



RETHINKING THE FUTURE: LEGAL FRAMEWORK FOR SUSTAINABLE TOURISM IN SRI LANKA, WHERE ARE WE? WHERE TO GO?

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ABSTRACT

Tourism is a beacon of hope that could flourish the economic facet of Sri Lanka. However, coupled with its long-term competitiveness, its negative effects can cause damage to the social, cultural, and environmental spheres in the country. Drug addiction, displacement, emergence of a materialistic community, environmental degradation, damaged traditional way of life and social values and serious health risks are some of the drawbacks of tourism that demand attention. In that context, Sustainable Tourism is the best restorative option that a country could seek. Many nations in the world are focusing on Sustainable Tourism Legislation though Sri Lanka still holds onto an idle phase in it.

Accomplishing Sustainable Tourism is a multiple faceted joint venture where efficient legislation and regulation bears a pivotal role in it. The purpose of the study is to examine Sustainable Tourism in a legal standpoint and to analyze the legislative instruments in Sri Lanka.

The study rests on qualitative data analysis and is carried out on a theoretical level which mainly discusses international tourism law instruments such as Manila Declaration, the 2030 Agenda for Sustainable Development and World Charter for Sustainable Tourism and national legislation as well as policies such as Tourism Act no 38 of 2005, Sri Lanka Sustainable Development Act, No. 19 of 2017 and Draft National Policy on Tourism for Sri Lanka. The paper only intends to gauge the adequacy of tourism legislation on “Sustainability” and does not extend to discuss the practical strategies and projects to be implemented to enhance sustainable tourism.

The international community has urged the States to implement legislation on Sustainable Tourism. Even though there is no direct reference on Sustainable Tourism in the Sustainable Development Act, its provisions (in)directly encourage Sustainable Tourism. The Tourism Act focuses more on the formation of an institutional framework but does not represent a reliable centralized authority with legislative powers to create general rules on Sustainable Tourism. However, Section 3, 12 and 17 are progressive. With comparison to other legislation, Draft National Policy on Tourism in Sri Lanka shows a cumulative growth in integrating Sustainable Tourism. Myanmar, holding the 59th place in Sustainable Tourism index, has set distinct examples in its tourism law. The author encourages to fuse and recognize the concept of sustainability within the tourism legislation of Sri Lanka and to adopt flexible legislative techniques consistent with international legislation. Tourism is a trans-sectoral subject and the author suggests a well-balanced holistic approach with other related laws.

Key Words- Sustainable Tourism, Sustainable Development, Sustainable Tourism legislation, Tourism Act

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INTRODUCTION

Tourism is the third largest foreign exchange earner in the country and one of the main income generators for Sri Lanka (International Trade Administration, 2022). Notwithstanding its key role in the Sri Lankan economy, tourism has its own drawback in the long run. Thus, Sustainable Tourism is the best option that a country can resort to.

Legislation is fundamental that can be used to strengthen sustainability within the spectrum of tourism. Many international conventions and communities have identified the importance of Sustainable Tourism, yet Sri Lanka is a few steps behind in that. Shanika (2019, p45) urges the authorities to reflect Sustainable Tourism in national tourism law as a necessary compromise between economic development and environmental protection.

The present study aims to review how international instruments have perceived the importance of legislation on sustainable tourism, and Sri Lankan tourism law in the lens of sustainability and to point out the lacunas in it. Further, recommendations will be provided from international instruments, and from comparatively advanced foreign legislations such as Myanmar to develop Sri Lankan tourism law. It is suggested that mere implementation of a legal framework will not suffice but should be accompanied with practical strategies and policies.

METHODOLOGY

This research rests on qualitative data analysis and is carried out on a theoretical level. For the purpose of this study, secondary data were collected from different secondary sources which are books, scholarly articles and other materials that were available through the internet. Added to that primary sources also have been referred to such as foreign and national Acts, international conventions and declarations. The criteria that have been used in selecting data are the credentials of the author, credibility of the material, depth of analysis and relevancy to the sustainable tourism arena.

RESULTS AND DISCUSSION

PART I- A BRIEF INTRODUCTION TO SUSTAINABLE TOURISM

1.1. What is sustainable tourism?

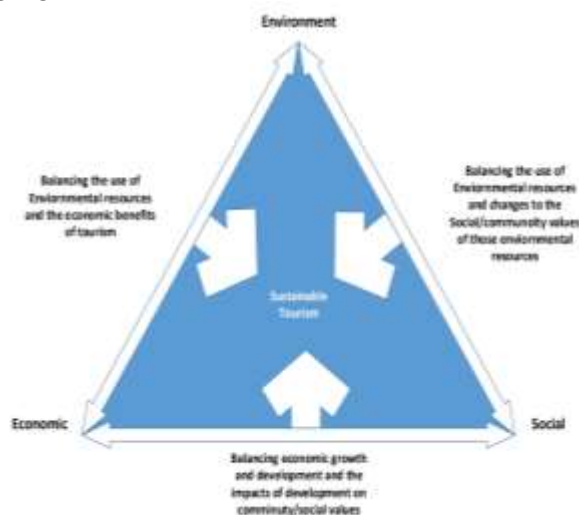
As UNWTO (2015) defines, Sustainable Tourism takes full account of its current and future economic, social and environmental impacts, addressing the needs of visitors, the industry, the environment and host communities.

A Guide for Policy Makers adopted by the WTO in UN Environment Programme (2005, Pp 11) further explains three principles to be followed to reach Sustainable Tourism.

- 1) Make optimal use of environmental resources that constitute a key element in tourism development, and help to conserve natural resources and biodiversity.
- 2) Respect the socio-cultural authenticity of host communities, conserve their built and living cultural heritage and traditional values, and contribute to inter-cultural understanding and tolerance.
- 3) Ensure viable, long-term economic operations, providing socio-economic benefits to all stakeholders that are fairly distributed, including stable employment and income-earning opportunities and social services to host communities, and contributing to poverty alleviation.



It is noteworthy that, Shanika (2019, pp46) summarizes above propositions stating that, Sustainable Tourism has three main facets which are; **Environmental sustainability**, **Social sustainability** and **Economic sustainability**. (See Diagram 1) Thus it is of timely concern to gauge the extent of Sustainable Tourism, that Sri Lankan tourism law have reached into.



Note. Adapted from “Towards to Sustainable Tourism Framework, Activities and Dimensions,” by Janusz, GK and Bajdor, P., 2013. International Economic Conference of Sibiu 2013, Poland <[Towards to Sustainable Tourism – Framework, Activities and Dimensions - ScienceDirect](#)>

1.2. Why law on sustainable Tourism should be adopted by a country?

Although Tourism is an effective development tool to a country, it has its own environmental, cultural, and social drawbacks. Consequential calamities of tourism such as low tendency for education, drug addiction, displacement, emergence of materialistic community and damaged traditional way of life and social values have shown a drastic rise lately in Sri Lanka (Satharani et al., 2020). To be specific, huge accumulation of garbage in Ella area (Perera, 2019) degradation of Hikkaduwa corals (Gillispie, 2012) and clearance of forest cover sanctuary for luxury hotels in Sigiriya (Biodiversity Sri Lanka, 2016) are a few exemplary indicators. These adversities need to be addressed on a legal footing to enhance sustainable tourism in the country.

Thus, (Faure et al., 2014) suggest Sustainable Tourism as the best solution to answer the conflicts that come along with the unlimited touristic development in developing countries. In that regard, binding legal instruments is necessary as a leeway to establish Sustainable Tourism (Feliu, 2019, pp182).

PART II

1.3. A walk with Law; Legislative instruments

3.3.1 International Tourism Law on Sustainable Tourism

This part of the paper intends to examine how international community has viewed upon the Sustainable Tourism and how international conventions and declarations have highlighted the importance of implementing legislation in this regard.

According to Micovic, one of the first initiatives in assembling Tourism and Sustainable development within the UN is the adoption of **the Manila Declaration on World Tourism in 1980**. The Declaration identified the real nature of tourism and the responsibility of States in developing and enhancing tourism as more than a purely economic activity. Agreement clause 3 observes the importance of legislation and institutions in tourism.



The UN elaborated document in 2015, ‘**Transforming Our World: The 2030 Agenda for Sustainable Development**’ indicates that Sustainable Development Goals (SDGs) are also worth a discussion in this aspect. The SDGs do not directly refer into Sustainable Tourism, but it is interesting for our purpose to note that point 8.9 under Goal 8 states that States should attempt by 2030, to devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products. Moreover, point 12b under Goal 12 spans out stating that tools should be developed and implemented to monitor sustainable development that creates jobs and promotes local culture and products (Franceschelli, 2019 pp78). These provisions encourage implementation of regulatory framework to monitor and develop Sustainable Tourism.

As a follow up to SDGs, the **World Charter for Sustainable Tourism** was adopted at the World Summit on Sustainable Tourism (ST+20) in 2015. Its’ first action principle itself suggests governments to integrate sustainability in national and international tourism policies, strategic plans and operations for meeting national sustainable development objectives, the UN (SDGs) and to Strengthen legislative and policy frameworks for sustainable tourism.

3.3.2. Where Are We? Where To Go?; Legislation In Effect In Sri Lanka;

❖ Sri Lanka Sustainable Development Act, No. 19 Of 2017

Even though the Act has no specific reference on development of Sustainable Tourism, a progressive approach is traceable in the Preamble which states that, Sri Lanka intends to design, develop and implement a National Policy and Strategy on Sustainable Development and to form own national targets guided by the global level of ambition taking into account national interests and circumstances and also incorporate seventeen SDGs in national planning processes. This can be interpreted in favor of Sustainable Tourism.

Section 2 further settles the above proposition. Accordingly, it identifies the importance of drafting a legal framework for developing and implementing National Policy and Strategy on Sustainable Development. Section 2(c) enshrines the core idea of Sustainable Tourism. However, whether the above Section is practically used to promote Sustainability within tourism is a question left to be answered.

Section 4 establishes Sustainable Development Council, and it is interesting to note that, Section 4(3) requires all the appointed members to possess academic or professional qualifications and wide experience in science, economics, environmental science or social science and possesses specific experience in relation to sustainable development. Consultation from personnels with expertise in above fields will obviously aid in reaching sustainability in Tourism.

Since the above Act sets a substantial groundwork to incorporate sustainability in many sectors including tourism, next I intend to gauge the extent to which laws as whole and tourism related legislation and National Policy framework have addressed Sustainable Tourism within its’ legal parameters.

❖ The Constitution of Sri Lanka 1978

The Sri Lankan Constitution of 1978 fails in identifying either Sustainable development or Sustainable Tourism within its Articles. Yet, Article 27 (2) (d), 27 (14) and Article 28 (f) imply the idea of sustainability and tourism. Article 27 (2) (d) is significant in this regard because it facilitates implementation of legal instruments to plan and control public and private economic activities for the rapid development of the country. On the whole, Sustainable Tourism is the leeway to achieve almost all directive principles of State Policy enshrined in the Constitution.

Ecuador recognizes Rights of Nature in its constitution, with the Environment’s right to exist, flourish and regenerate in its Constitution. That has helped them in implementing Sustainable Tourism (Chapter7, Article 71-Article 74; Constitution of Ecuador 2008).



❖ **Tourism Act, No. 38 Of 2005**

Tourism Act is the only legal reference for tourism, a sector that has profoundly transformed on both demand and supply sides (Draft National Tourism Policy, 2021,p2). At the outset, the Act fails to directly identify and merge Sustainable Tourism within its provisions.

Indeed, Tourism Act aims more on formation of institutional framework on Sri Lankan tourism, but doesn't represent a reliable, centralized legislative authority with legislative powers to create binding general legal rules on Sustainable Tourism. Besides, it is commendable that SLTDA is empowered to make rules in respect of matters specified in the Act (Section 12 (k); and to make rules relating to the exercise, performance and discharge of the powers, duties and functions vested in, or assigned to, the Authority, in respect of any matter for which rules are authorized to be made. However, all these rules are conditioned upon the approval of the Minister (vide Section 17(2)). Thus, a more advanced transparent procedure is encouraged.

Section 3 (f) promotes development of sustainable tourist services. Shanika (2019, pp 43) further criticizes that Section 12 which elaborates on powers and functions of the SLTDA, has failed to extend its powers towards execution of environmentally friendly tourism goals.

Nevertheless, Section 12 *inter alia* mandates the Authority to regulate and maintain standards of tourism industry, to issue licenses to enterprises to maintain standards, and to engage local or foreign consultants to discharge functions. These powers can be positively used to implement Sustainable Tourism in Sri Lanka. SLTDA which acts in concurrence to National Environmental Act, No. 47 of 1980 in declaring Tourist Development Areas can also be identified as an Eco-tourist approach which is a part of Sustainable Tourism. That will possibly reduce the unwanted environmental and natural issues toward the ecosystems and it leads to protection of tourist areas for the future generations as well (Soe and Romsaitong,2018,p369).

❖ **Draft National Policy on Tourism for Sri Lanka**

WTO joining hands with UN has drafted a Guide for Nations in reaching Sustainable Tourism and it is titled as, "Making Tourism More Sustainable A guide for Policy Makers". Meanwhile, Sri Lanka also has adopted a Draft National Policy on Tourism for Sri Lanka for the period of 2020-2025. So, the author intends to compare the two documents and to weigh the extent to which Sri Lankan Draft has succeeded in a legal sense.

There is a significant weight put on sustainability within the National Policy where objectives include *inter alia* sustainable environmental management and people centric economic development. Lack of proper legislation and regulations on tourism has also been identified as a challenge which is a consequence of weak governance.

In addition, the Draft suggests 'mitigation and adaptation steps', some practical steps that could be taken by parties to enhance sustainability in Tourism and that is not expected to be discussed here.

Moreover, Thrust Theme 2 of the Draft is on "Inclusive and Sustainable Tourism" and highlights the importance of legal acknowledgement of sub-segments of tourism(ecotourism and adventure tourism, and cruise tourism) and sub-Sectors (artisan, traditional dancers, car rental, etc.)that can benefit local populations.

These are in line with UN Guide, where they encourage legislation that enables and supports the sustainability of tourism and gives authority to act, clear and enforceable regulations, supported by licensing as appropriate, where this is necessary to ensure important minimum standards. Moreover, the Guide urges authorities to make these laws mandatory to be abided by parties and which lead to sanctions and penalties if they are not met. Yet, neither the National Draft Policy nor tourism-based legislation has extended its provisions on penalties.

The Guide further pinpoints the need for recognition of sustainability within national tourism law and the Constitution, but as discussed above, Sri Lanka has failed in it.



In addition, lack of consistent tax policy and incentive system (Sivesan,2019) and inappropriate delays in applying existing laws also indicate the dire need in establishing a strategic framework including comprehensive legal network on sustainable tourism in Sri Lanka.

1.4. The Myanmarese Secret; Examples from Myanmar legislation

As per Sustainable Travel Index Rankings 2020, Myanmar holds the 59th place, above all other South Asian and Southeast Asian countries (Euromonitor International Report, 2021). Thus, it is worthwhile to examine the sustainable tourism legislation in Myanmar and examples that it sets.

Myanmar Tourism Law no 26 of 2018 is comparatively a comprehensive Act which mainly deals on tourism in Myanmar. In contrast to Sri Lanka Tourism act, Section 2 in Myanmar Act has identified several types of tourism including, Eco-Tourism and Responsible Tourism which basically stem from Sustainable Tourism.

It is mentioned in Section 3(f) that, one of the objectives of the Act is to promote responsible tourism activities that will contribute to the country's sustainable development, ecotourism, and conservation of the natural environment. This can be interpreted as a representation of sustainable tourism within the Act. Further, the Act establishes a Central Committee of National Tourism Sector Development and the Act mandates the council to promote Sustainable Tourism via development of short-term and long-term plans to achieve a responsible tourism sector that respects the cultural practices of Myanmar and conservation of natural environment by abiding to the existing Myanmar social and economic principles. It also supports sustainable development of tourism sector, by establishing policy in promoting responsible tourism which respects traditions and culture of Myanmar and by promoting the standard living of local people and community development by providing a plan for tourism development.

Moreover, as UN Guide recommends, the Act has introduced the penalties when the law imposed by the Act is breached.

Thus, it is evident that Sri Lanka can get inspired by the Tourism law of Myanmar and improve in its tourism legislation.

CONCLUSIONS/RECOMMENDATIONS

PART III

1. Road for Sustainable Tourism: Conclusion and Recommendations

Sustainable Tourism is the best solution to conflicts that come along with the unlimited touristic development in developing countries. Low tendency for education, drug addiction, displacement, emergence of materialistic community and damaged traditional way of life and social values that sequel tourism have shown a drastic rise lately in Sri Lanka. To be specific, heavy accumulation of garbage in Ella area, degradation of Hikkaduwa corals and clearance of forest cover sanctuary for luxury hotels in Sigiriya are a few exemplary indicators. These adversities need to be addressed on a legal footing to enhance sustainable tourism in the country.

First and foremost, as the UN Guide suggests, sustainability should be reflected in National Tourism Law and within the Constitution which provide a firm basis for sustainable tourism in the long term. It shields tourism from short term political influences and non-statutory tourism strategies. It is time for Sri Lankan Tourism Law to identify the importance of sustainability of tourism within its provisions. Added to that, penalties and fines followed with non-compliance of law is also needed.



As Cyprus sets the example, Sri Lanka needs to move from our current volume-driven strategy, towards a value-driven approach. World tourism is updating, thus as Feliu (2019, pp 176) perceives, nations including Sri Lanka require a flexible legislative technique that is consistent with international legislations. Such legal principles and norms can build a responsible tourism within the country.

As Myanmar tourism law has identified, responsible tourism, regenerating tourism and eco-tourism are some other favourable forms of sustainable tourism that Sri Lanka can consider in adopting.

The 7 lettered word 'TOURISM' may sound simple, but it is a trans-sectoral subject that has its roots everywhere. Thus, a well-balanced holistic approach with the collaboration of Tourism Law with Environmental laws, Labour laws, the Constitution, Cultural heritage protection laws, Economic laws, and Tax laws is highly recommended. This is perceived as harmonizing and synchronizing legislation that are linked to tourism.

Sustainability within tourism cannot be ensured solely through recognition within law, yet practical strategies and policies also should follow with it.

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ABBREVIATIONS

UNWTO- United Nations World Tourism Organization

SLTDA- Sri Lankan Tourism Development Authority

WTO- World Tourism Organization

UN- United Nations