

RE-EXAMINATION OF THE TOURISM ACT OF SRI LANKA THROUGH THE LENS OF ECO-TOURISM; A THIRD WORLD COUNTRY PERSPECTIVE

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ABSTRACT

Expansion of Sri Lankan tourism industry to meet eco-tourism objectives is a key concern in post war development agenda. With this intention, it is crucial to discuss sufficiency of the available regulatory body in order to acquire prime notions of eco-tourism. Therefore, the objective of this study is to identify legal challenges for ecotourism in the light of Sri Lankan Tourism Act No 38 of 2005 (SLTA) and propose suitable improvements. This study is largely based on qualitative approach which is a contemporary study on Tourism Act No 38 of 2005 which engages in the tourism activities and relevant scholarly works. It is noted that the main purpose of the SLTA was to establish *inter alia* an institution called "Tourism Development Authority" (TDA) and to grant powers to facilitate planning and implementation of tourism policies and other related industries. Further, it holds powers for regulation and monitoring. Perhaps, a deep survey of the SLTA identifies inadequacy of its legal capacity to implement eco-tourism based policy measures. Basically, section 3 of SLTA stipulates nine core objectives of TDA, but recognition, protection and promotion of eco-tourism was not within its parameters. Hence, both Sri Lankan Tourism Act and the judiciary were reluctant to provide either definite or creative interpretation favorable for eco-tourism. Apart from that, although section 12 discusses powers and functions of the TDA, it has failed to extend its powers towards execution of environmental friendly tourism goals. Further, there are some controversies relating to appointment and composition of TDA members and transparency of TDA guidelines. Nevertheless, by considering above identified fourfold legal challenges of the Tourism Act, the research paper concludes that Sri Lankan tourism law has enacted only from the development perspective but not from environmental perspective and needed to be revised to meet ecotourism objectives. Reception and application of concept of "Sustainable Tourism" is highly concerned for proposing appropriate improvements for the Tourism Act. Adequate attention was paid for the lessons from foreign jurisdictions for recommendations. While tourism industry is becoming a boom of Sri Lankan economy in post war era, it is very important to maintain a balance between development as well as environmental protection in the fabric of Sri Lankan Tourism. Therefore, this study makes recommendations ensuring eco-tourism based commands and controls for the current Tourism Act No 38 of 2005 of Sri Lanka.

Key words: Eco-tourism, Third world, Tourism

1. Introduction

"Tourism is a way of representing the world to ourselves and to others."

Martin Mowforth and Ian Munt¹

Statutory recognition of the concept of 'ecotourism' confined to 'sustainable development' is urgent need of third world countries like Sri Lanka where many tourism activities commenced during post war development era are identified as fake ecotourism activities which required adequate legislative control. Ecotourism based shams have become reasons to decrease value of Sri Lanka as a popular tourist destination and to lose number of actual eco tourists. In fact, above collapse may adversely affects for economic growth of the country. Maintaining proper balance between economic development and promotion of ecotourism is an unavoidable challenge for third world countries. Legislative command and control system is needed to be standardized on what is meant by ecotourism and incidental matters there with to establish sufficient balance to satisfy demands of arriving tourists. Therefore, re-examination of the Tourism Act through the lens of ecotourism is imperative prerequisite for a third world country like Sri Lanka significantly in a growing economy after victory of 30 year war and gaining lot of tourists' attraction. The objective of the study is to identify legal challenges for ecotourism in the light of Sri Lankan Tourism Act No 38 of 2005 (SLTA) and propose suitable improvements. Moreover, the research paper endeavors to reveal an approach for transformation from development based tourism legislation to eco-tourism based legislations underpinning sustainable development and responsible tourism². The paper is largely based on qualitative approach which is a contemporary study on the Tourism Act No 38 of 2005 and relevant scholarly works. Academically, economic analysis of Laws regulating explicit markets has discussed by Adam Smith³ and Tourism Law is significant in regulation of the "economic system" specifying tourism industry in third world countries. According to Posner and Smith, public utility regulations evolved in the world to control antitrust activities in the market. Hence, tourism law could be identified as such a utility legislation to control anti-tourism activities including eco-tourism shames. This approach is known as normative economic analysis of law. Therefore,

¹Martin Mowforth and Ian Munt, *Tourism and Sustainability: Development, Globalization and new tourism in the Third World* (3rd edn, Routledge, 2009) p.1

²Responsible Tourism requires that operators, hoteliers, governments, local people and tourists take responsibility, take action to make tourism more sustainable.

³Richard R. Posner, "Some uses and abuses of Economics in Law". (The University of Chicago Law Review, 46(2), 1979), p. 281, Visit <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2864&context=journal_articles> accessed on 3rd June 2019

this economic-legal research is academically rooted upon Posners' economic analysis of Law. Ultimately, recommendations are made ensuring eco-tourism based commands and controls for Sri Lankan Tourism Act. Statutes such as Vietnam Law on Tourism No 44 of 2005 and Tourism Australia Act No 74 of 2004 which are well addressed "ecotourism issues" and established sufficient institutional framework are persuasive for statutory improvements of Sri Lankan Tourism Act.

Today, Sri Lanka needs to open doors for developing tourism around the notion of ecology and environment to comply with the concept of sustainability. Sri Lanka due to its rich bio diversity and natural beauty attracts countless tourists from worldwide. As identified later part of the research 'green tourism' (*Sustainable Tourism/Ecotourism*) is a vehicle for ensuring sustainable development in all host countries providing hospitality. Tourism in third world countries is known as Third World Tourism.⁴ Therefore, Sri Lanka is part of it as a third world country. It is significant that the third world tourism has created two-way opportunity for both western and third world countries. Many western countries identified tourism in Third World including Sri Lanka⁵ as an opportunity for exciting 'new-style' holiday disregarding tragic situations⁶ prevalent therewith.⁷ On the other hand, Third World absorbed above opportunity into countrys' development agenda by attracting foreign exchange through mass-tourism.

Based on above geo-political setting, contribution of tourism income for growth of Sri Lankan economy is highly significant and remarkable. Tourism as economic live-wire of the country produces wide range opportunities both directly and indirectly for Sri Lankans such as generating employment, increasing gross domestic production and improving wages etc. As reported, 4.4 dollar billion revenue was generated to the country in 2018 through tourism and other related activities.⁸ Sri Lanka Tourism reached the No. 1 ranking as Top Destinations to visit in 2019 by the Lonely Planet, followed by Sri Lankan cuisine ranking to No. 1 in BBC Good Food amongst 15 food trends for 2019.⁹ Further, research of more than 1.3 million social media posts found the Asian city location travellers most want to take a picture of Colombo ranked No 1¹⁰ and ranked 'World's best island' by Travel + Leisure mag readers in July, 2019.¹¹

Though Sri Lanka inherits large foreign income and high popularity from tourism; fails to regulate its impact on the environment. Actually, development of coastal mass tourism arose many environmental problems in Sri Lanka. Incidents such as environmental degradation in Unawatuna beach¹² due to tourism activities could be concerned in this regard. However, eco-tourism instead of mere tourism is encouraged for third world by principles of sustainable development¹³ and concept of responsible tourism¹⁴. Above concern cannot be denied since tourism is a metaphorical lens that helps to bring aspects of development into sharper focus¹⁵.

However, provisions in Sri Lanka's Tourism Act, No 38 of 2005 are insufficient and fail to integrate the notion of eco-tourism statutorily due to high emphasis on institutional framework than identification and prevention of practices against eco-tourism. As a result, access to justice against environmental malpractices in tourism is very low and unimpressive in Sri Lanka. Above justice seekers have to rely upon substitute sources such as the constitution and other legislations relating to environment which are cumbersome and tiresome to get remedies. Remedial uncertainty and patchwork protection led absurdity in promotion of eco-

⁴See Note 1, (Mowforth & Munt)

⁵Inclusion by the author

⁶Famine/Starvation, Terrorism, Deprivation and War

⁷See Note 1 (Mowforth & Munt), at p.1

⁸Charmarie Maelge, "Sri Lanka Tourism a success story: No tourism, no economy?", Daily FT, 2019, visit <<http://www.ft.lk/columns/Sri-Lanka-tourism-a-success-story--No-tourism--no-economy-/4-677890>>, accessed on 1st of June 2019

⁹Sri Lanka Tourism Development Authority Official Website, "Making Sri Lanka Tourism Sustainable", 2019

< <http://www.sltda.lk/sustainable-tourism> >, accessed on 19th July 2019

¹⁰Ibid.,

¹¹Daily FT, "Sri Lanka ranked 'World's Best Island' by Travel + Leisure mag readers", 2019 <<http://www.ft.lk/front-page/Sri-Lanka-ranked-World-s-Best-Island-by-Travel-Leisure-mag-readers/44-681783>>, accessed on 19th July 2019

¹²Rathnayake Suvimali M.V.R.M, "Negative Environmental Impacts of Tourism in Unawatuna Beach Area", Samaja Wimashana, University of Kelaniya, 2015, visit <<http://repository.kln.ac.lk/xmlui/bitstream/handle/123456789/13623/SV.139-152.pdf?sequence=1>>, accessed on 18th July 2019

¹³Sustainable tourism is firmly positioned in the 2030 Agenda.

"Tourism in The 2030 Agenda", UNWTO Official Website, visit <<http://www2.unwto.org/content/tourism-2030-agenda>>, accessed on 17th July 2019

¹⁴Cape Town Declaration on Responsible Tourism, 2002, visit <<http://www.responsiblecapetown.co.za/wp-content/uploads/downloads/2011/09/Responsible-Tourism-in-Cape-Town.pdf>>, accessed on 18th July 2019

¹⁵See Note 1 (Mowforth & Munt), p.1

tourism. However, reflection of sustainable tourism in national tourism law should necessarily built compromise between economic development and environmental protection.

2. Travel and Tourism; Origin and Evolution in a Nutshell

Travelling was a need of the primitive man for survival such as to find food and clothing.¹⁶ Gradually, people traveled for multi-purposes including climate change¹⁷, trade, economic gain, religious convictions¹⁸, war and migration.¹⁹ Earlier in Roman era, tourism was one of the privileges enjoyed only by opulent people such as wealthy aristocrats and high government officials. William F. Theobald recorded travelling was vital role in the development of human civilization.²⁰ This could be observed as ‘individual tourism’ as it was person centered.

Mass-tourism in modern context is a phenomenon and by product of the industrial revolution occurred 20th century in England.²¹ Rise of the middle class and development of inexpensive transportation were two major reasons for emergence of mass-tourism. Further, facilitating and subordinate services such as airline industry started expanding boundaries of travelling after World War II. Subsequently, number of inter-related activities evolved directing better meaning for “tourism”. Now economic and social importance of tourism has derived inevitable and inalienable responsibility²² over national governments in the world²³.

Accomplishing aforementioned responsibility, modern governments have come with tourism laws/legislations to promote, develop and regulate tourism and related activities.²⁴ Initially, these legislations drafted based on mere economic-development perspective. Environmental impact of tourism was deliberately or negligently unforeseen by many legislations²⁵ has occurred long term unfavorable repercussions in third world countries. Therefore, in present, eco-tourism as a new dimension of tourism has come to attention of many countries²⁶ along with principles of sustainable development and responsible tourism.

3. Eco-Tourism; Public International Law perspective

Understanding the term “tourism” has paramount importance before discussing aspects of eco-tourism. Historically, the word ‘tour’ came from Latin word ‘*tornus*’ which meant ‘circle and turn’.²⁷ Tourism means activities involve in circling away from home and returning. This primitive definition includes both departure and return. As defined by United Nations World Tourism Organization (UNWTO)²⁸ in 2008, tourism is a social, cultural and economic phenomenon which entails the movement of people to countries or places outside their usual environment for personal or business/professional purposes.²⁹ In simple, tourism is movement of people for number of reasons specifically business and pleasure.

Impacts of tourism spread towards social, cultural, economic, political and environmental mainstreams in any country. Basically, tourism and other related activities have high potential impact on biological and ecological environments.³⁰ Eco-tourism emerged grounding the concern of environmental impacts of tourism. Concept of sustainable development nourished and nurtured seeds of ecotourism. The relationship between sustainable development and tourism was taken up for discussion at the World Summit for Sustainable Development in 2002. Hence, ecotourism could be identified as a different way of looking tourism based on

¹⁶William F. Theobald, *Global Tourism*(2nd edn, 1998, Routledge) p.3

¹⁷Aryans left from Central Asia due to climate change seeking refuge

¹⁸Christian missionaries and Buddhist monks travelled carrying religious messages.

¹⁹See Note 16., (Theobald), p.3

²⁰See Note 16., (Theobald), p.3

²¹See Note 16., (Theobald), p.3

²²Cape Town Declaration on Responsible Tourism, 2002, visit <<http://www.responsiblecapetown.co.za/wp-content/uploads/downloads/2011/09/Responsible-Tourism-in-Cape-Town.pdf>>, accessed on 18th July 2019

²³‘Concept of Responsible Tourism’ will be discussed in the study.

²⁴ Sri Lankan Tourism Act No 38 of 2005, Indian National Tourism Policy of 2002,

²⁵ Indian National Tourism Policy of 2002, visit <<http://tourism.gov.in/sites/default/files/policy/National%20Tourism%20Policy%202002.pdf>>, accessed on 19th July 2019, Tourism Development Act No 14 of 1968, Tourism Act No 38 of 2005

²⁶ Draft Indian National Tourism Policy of 2015, visit <http://tourism.gov.in/sites/default/files/policy/Draft_National_Tourism_Policy_2015.pdf>, accessed on 19th July 2019

²⁷See Note 14., (Theobald), p.3

²⁸UNWTO is the United Nations agency responsible for the promotion of responsible, sustainable and universally accessible tourism.

²⁹“*Understanding Tourism Basic Glossary*”, UNWTO,2008, visit <<http://cf.cdn.unwto.org/sites/all/files/docpdf/glossaryenrev.pdf>>, accessed on 17th July 2019

³⁰ UNWTO and UNEP, *Making Tourism Sustainable: A Guide for Policy Makers*, 2005

norms of sustainability. Therefore, ecotourism is one major aspect of sustainable tourism while social and economic sustainability are other aspects focused by sustainable tourism.³¹ This means all aspects of tourism should strive to be more sustainable.³²

Sustainable tourism is based on principles of sustainable development³³. The report, '*Making Tourism Sustainable; A Guide for Policy Makers*' published by UNWTO outlined two reasons for reception of sustainable tourism. Major contribution of tourism for economic development commanded to concern tourism in light of sustainability. Nature of tourism is another crucial factor to absorb sustainability. This means tourism is a special relationship that consumer travels towards the product or producer. All stakeholders involved in tourism such as tourism enterprises, local communities, environmentalists and tourists need to consider importance of eco-tourism embedded in sustainable tourism based on above prospects.

UNWTO defined environmental aspect of sustainable tourism as making optimal use of environmental resources that constitute a key element in tourism development, maintaining essential ecological processes and helping to conserve natural resources and biodiversity. In the above context, eco-tourism could be used as a tool to achieve sustainable tourism.³⁴ Need of sustainable tourism recognized internationally in several occasions such as at 7th session of the UN Commission on Sustainable Development in 1999, by the WTO Global Code of Ethics for Tourism in 1999, by the Quebec Declaration on Ecotourism in 2002, at the World Summit on Sustainable Development held in Johannesburg in 2002 and by the Convention on Biological Diversity, Guidelines on Biodiversity and Tourism Development in 2003. More recently, the 2030 Agenda for Sustainable Development³⁵ is provided 17 global goals set by the United Nations General Assembly in 2015 for the year 2030. Goal 8³⁶, 12³⁷ and 14³⁸ are about facilitating sustainable tourism by member states including Sri Lanka as state responsibility.

Designation of the year 2002 as "International Year of Ecotourism" and adoption *Quebec Declaration on Ecotourism*³⁹ at the World Ecotourism Summit in 2002 are evidenced initial internationalization of ecotourism. This builds proper balance between two needs in tourism i.e. need of conserving natural resources and need of gaining economic development which could be identified as 'win-win' solution for third world. Simply, visiting a natural area is not ecotourism.⁴⁰ It is nature based tourism. As recognized, ecotourism is a tool to be contributed for both conservation and economic growth. The *Vientiane Declaration on Ecotourism for Developing Countries* in 2009⁴¹ highlighted danger of mere use of 'ecotourism' as a marketing and promotional tool without recognizing its impact on natural and human environments. However, lack of binding international law on ecotourism has caused serious challenge to the world when promoting and demanding for ecotourism based laws.

Plethora of definitions and absence of universally accepted definition for eco-tourism provided an opportunity for multiple interpretations which could result dilutions and confusions. Ecotourism named as 'travel ethic' by the Audubon Society in 1989.⁴² *Quebec Declaration on Ecotourism* is a mere action plan for member countries to promote ecotourism and it does not provide proper definition for the term. According to Simon, Canada provides a definition for ecotourism that is "*an enlightening nature travel experience contributes to conservation of the ecosystem, while respecting the integrity of host communities*".⁴³ In light of above definition, nature conservation and contribution to local communities are two main purposes of ecotourism. Depletion of natural resources is a major ecotourism problem concerned here. This means competition between local/host

³¹ Ibid., (Making Tourism Sustainable: A Guide for Policy Makers)

³² Ibid., (Making Tourism Sustainable: A Guide for Policy Makers)

³³ 'a process to meet the needs of the present without compromising the ability of future generations to meet their own needs', *World Commission on Environment and Development* (1987)

³⁴ *Quebec Declaration on Ecotourism*, (2002)

³⁵ United Nations, *Transforming Our World: The 2030 Agenda For Sustainable Development*, visit

<<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>>, accessed on 17th July 2019

³⁶ Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.

³⁷ Ensure sustainable consumption and production.

³⁸ Conserve and sustainably use the oceans, seas and marine resources for sustainable development.

³⁹ *Quebec Declaration On Ecotourism*, visit <<http://www.gdrc.org/uem/eco-tour/quebec-declaration.pdf>>, accessed on 17th July 2019

⁴⁰ Ranjith Bandara, *The Practice of Ecotourism in Sri Lanka: An Assessment of Operator Compliance towards International Ecotourism Guidelines*, (South Asia Economic Journal, 10(2), 2009), p. 471–492

⁴¹ *Vientiane Declaration on Ecotourism for Developing Countries*, visit

<http://www.discoverymice.com/WECO2009LAOS/VIENTIANE%20DECLARATION%20_UNWTO_.pdf>, accessed on 17th July 2019

⁴² Francoise Simon, "*Regulating Ecotourism: Legal Frameworks and Market Guidelines*" visit <<https://environment.yale.edu/publication-series/documents/downloads/0-9/99simon.pdf>>, accessed on 17th July 2019

⁴³ Ibid., (Francoise Simon)

communities and tourists for sharing local resources⁴⁴ (drinking water and bathing) that can exert pressure on local communities in both environmentally and socially.⁴⁵

Further, there are seven unique principles identified in ecotourism which involve travelling to natural destinations, minimizing impact, building environmental awareness, providing direct financial benefits for conservations, providing financial benefits and empowerment for local people, respecting local culture and supporting human rights.⁴⁶ These principles direct to rationalize true meaning of ecotourism.

Considering above definitions and principles associated therewith, viable instrument⁴⁷ such as a statute needs for governments to be used for implementation sustainable tourism practices. Strict control over ecotourism related activities is much needed as many Sri Lankan enterprises misapplying the concept. Sri Lanka has lack of understanding of true principles of ecotourism.⁴⁸ Many of nature related tourism-business practices in Sri Lanka do not belong to proper ecotourism. Use of ecotourism for economic growth instead of sustainability is highly apparent in Sri Lanka.⁴⁹ "Green Washing"⁵⁰ has become major threat in Sri Lankan tourism industry required immediate attention of law makers. Not only Sri Lanka but many third world countries commonly face above challenge due to inadequacy of control and commanding tools. The government is significant in leading ecotourism development and formulating national ecotourism strategy required in planning and operating ecotourism.⁵¹ However, *economic development* and *environmental protection* should go hand in hand in tourism sector instead of being two opposing forces.⁵² Crucially, ecotourism breed in western cultural, economic and political setting⁵³ and now becoming need of third world countries like Sri Lanka. Therefore, re-examination of exiting tourism laws of Sri Lanka through the lens of ecotourism has to be in between above two ends ensuring proper balance is much focused by the research.

4. Sri Lankan Statutory Law on Tourism; Unforeseen Reality

*"Man is both creature and moulder of his environment which gives him the opportunity for intellectual, moral, social, and spiritual growth and the protection and improvement of the human environment is a major issue which affects the well-being of people and economic development throughout the world, it is the urgent desire of the people of the whole world and the duty of all governments."*⁵⁴

While concerning importance of human involvement in environmental protection, it is noteworthy that Sri Lankan tourism law is highly fragmented due to scattered legislations. Body of Sri Lankan tourism law consists of Tourism Development Act No 14 of 1968, Tourism Act No 38 of 2005 (SLTDA) and Ceylon Hotels Corporations (Repeal) Act No 25 of 2007. Tourism Development Act is more substantial in nature along with Tourism Act which is more procedural in nature as it sets an institutional regime.

Tourism Development Act No 14 of 1968 is mainly focused on promotion of tourism and development. The Act highly emphasized on facilitating factors of tourism such as rules relating to establishment of rest houses, national holiday resorts, regulation, supervision and operation of tourism services etc. Deep digging into the Act provides that it is silent on sustainable tourism and failed to recognize sustainable tourism practices. Non recognition of sustainable tourism during period of 1968 may be the reason for above legislative failure. However, subsequent amendments to the above Act have also being reluctant to recognize principles of sustainable tourism.

Tourism Act No 38 of 2005 (SLTDA) is largely based on setting-up vibrant institutional framework to govern tourism related activities. SLTDA established Sri Lanka Tourism Development Authority (TDA), Tourism Development Fund, Tourism Advisory Committee, Sri Lanka Institute of Tourism and Hotel Management, Sri Lanka Tourism Promotion Bureau and Sri Lanka Convention Bureau. Above institutional driven legislation has little emphasize on regulation of environmental aspects of tourism⁵⁵ and avoided express recognition of sustainable tourism. Section 29⁵⁶ of SLTDA largely relies upon National

⁴⁴See Note 12., (*Environmental degradation in Unawatuna Beach, Sri Lanka*)

⁴⁵Arundathie Abeysinghe, *Environmental impacts of sustainable tourism in Sri Lanka*, South Asia Culture, History & Heritage, 2015,p .2

⁴⁶ Honey, M., *Ecotourism and Sustainable Development: Who Owns Paradise.*,(Island Press, USA , 1999)

⁴⁷ based on command and control

⁴⁸ See Note 40., (Ranjith Bandara), p. 471

⁴⁹ See Note 40., (Ranjith Bandara), p. 476

⁵⁰ This means use of green marketing deceptively to promote the perception that an organization's products, aims or policies are environmentally friendly.

⁵¹Tuan Phong Ly and Thomas Bauer, *Ecotourism in mainland Southeast Asia: Theory and practice* (Tourism, Leisure and Global Change, 1,2014),p.63

⁵²See Note 30., (*Making Tourism Sustainable: A Guide for Policy Makers*)

⁵³Erlet Cater , *Ecotourism as a Western Construct*, (2006, Journal of Ecotourism, 5(1-2)), p. 23-39

visit <<https://pdfs.semanticscholar.org/25e0/d752b5f9858981437feb20001c25a0085d47.pdf>> accessed on 19th June 2019

⁵⁴Chinnappa v. Union of India (2002) INSC 453

⁵⁵ Section 2 (3) f, 26(3), 29 of Tourism Act No 38 of 2005

Environmental Act (NEA) and accompanying with NEA may result conflict of interests, losing institutional autonomy as well as independence of both Tourism Development Authority (TDA) and Central Environmental Authority (CEA). In practical, above double filtering system⁵⁷ or duplication of powers may cause inefficiency in decision making of TDA. On the other hand, allocation of power to a task specified institution with qualified expertise in the relevant field (CEA) is better than centralizing power towards single institution with lack of specific expertise (TDA). Powers declared in section 29 are mostly vest with minister in charge of environment who is pure political entity. Therefore, proper check and balance needed to be followed throughout the entire Act to prevent negative political influences.

Draft final report of Sri Lanka Sustainable Tourism Development Project in 2009⁵⁸ examined prevailing environmental laws of Sri Lanka which are to facilitate sustainable tourism such as National Environmental (Amendment) Act No. 53 of 2000, Coast Conservation Act No.57 of 1981, Fauna and Flora Protection Ordinance Amended Act No. 49 of 1993 and the North Western Provincial Environmental Statute No. 12 of 1990. The report implies that none of tourism related legislations have provided effective command and control over ecotourism and encouraging sustainable tourism. Above legislations are for the purpose of control but do not adequate enough to promote sustainable tourism. Need of a basic legal framework in support of sustainable tourism which applicable for all types of tourism in all locations is highly demanded.

As identified above, leading tourism legislations in Sri Lanka rooted upon mere economic development and have paid little importance towards environmental protection in light contemporary international agreements discussed. In reality, Sri Lanka is experiencing many tourism activities which are not genuinely fall within what is meant by ecotourism. Meanwhile, Sri Lanka as a country rich of biodiversity could earn multibillion through correct application of ecotourism. For this, firstly activities misusing ecotourism should be controlled properly and secondly promotion of authentic nature of ecotourism should be conducted. None of tourism laws in Sri Lanka clearly identifies ecotourism nor regulates ecotourism malpractices. Tourism legislations of Sri Lanka are completely silence and obsolescent on ecotourism. Sri Lanka as a third world country needs to be more attentive on generating wealth for countrys' development through tourism based on 'controlled but tourist friendly approach'.

5. Overview of Sri Lankan Tourism Act No 38 of 2005; Classic Deadlock for Eco-Tourism

Discussion of the research is deliberately limited to the scope of Tourism Act No 38 of 2005 as it enables leading regulatory arm for tourism industry in Sri Lanka. TDA empowered by the Tourism Act to facilitate planning and implementation of tourism policies and other related industries within the island. Non-recognition of eco-tourism is clearly visible in entire Tourism Act No 38 of 2005 as well as Tourism Development Authority (TDA) is not sufficient enough to acquire prime notions of ecotourism as it is not included within its parameters. Therefore, TDA disable to control any activity downgrading ecotourism such as 'green washing' and tourism activities which are not truly ecotourism. Badly, tourism enterprises are carrying out numerous environmentally harmful activities shielding wrongly identified ecotourism and also due to lack of legal capacity for TDA to regulate such activities. If this is not regulated immediately; depletion of natural resources will be resulting while losing importance of Sri Lanka as a travel destination.

Based on earlier discussions on conceptual proximity, at least availability of sustainable tourism could be advantage for recognition of ecotourism in the country. Capacity of TDA is determined by section 3 and section 12 of the Tourism Act and section 3(f) specifies that *inter alia* objectives of TDA shall be to develop and promote adequate, attractive, and efficient tourists services, inclusive of the hospitality industry in a sustainable manner. This provision could be interpreted in favor of introducing sustainable tourism to Sri Lanka while examining possibility of incorporating ecotourism successively. Sometimes introduction of ecotourism from back door may not sensible. Section 12 (d) of the Act states that *inter alia* TDA may exercise powers to prescribe, regulate, maintain and enforce the standards to be maintained by different enterprises of the tourism and travel industry. Positively, SLTDA prepared guidelines for ecotourism facilities and activities operation⁵⁹. However, guidelines are not compulsorily binding upon stakeholders in tourism specifically tourism enterprises. Need of strictly enforceable legal instrument is demanded to control environmentally unfriendly behaviors of various actors in tourism.

Further section 63(1) of the Act identifies three forms of offences i.e. for any requirements of the Act, making false statement deliberately, rejection of providing information or providing false information and resisting or obstructing exercise of power, function or duty by any authorized person by the Act. Literally, ecotourism related malpractices could not be clearly identified as a punishable offence by the Act.

The Tourism Act is more focused on institutional framework than enabling access to justice for any person against anti-tourism behaviors. The Act does not empower any person to make complains against environmentally harmful activities and does not grant power to TDA for investigation such matters. Any victim of such activity has to seek substitute means and ways to get remedies.

⁵⁶ Authority to be vested with powers under the National Environmental Act and the Antiquities Ordinance.

⁵⁷ Section 29(2) of Tourism Act No 38 of 2005

⁵⁸ Sri Lanka Tourism Development Authority, *Draft Final Report; Sri Lanka Sustainable Tourism Development Project on Environment Assessment and Management Framework*, 2009,

visit <http://www.slttda.lk/sites/default/files/EAMF_report_15.06.2009.pdf>, last accessed on 17th July 2019

⁵⁹ Sri Lanka Tourism Development Authority, *Guidelines Eco Tourism Facilities And Activities Operation, Visit* <<http://www.slttda.lk/sites/default/files/Guidelines%20Eco%20Tourism.pdf>>, last accessed on 18th July 2019

Considering all above lacunas, TDA has become a ‘tiger without teeth’ in promoting ecotourism and regulating ecotourism. Either adoption of ecotourism based legislation or amending existing legislation to meet demands of ecotourism are positive options available before law makers of Sri Lanka. Ecotourism is widely recognized as a means to derive economic benefits from natural forest resources.⁶⁰ True ecotourism and ecotourism based products could support economic growth of Sri Lanka as a third world country.

6. Challenge for promotion of Eco-Tourism in light of Sri Lankan Tourism Act No 38 of 2005

As identified above, absence of ‘ecotourism’ within objectives and powers of TDA is the major legal challenge in the Tourism Act of Sri Lanka. Composition of the Authority is another crucial factor affecting for transparency of decision-making and policy formulations by the Authority. According to section 4 of the Act, there are 09 members present in TDA namely Chairman, Director General, Secretary to the Ministry of Tourism, Secretary to the treasury, member of Tourists Hotel Association of Sri Lanka, member of Sri Lanka Association of Inbound Tour Operators, member of Travel Agents Association of Sri Lanka, experienced person in the field of travel and tourism and secretary to the Ministry of Provincial Councils. All above persons are appointed by Minister of tourism who is a political entity. Transparency, independency and autonomy of the Authority in decision making are very important ensuring ecotourism because mere economic development is not the only concern of ecotourism. Reducing high tendency of adopting politically favorable decisions should be well regulated by proper legislation. Laws should not become spider webs through which big flies pass and the little ones get caught.⁶¹

7. Lessons from foreign jurisdictions for a raft of legislation

Ecotourism has equal importance in both developed and developing countries. Need of revising tourism laws of Sri Lanka particularly Tourism Act could be outlined on the basis of infeasibility and unsuitability of above provisions discussed with realities. Strict legal framework would not be for benefit of third world countries because economic development is inalienable requirement of these countries which could not sacrifice under any circumstance. Specific legislation or suitable amendments for ecotourism is necessary without diminishing interests of tourists for travelling Sri Lanka. Legally binding instrument for the implementation of sustainable ecotourism and avoidance of non-sustainable forms of ecotourism for sensitive areas should be established.⁶²

Relevancy of selected jurisdictions for Sri Lanka was carefully considered from both developmental and geographical perspectives. According to UNWTO Tourism Highlights in 2018⁶³ for year 2017, Vietnam occupied 5th place among countries in South East Asia while Sri Lanka occupied 2nd place among countries in South Asia. Both Sri Lanka and Vietnam are third world countries rich of bio diversity and natural resources.

Secondly, ‘Tourism Australia’, regulates tourism in Australia considered due to high technical and scientific composition of board of directors which could be recommended for Sri Lanka. Careful overview of organization of the regulatory body from institutional perspective directed to refer Australian Law because tourism has equal importance for every country.

Vietnam Law on Tourism No 44 of 2005⁶⁴

The Tourism Ordinance of 1999 of Vietnam repealed by new Law on Tourism. The Law drafted in 2003 with assistance of United Nation’s World Tourism Organization. Principles of sustainable tourism are largely incorporated in new Law to ensure socially, economically and environmentally responsible tourism in Vietnam. Tourism law drafting committee of Vietnam was conducted range of study tours and workshops with different stakeholders such as tourism service providers, tour operators, local communities and local government bodies etc. Basically, the success factor of Vietnam tourism law was due consideration of needs of grass root level. Therefore, the Law became answerable and responsible for demands and needs of who actually affected by tourism. In Vietnam, this Law prevails above all other tourism laws in the country⁶⁵ and government agency responsible for tourism regulation must necessarily comply⁶⁶ with Law on Tourism.

⁶⁰Kanchana Wickramasinghe, *Ecotourism for Sustainable Forest Management in Sri Lanka*, Research Studies: Environmental Economic Policy Series No.12, Institute of Policy Studies of Sri Lanka, November 2009

⁶¹Honore de Balzac

⁶²See Note 28.,(Making Tourism Sustainable: A Guide for Policy Makers) 2006

⁶³UNWTO, *Tourism Highlights*; 2018 edition, visit <<https://www.e-unwto.org/doi/pdf/10.18111/9789284419876>> , last accessed on 20th July 2019

⁶⁴Vietnam Law on Tourism No 44 of 2005, Visit <https://www.wto.org/english/thewto_e/acc_e/vnm_e/WTACCVNM43_LEG_12.pdf>, last accessed on 20th July 2019

⁶⁵Article 11 (2) of Vietnam Law on Tourism No 44 of 2005 provides that *the State administrative agency in charge of tourism at the central level shall be responsible for assisting the Government in performing State administration of tourism and organizing and coordinating with other state agencies in performing State administration of tourism.*

⁶⁶Article 11 (2) implies this meaning

Article 4 of the Law provides definitions for terms ‘sustainable tourism’ and ‘eco-tourism’. Sustainable tourism means development of tourism that meets the needs of the present without harming the ability of the future to meet tourism needs.⁶⁷ Eco-tourism means a type of tourism that is based on nature, connected with the local cultural identity and with the participation of local communities for the sake of sustainable development.⁶⁸ Clarity of provided definitions with internationally accepted definitions are commendable.

Article 5 of the Law identified six key principles to consider in tourism development. The principle embedded in Article 5(1) has emphasized on ecotourism that is ‘to develop sustainable tourism in line with master plans and plans, ensuring harmony between socio-economic development and environmental protection; develop cultural and historical tourism and eco-tourism in priority and key regions; and conserve, embellish and promote the values of tourism resources’.⁶⁹ The provision expressly binds the state and responsible institutions to comply with sustainable tourism when planning tourism development while prioritizing ecotourism and conserve, improve and promote natural resources. Article 8(2)⁷⁰ made statutorily compulsory for Tourism Associations to comply with above principles and entire tourism law.

Article 9 sets out five ways for protection of the tourism environment i.e.

1. The natural and social humanity environment shall be protected, enhanced and developed with the aim of ensuring a green, clean, sound, safe, secure, wholesome and civilized tourism environment.
2. Ministries and ministerial-level agencies shall, within the scope of their duties and powers, issue regulations in order to protect, enhance and develop the tourism environment.
3. People’s Committees⁷¹ at all levels shall take measures to protect, enhance and develop the tourism environment in conformity with local conditions.
4. Organizations and individuals doing tourism business must collect and treat wastes discharged during their business operations; remedy negative impacts on the environment caused by their business operations; and take measures to prevent and fight against social evils in their business establishments.
5. Tourists, local communities and other organizations and individuals must protect and preserve landscapes, the environment, national cultural identity and fine national customs and practices, and behave in polite and civilized manners in order to promote the image of the country, people and tourism of Vietnam.

The provision assigns duties of government bodies, provincial councils, tourism enterprises, individuals, tourists and local communities etc. for protection of natural resources engage with tourism. Verification of duties from top to bottom is important to expect obligatory conduct from everyone for promotion of tourism in light of sustainability.

Under scope of state administration of tourism⁷², the state made eligible to issue and withdraw licenses and certificates of tourism⁷³ as well as to monitor, inspect and settle complaints and denunciations and handle violations of tourism law⁷⁴. Power given for state to enforce law on tourism including right to hear violations of tourism laws provides opportunity for voluntary compliance by every stakeholder involve with tourism. This deterrent factor has high impact on controlling environmental malpractices occur through tourism.

Article 12 identifies eight prohibited activities in tourism including causing harm to national sovereignty, national interests, defense, security, social order and safety, cultural traditions, ethics and fine national customs and practices⁷⁵; constructing tourism projects which are not in compliance with approved tourism plans⁷⁶; damaging tourism resources and environment⁷⁷; discriminating against tourists and making illicit profits from tourists⁷⁸; scrambling for customers or insisting on or forcing customers to purchase goods or services⁷⁹; running a tourism business without license and registration or out of their registered

⁶⁷ Article 4 of Vietnam Law on Tourism No 44 of 2005

⁶⁸ Ibid., (Art.4) 2005

⁶⁹ Article 5(1) of Vietnam Law on Tourism No 44 of 2005

⁷⁰ The tourism association shall take part in organizing tourism publicity and promotion activities and in formulating and disseminating the provisions of law on tourism.

⁷¹ Executive arm at provincial level (People’s Councils), and is responsible for formulating and implementing policy in Vietnam.

⁷² Article 10 of Vietnam Law on Tourism No 44 of 2005

⁷³ Article 10(8) of Vietnam Law on Tourism No 44 of 2005

⁷⁴ Article 10(9) of Vietnam Law on Tourism No 44 of 2005

⁷⁵ Article 12 (1) of Vietnam Law on Tourism No 44 of 2005

⁷⁶ Article 12 (2) of Vietnam Law on Tourism No 44 of 2005

⁷⁷ Article 12 (3) of Vietnam Law on Tourism No 44 of 2005

⁷⁸ Article 12 (4) of Vietnam Law on Tourism No 44 of 2005

⁷⁹ Article 12 (5) of Vietnam Law on Tourism No 44 of 2005

business line or scope⁸⁰; abusing the legal status of other organizations or allowing other persons to use their legal status to do illegal business⁸¹ and abusing one's position and powers to take bribes from, harass or trouble organizations or individuals doing tourism business or tourists⁸². Informed stakeholders in tourism are worthwhile for promotion and successful implementation of ecotourism practices.

Tourism Australia Act No 74 of 2004⁸³

Australia is empowered 'Tourism Australia'; a body corporate consists of board of directors by Tourism Australia Act No 05 of 2004. The Act came into operation on 5th March 2016. As reported, there was no single regulatory instrument governing tourism in Australia⁸⁴ before the Act. According to *section 12* of the Act, the Board consists of the following members; the Chair, the Deputy Chair, the Managing Director and six other members. Minister appoints members of the Board in writing except managing director.⁸⁵ *Section 14* of the Act provides a closed list of qualifications considered for appointment of members and the Minister may appoint a person as a member only if the Minister is satisfied that the person has high level expertise in one or more of the following areas:

- (a) international tourism;
- (b) domestic tourism;
- (c) corporate governance;
- (d) financial management;
- (e) marketing and promotion;
- (f) business;
- (g) investment strategies;
- (h) infrastructure in Australia that supports tourism, including events;
- (i) transport networks;
- (j) economic analysis;
- (k) current and emerging technologies;
- (l) regional development;
- (m) environmental management;
- (n) Australian indigenous tourism or culture.

In light of above provisions, majority of members are subject experts having knowledge from different aspirations of tourism and their contribution is for enhancement of tourism industry in the country. Tourism Australia is the central authority responsible for formulation of tourism policies and based on above higher degree of knowledge contribution from different sub disciplines of tourism is immensely for the benefit and best interest of the tourism industry of the country. Intellectual needs and collaboration for the authority could be cost effectively and timely satisfied because of above diversified composition. Scientific and technical organization of the authority facilitates better environment for high performance and rationalized decision making.

Based on above observations, substantial aspect of ecotourism in Sri Lankan Law could be developed by considering Vietnam Law on Tourism No 44 of 2005 while procedural aspect of ecotourism in Sri Lankan Law could be developed by considering Tourism Australia Act of 2004.

8. Conclusion

Ecotourism is a big business worldwide.⁸⁶ It is used as a mere tool of marketing and promotion of goods and services. This danger has influenced for tourism industry very badly because many counterfeits labeled as ecotourism. Even though green tourism has become very popular particularly among developing countries, they very rarely recognized actual meaning of it. Hence, impact of ecotourism continued to grow in both national and international context. Responsible travel to natural areas that conserves the environment and improves the well-being of local people is known as ecotourism.⁸⁷ This refers efforts to provide

⁸⁰ Article 12 (6) of Vietnam Law on Tourism No 44 of 2005

⁸¹ Article 12 (7) of Vietnam Law on Tourism No 44 of 2005

⁸² Article 12 (8) of Vietnam Law on Tourism No 44 of 2005

⁸³ Australian Government, *Federal Register of Legislations*, visit <<https://www.legislation.gov.au/Details/C2016C00443>>, last accessed on 19th June 2019

⁸⁴ E.J. Techera & N. Klein, *The role of law in shark-based eco-tourism: lessons from Australia*. (Marine Policy, 39 2013), p. 25 Visit: <<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.963.1701&rep=rep1&type=pdf>> last accessed on 20th June 2019

⁸⁵ Section 13(1) of Tourism Australia Act of 2004

⁸⁶ Archana, K, *Menace of Ecotourism and the Role of legislations in India*, (Bharati Law Review, 2(1),2013), p. 109 ,Visit <<http://docs.manupatra.in/newslne/articles/Upload/F503F69B-EBA6-4B5F-8457-A5CA2484D747.pdf>> last accessed on 20th July 2019

⁸⁷ International Ecotourism Society, 1990

for environmental and social sustainability through the use of tourism as an economic activity.⁸⁸ Ecotourism recognized as a *magic mantra* pacified adverse effects of tourism in light of conservation.⁸⁹

Bio diversity of Sri Lanka motivated ecotourism with the intention of preserving these natural resources for next generation. As identified Sri Lankan Tourism Act primarily based on development perspective and largely deviated from environmental protection. As a third world country, focusing economic development is general but ignorance of environmental preservation in the context of tourism could not be justified anymore. Sri Lankan Tourism Act is highly institutional driven and substantial issues are very rarely discussed. However, Tourism Development Act No 14 of 1968 is attempted to discuss many aspects but it is silent on environmental protection in tourism. The issue should be directly addressed within the Tourism Act itself instead of lying upon other environmental legislations is presented and argued throughout the research. The reason is proper access to justice is denied without being task specified. Therefore, the control and commanding aspects in relation to tourism should be reviewed and well-focused on ecotourism prospects. Conclusion is based that negative effects of ecotourism needed to well control with support of sufficient legislative enactments.

Progressively, Indian courts provided wide spectrum of judicial decisions recognizing legal protection for ecotourism. In *Union of India V Kamath Holiday Resorts Pvt Ltd*⁹⁰ the supreme court of India held that lease for a snack bar and a restaurant for visiting tourist within reserved forest needed prior approval of imperative. Protection of environment and preservation of forest wealth has led basis for above decision. In the *Forest Friendly Camps Pvt Ltd V State of Rajasthan*⁹¹ tiger project established in the vicinity of National Park and various hotels and resorts were allowed to setup. But the government regulated entry of private vehicles to the park. Petitioners said that above restriction was hampering tourism. However, the court rejected the petition. The court emphasized different aspects of ecotourism such as tourism should be based on environmental friendly concept and tourism activities should be environmentally, economically socially and culturally sustainable. Sri Lankan courts have to be reluctant to construct or interpret rules relating to ecotourism because it has to wait until matter comes before them and access to justice for victims is unclear due to diversification. However, still Sri Lankans are enjoying some considerable level of results of judicial activism thanks to the creativity of Bench & the Bar.⁹² The problem of not having proper definition for eco-tourism in Sri Lankan Tourism Act could be remedied after considering Vietnam Tourism Law. Institutional transparency could be enhanced considering developments of Australian Tourism Act. Further, different aspects of ecotourism such as state duties, offences and punishments could be significantly addressed as identified above.

All these interpretations direct to believe that environmental protection and economic development should be interwoven in tourism legislation in order to promote ecotourism. Success implementation of ecotourism would be vain without adequate understanding of underlying factors and careful planning and management and ecotourism may include unsustainable aspects.⁹³ Reflection of Sri Lankan Tourism Act through the lens of ecotourism is clearly shown high emphasize on economic development with little emphasize on environment facets. Fruits of tourism for Sri Lanka as a third world country never could be undervalued. Hence ecotourism based tourism legislation has substantial impact on every stakeholder in tourism industry. If tourism is to contribute to sustainable development then it must be economically viable, ecologically sensitive and culturally appropriate.⁹⁴ Factors affecting the development of ecotourism in third world countries involve the state of the environment, the extent and sophistication of protected area management, intensity levels of ecotourism, local community involvement, political and social sustainability and personal safety.⁹⁵ While tourism industry is becoming a boom of Sri Lankan economy in post war era, it is very important to maintain a balance between development as well as ecological dimensions in the fabric of Sri Lankan Tourism. Vietnam Law on Tourism No 44 of 2005 together with Tourism Australia Act of 2004 recommends sustainable solutions for Sri Lankan Tourism Act to be harmonized with the concept of ecotourism in favor of growth of economy as a third world country.

⁸⁸ Botello-Samson, Darren, *Ecotourism and Legal Institutions*. (Western Political Science Association, Annual Meeting Paper, 2011), Visit <<https://ssrn.com/abstract=1766712>> , accessed on 20th July 2019

⁸⁹ Ibid., (Archana, 2013)

⁹⁰ AIR 1996 S.C 1100

⁹¹ AIR 2002 Raj 2001

⁹² T.B. Abeysekara, *The role of a judge, What it is and what it ought to be: The Independence of Judiciary and Judicial Activism clothed in Judicial Review in Sri Lanka*, Proceedings of 8th International Research Conference, KDU, Published November, p. 163, Visit: <<http://ir.kdu.ac.lk/bitstream/handle/345/1380/law-028.pdf?sequence=1&isAllowed=y>> last accessed on 19th June 2019

⁹³ E. Cater, E., *Ecotourism in the third world: Problems for sustainable tourism development*, (Tourism management, 14(2) 1993), p. 85.

⁹⁴ G. Wall, *Is ecotourism sustainable?* (Environmental Management, 21(4), 1997), p. 483-491.

⁹⁵ D. Weaver, *Ecotourism in the less developed world*. Cab International. 1998

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