituents of the tourism industry like hotel and restaurant owners, travel associations and tour operators and important to analyse in the context of GATS rules governing domestic regulation.

- The Act abolishes all forms of child labour in Goa and has dissolved the usually maintained distinction between hazardous and non-hazardous forms of child labour⁴ and prescribed stringent punishment for offenders
- In preventing child sex abuse, Section 8 [10] of the Act states that "*All hotels and other establishments which provide boarding or lodging or similar facilities shall ensure that children are safe and are not at risk of child abuse within their premises including all adjoining areas like beaches, parks etc*" and thus places huge onus on industry establishments in ensuring child safety.

The Act has several other provisions that relate to other issues faced by children but specifically regarding the above two it is important to analyse if they could be read as trade restrictive in the eyes of the GATS. It has taken civil society several years of work to bring the government to recognise child abuse in tourism and put in place such an Act. To have its provisions potentially labeled as trade-restrictive might grant immunity to service providers in the tourism industry from performing their duties under this Act. It can be speculated as to what proportion of this investment in tourism is being or will be facilitated by the GATS. But undoubtedly its disciplines on domestic regulation might consider such regulation trade-restrictive and violating GATS commitments and possible deny state governments their constitutional right to pass such regulations in the future.

The Kerala Tourism Act 2005

Kerala is also an important tourist destination on the Indian map and a large proportion of state revenues are derived from tourism-related activities. In recognising the need to mitigate the impacts of tourism, the state government passed the Kerala Tourism (Conservation and Preservation of Areas) Act on March 9th 2005. The name of the Act as well as its Preamble clearly lay down that the Act is framed "*...to make provisions for the conservation and preservation of tourist areas in the State and for matters connected therewith or incidental thereto*".

In keeping with this principle, one of the provisions of the Act is that the government may declare any tourism area of the State as a 'Special Tourism Zone' within which tourism activities may be strictly regulated. Although the Act has not detailed what the nature of such regulation will be, it has certainly given the Committee the right to devise/approve any such regulation which is in the interest of conservation and preservation of the Special Tourism Zone. In tourism, such regulation can take the form of quantitative restrictions on the number of hotels or number of tours, safaris inside a particular zone or qualitative restrictions like reservation of jobs for locals or preference to local entrepreneurship. In GATS jargon these could be termed limitations of market access and national treatment respectively.

If this Act is considered in the light of India's current offer under the GATS, a clear contradiction emerges. India has completely liberalised tourism services under the GATS without placing any limitations on market access or national treatment. This would make any potential regulation of such activities in the identified 'zones' through this Act contravenous of the country's Mode 3 commitments in tourism.

Although the rules of this Act are yet under formulation, the potential contradiction with GATS rules is very real. There is another worrisome aspect to the Act vis-à-vis GATS rules that directly impacts decentralisation measures and power of local governments to regulate. Through the Kerala Tourism Act, it is hopeful that panchayats will be granted more powers of regulation on tourism within their jurisdictions. This has been an important demand of local communities to ensure that tourism activities directly benefit them and impacts can be mitigated. Contradictions with the GATS can well nullify this advantage that the Act will grant to local governments.

Kumarakom People's Charter on Guidelines for Sustainable Tourism

Kumarakom in Kerala is an exclusive tourist destination known for its scenic backwaters and relaxing ambience. In 2002, the people of Kumarakom along with the Grama Sabha members adopted a People's Charter Peoples Charter and Draft Guidelines on Sustainable Tourism for Kumarakom that was a bold step towards retaking the reigns of tourism development into their own hands. The Charter is a landmark commitment to put into force constitutional provisions on decentralisation and thereby democratize tourism development.

The Charter that was developed by the panchayat in consultation with local communities has several important provisions to ensure that tourism benefits and protects interests of the locals.

- It places strict control over use of natural resources like land, water and banks of the backwaters in the hands of the panchayat making it mandatory for industry to not only seek permission from it but also plan and construct structures according to the designed land-use patterns.
- To mitigate the environmental impacts of tourism, the Charter puts the onus of ensuring environmental safety on the tourism industry by directing them to install and use sewage treatment plants and solid waste management plants.
- To ensure that tourism directly benefits the local community, the Charter has put down the following points –
 - o 30 % of direct employment reserved for locals keeping in view of
 - a. requirement of tourism industry (Ratio between locals and outsiders)
 - b. availability of qualified personnel within the Panchayat
 - c. provision for adequate training
 - o Maintenance of labour standards in the formal sector
 - o Informal sector
 - a. Book binding
 - b. Washing
 - c. Tourist guides

An analysis of the above clearly reveals that they will be termed trade restrictive when applicable under GATS' Rules on Domestic Regulation. For instance, the provision to subject land and water access to panchayat rules can be interpreted by interested parties as obstructing tourism activities while the reservation of jobs for locals in tourism will clearly be a national treatment limitation. As WTO Agreements are negotiated by national governments with very little consultation at state or local levels, it is impossible that such a people's charter developed by a local government will be recognised within the GATS framework. Moreover, rules on domestic regulation will certainly curtail the power of the panchayat from making any further changes or additions to the Charter if the local situation demands it.

The Kumarakom People's Charter is a unique attempt by local communities and government to reclaim their right to direct tourism development. It is a concept that ought to be adapted to several other tourist destinations to ensure that development is democratic and directed by the needs and sensitivities of the local community. However, applicability of the GATS seriously threatens the validity of such local regulation and will further prevent governments from initiating any such measures in the future.

The Coastal Regulation Zone Notification

The CRZ Notification 1991 is one of the most stringent environmental regulations in India and was passed as a guideline under the Environment Protection Act in 1991. Unregulated development along the country's coastline including the mushrooming of hotels, resorts, industries and the conversion of coast land for non-conventional uses had not just brought the country's coast on the brink of an ecological crisis but also hit the backbone of local fishing and agrarian economies. Against this background, the primary objective of the CRZ was to ensure the protection of the country's coasts for which strict norms of zoning, clearance mechanism and permission has been put in place.

The salient features of the law included the demarcation of the coastal areas into the categories of CRZ-I, CRZ- II, CRZ -III and CRZ-IV, based on the features found in these regions, and the extent of development, which is already located therein. The original notification prohibited construction of beach resorts within 500 mts of the High Tide Line (HTL) with regulations on the type of constructions. However, the original spirit of protection and management of the coastal regions were effectively diluted in the interest of the tourism industry. On the recommendation of an expert committee amendments were effected to the law that allowed tourism related constructions upto 200 mts of the HTL.

There is no doubt that regulations like the CRZ, meant to serve environmental goals have been considered a hindrance to development activities. This has led to their blatant violation by industries like tourism, aquaculture,

pharmaceuticals, and port development in most coastal stretches. In a recent meeting of the Coastal Action Network in Chennai, a representative of the National Fishworkers Forum stated that a survey done by them reveals approximately 728 violations of the Coastal Regulation Zone Notification along the country's coastline. The fact that the CRZ Notification is being regarded a serious barrier to industrial activity is indicated by the 15 amendments that have been made to it in its 14 years of existence and continued appeals for further amendment.

In the context of the GATS, there are several reasons why application of Article VI on Domestic Regulation will call for further dilution of CRZ provisions. The Act – with its zonal requirements and licensing limitations would fall under the category of 'measures affecting trade' in services like tourism, construction and even transportation. Zoning and licensing will be treated as market access barriers and it can be easily argued that it restricts the flexibility granted by the GATS to pursue trade unobstructed. The possibility is very real as the tourism industry is culpable of a substantial portion of CRZ violations in the country and a prime demander of its dilution and gradual elimination. Industry lobbyists are being actively supported by the central Ministry of Environment and Forests (MoEF) which itself sees no purpose in the CRZ and is willing to dilute it relentlessly and even substitute its provisions by other means.

But the CRZ is critical for the good health of the country's coastline and the livelihoods of communities living therein. Rampant industrialisation and unregulated tourism have continued to displace coastal communities – primarily fisherfolk and indigenous peoples from their traditional lands and occupations. The loss of the CRZ on its potential nullification in the context of the GATS will blow the final death knell for regulated development of tourism and other activities along the coasts.

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End Notes

1 GATS Art. I, 1.

2 Id. At Article XXVIII, (a)

3 India is a federal democracy where right to regulate on tourism rests both with the central and state governments. In keeping with the principles of decentralisation, the 73rd and 74th amendments to the Indian Constitution have extended these rights to local self-governing bodies i.e. panchayats in rural areas and municipal corporations in urban areas.

4 This is an important step as even the International Labour Organisation chooses to classify child labour under hazardous and non-hazardous categories. The Goa Children's Act is the first to recognize that non-hazardous occupations which children are employed in like domestic labour, working in hotels, rag picking, plastic bag selling, nut selling, running errands, carrying loads of shoppers or working as helpers in buses and trucks etc., are as hazardous to the well-being of the child as other physically hazardous ones. Exploitation that children are subject to in traditionally 'non-hazardous' occupations like domestic labour and working in hotels includes long work hours with poor pay and rising physical and sexual exploitation.