

**Legal and Regulatory Issues of Consumer
Protection in E-Tourism with
Special Reference to State of Sikkim**

A Dissertation Submitted

To

Sikkim University



In Partial Fulfilment of the Requirement for the
Degree of Master of Philosophy

By

Menuka Devi Adhikari

Department of Law

School of Social Sciences

February 2017

DECLARATION

Date:

I declare that the dissertation entitled “**LEGAL AND REGULATORY ISSUES OF CONSUMER PROTECTION IN E-TOURISM WITH SPECIAL REFERENCE TO STATE OF SIKKIM**” submitted to Sikkim University for the award of the degree of **Masters of Philosophy in Law** is my original work. This dissertation has not been submitted for any other degree of this University of any other university.

Menuka Devi Adhikari

M.Phil Scholar

Roll No: 15MPLW04

Registration No:15/M.Phil/LAW/03

Department of Law

Sikkim University

Tadong-737102

We recommend that this dissertation is placed before the examiners for evaluations.

Name of the Head of Department

Name of the Supervisor

Prof. Intiaz Gulam Ahmed
(Head) Department of Law
Sikkim University

Dr. Nidhi Saxena
Assistant Professor
Department of Law
Sikkim University

CERTIFICATE

This is to certify that the dissertation entitled “**LEGAL AND REGULATORY ISSUES OF CONSUMER PROTECTION IN E-TOURISM WITH SPECIAL REFERENCE TO STATE OF SIKKIM**” submitted to the Sikkim University in partial fulfilment for the requirement of the degree of **Masters of Philosophy in Law** embodies the results of the bona fide research work carried out by **Miss Menuka Devi Adhikari** under my guidance and supervision.

All the assistance and help received during the course of investigation have been duly acknowledged by her.

Supervisor:

Dr. Nidhi Saxena

Assistant Professor

Department of law

Sikkim University

Tadong- 737102

Place: _____

Date: _____

PLAGIARISM CHECK CERTIFICATE

This is to certify that plagiarism check has been carried out for the following M.Phil dissertation with the help of *Urkund* software and the result is within the permissible limit decided by the University.

Legal and Regulatory Issues of Consumer Protection in E-Tourism with Special Reference to State of Sikkim

Submitted by **Miss Menuka Devi Adhikari** under the supervision of
Dr. Nidhi Saxena, Assistant Professor, Department of Law,
School of Social Sciences, Sikkim University,
Gangtok-737102, India

Signature of the Candidate

Countersigned by the Supervisor

ACKNOWLEDGEMENT

It is a pleasant task to express my thanks to all those who helped in many ways in completion of M.Phil dissertation and made it an unforgettable experience for me.

Foremost, I would like to express my sincere gratitude to Prof. **Imtiaz Gulam Ahmed**, Head of Department of Law, Sikkim University. This work would not have been possible without his guidance, support and encouragement.

I am also extremely indebted to Associate Professor **Dr. Pravin Mishra** Department of Law, Sikkim University. Despite of his busy schedule; he reviews my research proposal and gives his valuable suggestions and made corrections.

I would like to express my sincere and deepest gratitude to my supervisor, **Dr. Nidhi Saxena**, Assistant Prof. Department of Law, Sikkim University, a person with amicable and positive deposition. Madam has always made available to clarify my doubts. Her expertise, invaluable guidance, constant encouragement, affectionate attitude, understanding and patience added considerably to my experience.

This dissertation would not come to a successful completion without some special individuals. Words fail to express gratitude from the core of my heart to the Hon'ble Minister **Shri Ugen T. Gyatso Bhutia** of Tourism and Civil Aviation Department, Government of Sikkim. Hon'ble Sir extended unstinted support and constant help. He was always besides me during the hard moments to push me and motivate me. Whenever I visited his office, I got new idea to input my research work.

I expand my thanks to Principal P.S to Hon'ble Minister Tourism, **Shri Prakash Pradhan** for immense help. I also extend my thanks to Joint Secretary (Adm) Tourism **Shri Dharma Bhusan Gazmer** for providing published material related to Tourism, Government of Sikkim and AD (IT) of Tourism Department **Ms. Tenzing T. Bhutia** for providing the list of various online links related to Sikkim Tourism.

I also give my special thanks to PRO **Shri Karma Tshering Bhutia** of Tourism Grievances Cell, Gangtok, for giving valuable time to interact in the interview session, which I conducted without any pre decided plan. I can see the good shape of my

dissertation because of his immense help. My special thanks to Deputy Director, Tourism Department **Mrs. Nima Choden Bhutia** for explaining the procedure of the filing complaints in the Grievances Cell. My heartfelt thanks to the Senior Information Assistant, Tourism and Information Centre Gangtok, **Mrs. Anita Pradhan** for providing recorded materials, which help me a lot in writing my dissertation.

Words are short to express my deep sense of gratitude towards my fellow friends for their support and precious friendship.

I would like to thanks to librarian and all the library staff for helping in my academic pursuits. I also extend my thanks to UGC for providing finance for undertaking this Research.

Special thanks to my **Mother Father** and the entire **family** members for encouraging me throughout my life and for this degree. I would also like to thank my beloved nieces **Prava Adhikari** and **Dr. Chandrawati Gautam** for being with me in my final editing of dissertation for steady help.

Finally, I pay my obeisance to **GOD**, the almighty to have bestowed upon me good health, courage, inspiration, zeal and the light.

- **Menuka Devi Adhikari**

PREFACE

My research work “**Legal and Regulatory Issues of Consumer Protection in E-Tourism with Special Reference to State of Sikkim.**” deals with the development of e-tourism with the employment of Information and Communication Technology. This research analyses the existing structure and position of the legal framework to curb the major legal and techno-legal issues, which protects tourist/consumer rights in this contemporary e-tourism business. The study also discusses the decided cases of tourism/ e-tourism. For coming on grounded and rationale solutions I examined various Books/ e-books, Journals/e-journals, News Papers/ online Newspapers, Online Articles and visited various relevant websites.

The first chapter “*Introduction,*” discuss the important definitions along with the development of tourism and e-tourism industry throughout the country. The chapter also converse about the various developmental stages of tourism industry in the State of Sikkim and the changes, occurred after the introduction of Information and Communication technology (ICT). By giving the outline of the research, this introductory chapter provides the Objective of Research, Research Questions, Hypothesis and the Research Methodology, wherein mentions the research tools used to prepare this dissertation as a whole.

The second chapter is “*Legal issues of e-tourism*”. The chapter discusses legal issues of e- tourism. The researcher points out eight major legal issues arising when using Information Technology in tourism/ e-tourism business such as Privacy, Fraud, Identity Theft, Safety & Security, and Jurisdiction. The issues are not addressed in any National or International Legislations.

The third chapter “*Legal Frameworks of e-tourism* examines the legal framework which governs and operates the modern e-tourism industry in India. The chapter covers the Indian as well as international legal framework on e-tourism. The present laws which may applicable on the e-tourism business in India are the Consumer Protection Act, 1986, Indian Contract Act, 1872, Information Technology Act 2000, Competition Act, 2000 and the Consumer Protection Bill, 2015; all these have been discussed. The International documents on e-tourism are the United Nation Commission on International Trade Law (UNCITRAL), Organisation of Economic

Co-Operation Development (OECD), United Nation Conference on Trade and Development (UNCTAD) and United Nation World Tourism Organisation (UNWTO) has been discussed in the chapter.

In the fourth chapter "*E-tourism in Sikkim and the local Legislations,*" the researcher had discussed the growth of tourism and e-tourism specifically in the state of Sikkim. Further chapter analyses various provisions of local legislations the SRTT, Act, 1998 and SRTT Rules, 2008 and SRHSE Rules, 201. The researcher had analysed the data collected by using research tool of interview. The researcher interviewed the Public relation Officer of the Grievances Cell of Tourism and Civil Aviation Department, Government of Sikkim on the subject of the operation of the division of the tourist Grievances Cell, M.G. Marg, Gangtok.

In the fifth chapter "*Judicial Contribution to e-tourism*", the researcher had analysed and discussed the various cases of tourism/e-tourism business decided by the Consumer Redressal Forums in India and foreign courts cases as well. The chapter covers cases such as misleading advertisement, deficiency in services and the fraud cases of the tourism related product and services by the travel agencies, tour operators and the service providers in preparing the travel packages by Airways, Roadways, Railways or the Hotel accommodation, has been written in the context.

The sixth chapter is "*Conclusion and Suggestions.*" The researcher has concluded all the chapters by analysing the different points according to the previous chapters and provided suggestions of the problem arising in the modern e-tourism business.

| TABLE OF CONTENTS | PAGE NO. |
|---|----------|
| DECLARATION | i |
| CERTIFICATE | ii-iii |
| ACKNOWLEDGEMENT | iv-v |
| PREFACE | vi-vii |
| TABLE OF CONTENTS | viii-x |
| ABBREVIATIONS | xi |
| CHAPTER-ONE | 1-17 |
| 1. INTRODUCTION | 1 |
| 1.1. DEFINITIONS | 2 |
| 1.2. GROWTH OF TOURISM AND E-TOURISM WITH THE DEVELOPMENT OF INFORMATION AND COMMUNICATION TECHNOLOGY IN INDIA | 5 |
| 1.3. THE GROWTH OF TOURISM AND E- TOURISM IN SIKKIM | 7 |
| 1.4. OBJECTIVES OF STUDY | 13 |
| 1.5. RESEARCH QUESTIONS | 14 |
| 1.6. HYPOTHESIS | 15 |
| 1.7. RESEARCH METHODOLOGY | 15 |
| 1.8. CHAPTERS | 15 |
| 1. Introduction | |
| 2. Legal issues in e-tourism | |
| 3. Legal Framework of e-tourism | |
| 4. E-tourism Industry in Sikkim and the Local Legislation | |
| 5. Judicial Contribution to e-tourism | |
| 6. Conclusion and Suggestions | 14-15 |
| CHAPTER –TWO | 18-37 |
| 2. LEGAL ISSUES IN E-TOURISM | |
| 2.1. E-TOURISM SAFETY, SECURITY AND PRIVACY ISSUES | 20 |

| | | |
|----------|--|-------|
| 2.2. | FRAUD | 25 |
| 2.2.1. | Domain squatting or Cyber Squatting | 28 |
| 2.2.2. | Credit Card Skimming | 28 |
| 2.2.3. | Fake Website looking like genuine website | 28 |
| 2.2.4. | Online Air ticket Scam | 28 |
| 2.2.5. | Unsecured websites without adequate security features | 29 |
| 2.2.6. | E-mail Phishing | 29 |
| 2.3. | IDENTITY THEFT | 30 |
| 2.4. | LIBERALISATION OF E-VISA | 30 |
| 2.5. | JURISDICTION | 32 |
| 2.6. | NO ASSURANCE POLICY | 35 |
| | CHAPTER –THREE | 38-77 |
| 3. | LEGAL FRAMEWORK OF E-TOURISM | |
| 3.1. | INDIAN LEGISLATIONS | 40 |
| 3.1.1. | AN ANALYSIS OF CONSUMER PROTECTION ACT, 1986 | 40 |
| 3.1.2. | AN ANALYSIS OF INDIAN CONTRACT LAWS | 48 |
| 2.1.2.1. | Standard form of Contract | 51 |
| 3.1.3. | COMPETITION ACT 2002 | 62 |
| 3.1.4. | CONSUMER PROTECTION BILL 2015 | 64 |
| 3.2. | INTERNATIONAL GUIDELINES AND ORGANISATION | 65 |
| 3.2.1. | THE UNITED NATION COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL) | 66 |
| 3.2.2. | ORGANISATION OF ECONOMIC CO-OPERATION DEVELOPMENT (OECD) | 68 |

| | |
|--|---------|
| 3.2.3. UNITED NATION CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD) | 72 |
| 3.2.4. UNITED NATION WORLD TOURISM ORGANISATION (UNWTO) | 73 |
| CHAPTER-FOUR | 78-114 |
| 4. E-TOURISM INDUSTRY IN SIKKIM AND THE LOCAL LEGISLATION | |
| 4.1. AN ANALYSIS OF THE SIKKIM REGISTRATION OF TOURIST TRADE (SRTT) ACT, 1998 | 80 |
| 4.2. AN ANALYSIS OF SIKKIM REGISTRATION OF TOURIST TRADE (SRTT) RULES, 2008 | 96 |
| 4.3. AN ANALYSIS OF SIKKIM REGISTRATION OF HOME STAYS ESTABLISHMENT (SRHSE) RULES, 2013 | 104 |
| 4.4. AN INTERVIEW WITH THE PUBLIC RELATION OFFICER (PRO) OF TOURISM AND CIVIL AVIATION DEPARTMENT, GOVERNMENT OF SIKKIM | 110 |
| CHAPTER-FIVE | 115-131 |
| 5. JUDICIAL CONTRIBUTION TO E- TOURISM | 98 |
| CHAPTER- SIX | 132-144 |
| 6. CONCLUSION AND SUGGESTIONS | |
| 6.1.SUGGESTIONS | 142 |
| REFERENCES | 145-147 |

ABBREVIATIONS

| | |
|------------|--|
| CCI | Competition Commission of India |
| CRSs | Computer Reservation Systems |
| E-tourism | Electronic Tourism |
| E-Visa | Electronic Visa |
| E-TV | Electronic Tourist Visa |
| FIR | First Information Report |
| GCET | Global Code of Ethics for Tourism |
| GDP | Gross Domestic Product |
| GDSs | Global Distribution Systems |
| IATO | Indian Association of Tour Operators |
| ICT | Information and Communication Technology |
| IT | Information Technology |
| MRTTP | Monopolies and Restrictive Trade Practice |
| NFR | Northeast Frontier Railway |
| NIC | National Informatics Centre |
| NJP | New Jalpaiguri |
| OECD | Organisation of Economic Co-Operation and Development |
| PIN | Personal Identification Number |
| PRO | Public Relation Officer |
| SHO | Station House Officer |
| SRHSE | Sikkim Registration of Home Stay Establishment Rules, 2013 |
| SRTT Act | Sikkim Registration of Tourist Trade Act, 1998 |
| SRTT Rules | Sikkim Registration of Tourist Trade Rules, 2008 |
| STDC | Sikkim Tourism Development Corporation |
| UNCITRL | United Nation Commission on International Trade Law |
| UNCTAD | United Nation Conference on Trade and Development |
| UNWTO | United Nations World Tourism Organisation |
| WTTC | World Travel and Tourism Council |

CHAPTER - ONE

INTRODUCTION

Freedom of movement or the right to travel is a very important human right. An individual can travel from one place to another within the territory of a country and outside of the country. Such a right is provided in the constitutions of many states, and in documents reflecting norms of international law.¹ The freedom to move freely throughout the territory of India is guaranteed by the constitution of India for the citizens under Article 19(1) (d). But the right is not an absolute right. The Constitution of India provided certain exceptions² to it. The restrictions on the freedom of travel are includes restriction to move in Tribal areas³ and Army area. Another restriction is that freedom of travel is not construed as a right to permit an individual to enter into private property of another. Such an unlawful entry constitutes a trespass, often punishable as a tort or a crime. The constitution of India guaranteed fundamental right to freedom of trade or business of their choice is enshrined under part III of the constitution.⁴ According to this right given under the Constitution and the international instruments the trade or business facilities drawn by the tourism company is available to the tourist online by the implementation of Information Technology.

The tourism businesses developed the economy of developing country like India. Implementing of electronic technology brought more transparency in tourism business; the term “tourism” has been changed to “e-tourism”. E-tourism is the fastest growing business. It has potential to gives information about the destination and displays the product/services through online websites for better convenience to the tourists. Tourism and e-tourism, these two words cannot be studied separately,

¹ Article 13 of Universal Declaration on Human Right, 1948 and Article 12 of International Covenant on Civil and Political Rights, 1966.

² Articles 19(5) and 19(6) of the Constitution of India.

³ "Tribal areas generally mean areas having preponderance of tribal population. However, the Constitution of India refers tribal areas within the States of Assam, Meghalaya, Tripura & Mizoram, as those areas specified in Parts I, II, IIA & III of the table appended to paragraph 20 of the Sixth Schedule." In other words, areas where provisions of Sixth Schedule are applicable are known as Tribal Areas.

⁴ Article 19 (1) (g) of the Constitution guarantees the freedom to practice any profession, or to carry on any occupation, trade or business.

because the tourism is the root of e-tourism. In the traditional tourism business system, new system has been incorporated which simply modified the traditional name of business by adding prefix “e” in the word of tourism. There is no etymological definition given to e-tourism. Even not any legislation at national level or international level defines it. But this term used very often in the world. There are other two words besides “tourism” i.e. “tour”, and “tourist” which needs interpretation.

1.1. DEFINITIONS

By defining the word “tour” etymologically, is derived from the Latin '*tornare*' and the Greek '*tornos*,' meaning 'a *lathe* or circle'; the movement around a central point or axis.' This meaning is changed in modern English to represent 'one's turn.'⁵ The suffix -ism is defined as 'an action or process; typical behaviour or quality' while the suffix -'ist' denotes one that performs a given action. When the word tour and the suffixes -ism and -ist are combined, they suggest the action of movement around a circle. Therefore, like a circle, a tour represents a journey in that it is a round-trip, i.e., the act of going and then habitual to the original starting point, and therefore, one who takes such a journey can be called a tourist.⁶

According to the definition given in the Oxford English Dictionary the word “tour” means “a journey, visiting things of interest or giving performances.” And the word “tourist” is defined as that a person visiting a place for recreation.” According to the Cambridge English Dictionary the word “tour” is defined as “a journey made for pleasure, especially as a holiday, visiting several different places in an area”. And the word “tourist” means “someone who visits a place for pleasure and interest, usually while on holiday.”

⁵ <https://en.wikipedia.org/wiki/Tourism> (Accessed on 20/02/2016)

⁶H. Lalnunmawia, “*Development and Impact of Tourism Industry in India*”.

Available at: <https://www.scribd.com/document/63752881/Tourism-in-India-and-Its-Impact> (Accessed on 16/02/2016)

INTRODUCTION

Sikkim Registration of Tourist Trade (SRTT) Act, 1998, defines the word “tourist” which means “a person or group of persons including pilgrims visiting the State from any part of India or outside India.”⁷

Tourism has constant growth and diversification to become one of the fastest growing economic sectors in the world. It has become a flourishing global industry with the power to shape developing countries like India in both positive as well as negative ways.⁸ Tourism is the general term to cover both demand and supply that has been adopted in various forms and used throughout the World. It is defined as the activities of persons recognized as tourists. A tourist is someone who is making a visit to a main destination outside his/her usual environment for less than a year for any main purpose including holidays, leisure and recreation, business, health, education or other purposes. Now the scope of business is much wider than the traditional awareness of tourists, which included only those travelling for leisure.⁹

According to definition given by the United Nation World Tourism Organisation (UNWTO), "*Tourism comprises the activities of persons travelling to and staying in places outside their usual environment for not more than one consecutive year for leisure, business and other purposes.*"¹⁰

Hence tourism is “a collection of services and trade which deliver the experience of travel by various means such as Roadways, Airways and Railways including the facilities of accommodation, retail shops, amusement businesses and the hospitality services provided for individuals or groups travelling away from home”.¹¹ The change due to technological advancement in the field of computer technology has

⁷Section 2(1) (k) of the SRTT Act, 1998.

⁸ Supra

⁹“Various Definition of Tourism, Available at: <http://www.tourismsociety.org/page/88/tourism-definitions.htm>, (Accessed on 29/02/2016)

¹⁰ In 1975 World Tourism Organization (WTO) came into existence with its headquarter at Madrid in Spain. The WTO covers all sectors of tourism on worldwide basis and provides statistics to improve and regulate tourism in the world. In 1976, there were nearly 220 million international tourist arrivals in the world. This was an increase of nearly 90% in the ten years preceding it.

¹¹Macintosh and Goeldner, “*Definition of Tourism*” Available at: <http://www.tugberkugurlu.com/archive/definintion-of-tourism-unwto-definition-of-tourism-what-is-tourism> (Accessed on 12/02/2016)

changed the system of the operation in tourism. The term “tourism” has also been modified as “electronic-tourism” or “e-tourism” which covered the wide ranges in their length of business chain in this technological world. There is no appropriate definition of e-tourism has been given anywhere in the statutes or legislation in national or international instrument.

The word e-tourism is defined by the Professor Buhalis ¹² in his research on “e-tourism” accordingly e-tourism is the digitalisation of all the progression and value chains in the tourism, travel, hospitality and catering industries that facilitate organisations to maximise their competence and usefulness. Therefore “electronic tourism” is the digitalisation of all practices in the e-tourism which includes e-travel, e-hospitality and e-catering industries. Now all the services are reaching to tourist directly.

The e-tourism is a combination of various services that can be accessed by the tourist through different channels and distribution systems. Hence consumption of services articulates that tourist is a consumer. Hence the tourist will be a consumer according to the definition given under 2(1) (d) of the Consumer Protection (CP) Act 1986. Based on this definition, the Consumer Commission decided the cases relating to issues of tourism by using the word ‘tourist’ as a consumer in case of *M/s. Cox & Kings (I) Pvt. Ltd. V. Mr. Joseph A. Fernanes*.¹³ Therefore the researcher will use the term tourist as consumer in this research.

¹²Professor Dimitrios Buhalis is Head of Department Tourism and Hospitality, Director of the e-tourism Lab and Deputy Director of the International Centre for Tourism and Hospitality Research, at Bournemouth University in England.

¹³(Decided on 20 December, 2005) the consumer court held that “All the discussion are only theoretical options and the only real option available to the Respondents and the other tourists like them, is to mutely suffer the false and misleading advertisement given by the tour operators.

1.2. GROWTH OF TOURISM AND E-TOURISM WITH THE DEVELOPMENT OF INFORMATION AND COMMUNICATION TECHNOLOGY IN INDIA:

As early development of tourism in India, the first conscious and organized efforts to promote tourism in India were made in 1945.¹⁴ Thereafter, the progress of tourism was taken up in a planned way in 1956 overlap with the Second Five Year Plan. The approach has evolved from remote planning of single unit facilities in the Second and Third Five Year Plans. After that the Sixth five year Plan (1980 to 1985) marked the beginning of a new era when tourism began to be considered a major instrument for social combination and economic development.¹⁵ At that time the technology was also developed in the field of computer network and the tourism industry was also flourished by using the facilities of the computer network.

Historically, the Indian “e-tourism” industry is flourished with the advancement of the Information Technology. The rise of “e-tourism” has been one of the most outstanding developments of the Web global shifts towards increased of function of Information Technology by governments emerged in the Nineteen Nineties, with the beginning of the World Wide Web. The business of the Computer Reservation Systems (CRSs) in the year of 1970s, the Global Distribution Systems (GDSs) in the late of 1980s and the Internet in the years of late 1990s have changed working and purposeful practices severely in tourism.¹⁶The tourism industry at first decided on utilizing computerized systems to increase ability in dealing out of internal information and control circulation.¹⁷ The technology as well as e-tourism initiatives have come a long way since at that moment. The establishment of the National Informatics centre (NIC) in 1977 was the first major step towards e-tourism in India as it bring information and its communication in focus. Information is the key

¹⁴When a committee was set up by the Government under the Chairmanship of Sir John Sargent, the then Educational Adviser to the Government of India (Krishna, A.G., 1993)

¹⁵H.Lalnunmawia “*Development and Impact of Tourism Industry in India*”, Available at: <http://www.trcollege.net/articles/74-development-and-impact-of-tourism-industry-in-india>, accessed on 16/02/2016.

¹⁶ ibid

¹⁷ ibid

element in the e-tourism industry. Consumers by visiting online website for obtain information and plan their trip and travel.¹⁸

It was only after the 1980's that tourism activity gained energy of e-tourism. The Government took a number of considerable steps. For the first time a National Policy on tourism was announced in 1982. Later in 1988, the National Committee on Tourism was formulated a complete plan for achieving a sustainable growth in tourism. In the year of 1992, a National Action Plan was prepared by the Government of India and in the year of 1996 the National Strategy for Promotion of Tourism was drafted. In the year of 1997, the new tourism Policy recognises the roles of Central and State Governments, Public Sector Undertakings and the private sector in the development of e-tourism industry. The need for taking part of *Panchayati Raj* institutions, local bodies, Non-Governmental Organisations and the local youth in the creation of tourism facilities has also been recognised. At present, The Ministry of Tourism is the nodal agency for the development and promotion of e-tourism industry in India and maintains the "Incredible India" movement.¹⁹

An Indian economy lies in the tourism industry. Tourism is one of the world's largest and fastest growing industries. In India it secured 5th rank in growth prospects and 14th rank in considering the size of the industry, 6th in terms of price competitiveness and 39th in terms of safety and security in 2010.²⁰ The Global travel and Tourism raise 3.5% in 2015²¹ and now India ranks 52 in the World Economic Forum's 2015.²² During 2015, the tourism industry contributed to global Gross Domestic Product (GDP) also rises by 3.7% and employ by 2.6%. This show the sector's enduring

¹⁸Deepthi Shanker, "*ICT and Tourism: Challenges and Opportunities*". Also available at: <http://citeseerx.ist.psu.edu/Article>, (Assessed on 12/02/2016)

¹⁹ Supra

²⁰ACNielsen ORG-MARG "*Competitiveness of Tourism Sector in India with Selected Countries of World*", Final report submitted to Ministry of Tourism Government of India. Available at: <http://tourism.gov.in/sites/default/files/Other/IndiaTourismGlobal%20.pdf>, (Accessed on 12/02/2016)

²¹"*World Travel and Tourism Council*," available at: <http://www.wttc.org/> (Accessed on 12/02/16)

²²"*Travel and Tourism Competitiveness Index*", available at: http://www.business-standard.com/article/news-cm/india-ranks-52-in-the-world-economic-forum-s-2015-travel-and-tourism-competitiveness-index-115052000938_1.html, (Accessed on 02/02/2016)

INTRODUCTION

ability to generate economic growth and create jobs at a faster rate than the global economy, which is due to rise by 2.9% in 2015. By the end of 2015, the Travel & Tourism sector will add US\$7,860 billion, 10% of global GDP, once all direct, indirect and induced impacts are taken into account. The sector will account for 284 million jobs, 9.5% of total employment, or one in eleven of all jobs on the globe. The sector's growth is forecast to again outperform growth in the majority of leading sectors in 2015 with only consumer electronics and aerospace forecast to have considerably tough development.²³

The new e-tourism system which provides various facilities to its tourism is a bonus to foreign tourist. Because during the online booking of the travel packages or trips, the foreign tourist can get electronic visa (e-Visa) facilities to visit India from their native places. The decentralisation of e-visa relaxation of the rules to the tour operator adds challenging dimensions in the area of security. Travel Authorisation facility became operational²⁴ recently 6.8% growth in Foreign Tourist Arrivals in January 2016 over the same period in 2015 tourist visiting India.²⁵ It means the greater liberalisations of e-visas facilities disturb the border control rules and regulations and there will be the risk of Terrorism and increases the cross-border consumer cases.

1.3. THE GROWTH OF TOURISM AND E- TOURISM IN SIKKIM:

In this research the references has been made of Sikkim as a case study about how the growth of tourism has been emerged and what laws are available in the State to handle the issue in tourism. In Sikkim, a small kingdom prior to its merger with India in the year of 1975, tourism inflows were very small. After merger with the County India, the growth was slow till the 1980's as larger areas was restricted for tourism. The entire State of Sikkim was under the restricted/protected area under the Foreigners (Restricted Areas) Order, 1963 and Foreigners (Protected Areas) Order,

²³ "World Travel and Tourism Council Reports" (WTTC) on 30 March 2015, available at: <http://www.hospitalitynet.org/news/4069673.html>, (Accessed on 7/03/2016)

²⁴ "An online e-Tourist Visa" facility was introduced on 27 November 2014. Also available at: http://sabt.org.in/npmb_india/downloads/visa-policy.pdf, (Accessed on 18/02/2016)

²⁵ "Press Information Bureau, Government of India", available at: <http://pib.nic.in/newsite/pmreleases.aspx?mincode=36>, (Accessed on 20/02/2016)

1958. The two Orders were issued under the Foreigners Act, 1946; accordingly no foreigner can enter or stay in the State of Sikkim without obtaining permits from the designated authorities. These permits are known as Restricted Area permits/Protected Area Permits, popularly known as Inner Line Permits.²⁶ Some of the tourist spot such as Nathula and Gurudongmar Lake are located in border areas. These spot are not open for foreign tourist and even domestic tourist as well as local Sikkimese people needs permit to visit these areas too. In North Sikkim beyond Singhik all areas are required permit for visit. The permit for these boarder areas are issued by Tourism and Civil Aviation Department, Government of Sikkim. The two wheeler motor bikes are to obtain permit from the Home Department, Government of Sikkim. Private vehicles are not allowed in restricted areas.

If any non Indian wants to come for visit in Sikkim he has to complete the formality of fulfilling the online visa facilities provided by government of India. Online visa facility is the gift of advancement in technology. Particularly in State of Sikkim the foreign tourist arrival have more flexibility as compare to other North Eastern States. In Sikkim, there are so many entry places for granting Inner Line Permit to enter into the state by foreign tourist as compare to other North Eastern state of India. Restricted area permits can be provided from the twelve different places, from where tourist can obtain the permit from any one of the offices.²⁷

In Sikkim due to the flexibility of the Inner Line Permit regime the tourism industry saw a big improvement from 2002 to 2010 with tourist arrival figures equal to the state population of Sikkim.²⁸ Tourist arrivals in Sikkim have seen unprecedented growth in the last three decades.²⁹ The online facilities of booking of tickets for

²⁶“*Frequently Asked Questions*” prepared by Home Department, Government of Sikkim, available at: <http://sikkim.nic.in/homedept/ilpfaqs.html> , (Accessed on 01/03/2016)

²⁷“*An introduction of Foreign Tourist Interest,*” available at: http://sikkim.nic.in/sws/tour_off.htm (Accessed on 10/02/2016)

²⁸ Tourism and Civil Aviation Department Government of .Sikkim, Available at: <http://sikkimtourism.gov.in/Webforms/General/pdf/Policy.pdf>, (Accessed on 29/01/2016)

²⁹ *ibid*

INTRODUCTION

customised tour package, Readymade packages, Hotel Bookings, Taxi Bookings, Railways booking are easily accessible in the websites.³⁰

With this advancement of Communication Technology the facilities of online bookings of travel tickets according to the budgets of the tourists has been prepared by the stakeholders. Tourist may search their destination on the internet and decide plan for trips. All the information, Government formalities and forms are also available online for the convenience of tourist travels for Sikkim.³¹ The information of Hotels/flights for travel trips is also available in the online websites.³² There is an official portal of Sikkim Tourism development Corporation (STDC) for online bookings of tour packages facilities.³³ The Government of Sikkim act as a facilitator for all the tourism infrastructures in the hands of Private Stakeholders. A comparison of all the available monthly statistical data in this research is drawn. The comparison is of monthly statistics of Domestic Tourists Arrival in the State of Sikkim from the year 2005 with the year of 2015 shown below in the line diagram as (Figure No 1.1):

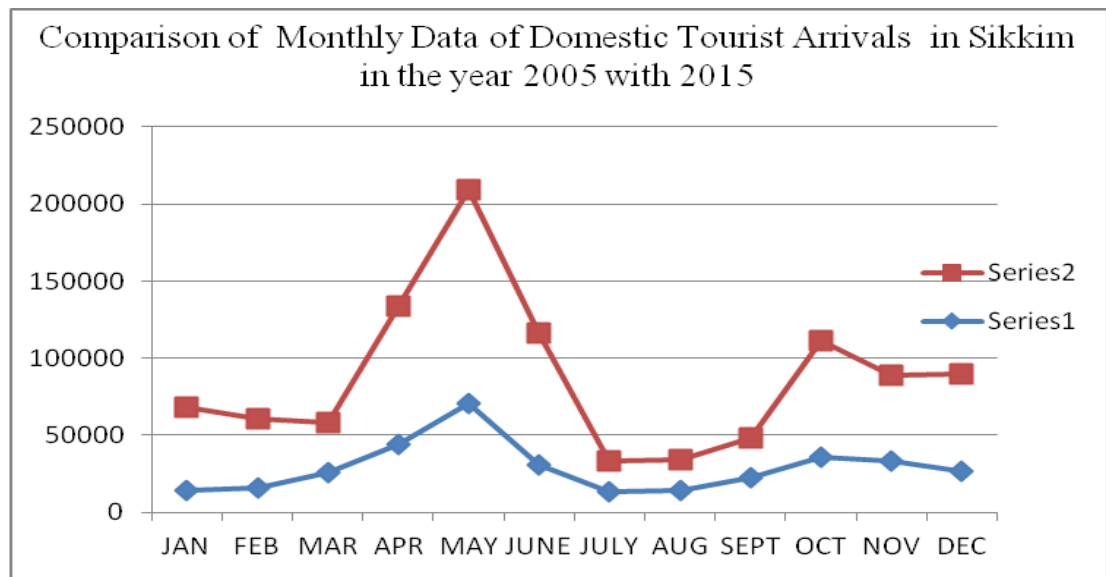


Figure No.1.1

³⁰ E-tourism facilities are also available in Sikkim. For e.g. available at: <http://www.sikkimroyal.com> (Accessed on 12/02/2016)

³¹ *ibid*

³² One of the renowned e-tourism website is www.goibibo.com. From this site the tourist may book domestic as well as international flights of round trip, one way trip, multi city trip etc., and also book hotels/bus services in reasonable rates.

³³ Available at: <http://www.sikkimstdc.com/>, (Accessed on 29/02/2016)

The Researcher had used the statistics received from Department of Tourism and Civil Aviation, Government of Sikkim. This figure represents two series containing the twelve months of the year 2005 and 2015. The red line (series-2) represents monthly data of tourist arrival in the year 2015 while blue line (series-1) which represents monthly data of tourist arrivals in the year 2005. The figure clearly indicates that the data of tourist arrival in Sikkim in the year of 2015 is high. The information and services which are available in 2015 are much higher than that of 2005. This is the result of people are having more online information of tourist place with the single click of mouse.

Another comparison of monthly statistics of Foreign Tourists Arrival in State of Sikkim in the year 2005 with in the year 2015 is shown in the line diagram (Figure No 1.2):

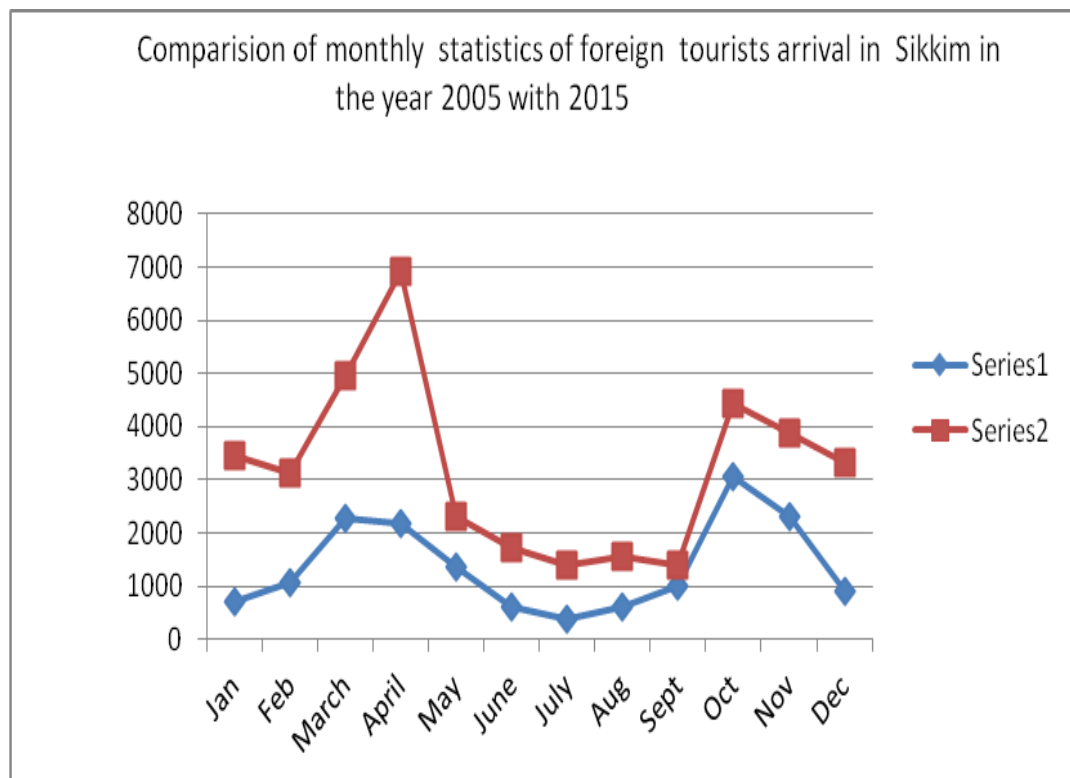


Figure No.1.2

The figure No.1.2 shows the comparison of the data of Foreign Tourist arrivals in the State of Sikkim from year of 2005 with the year of 2015. In the above figure, Series 1

INTRODUCTION

represents the monthly data of Foreign Tourist arrival in the year of 2005 and Series 2 represents the monthly data of Foreign Tourist arrivals in the year 2015. As compare to the data of the 2005, the foreign tourist arrival is increased in the year of 2015. This again reflects the advancement and facilitation of the technology, the booking of the travel trips, hotels accommodations and restaurants and bus facilities are available with the single click on the websites created by the Government agencies and the Private Stakeholders.

Statistics provided in this section represent the developing state where tourism is one of the most promising and revenue earning sector. Sikkim is one of the beautiful hilly State of India known by world in the name of some best Tourism Destination. Recently in the year of 2010 “Today’s Traveller” awarded Sikkim as the most Progressive Tourism State, and in the year 2014 Ministry of Tourism Department Government of India awarded Sikkim as “Lonely Planet Global Tour” award.³⁴ Recently Sikkim has been ranked 17th number out of 52 tourist visiting place in 2017 by the New York Times.

In Sikkim there is legislation called “*Sikkim Registration of Tourist Trade (SRTT) Act, 1998.*” It solely deals for the registration of tourism business operational such as Dealers, Travel Agent, and Hotels. The Government of Sikkim passed “*Sikkim Registration of Tourist Trade (SRTT) Rules, 2008*”, which prescribes the forms/Format for the registration of the Dealers, Travel Agent and Hotels which established their tourism business in the tourist notified area. Also Government of Sikkim passed “*Sikkim Registration of Home Stay Establishment (SRHSE) Rules, 2013*” for the better operation of the Home Stay business in the rural areas in Sikkim. It prescribes the format/ forms for the registration of Home Stay business. These rules including of the *SRTT Act, 1998, SRTT Rules, 2008 and SRHSE Rule, 2013* are analysed in detail in separate chapters.³⁵

With the advent of internet, new and often more efficient models of commercial interaction are constantly developing in the traditional marketplace and increasingly

³⁴ *ibid*

³⁵ *Infra Chapter- Four on topic “E-TOURISM INDUSTRY IN SIKKIM AND THE LOCAL LEGISLATION”*

larger numbers of businesses and consumers have begun to shift from more conservative marketing strategies to partake of the offerings of the electronic marketplace. There is no specific law for the e-tourism in India except Central Law of Consumer for the protection of consumer in India. But the law is inadequate to meet out the challenges of technology sometimes. Section 6³⁶ of Consumer Protection (CP) Act 1986, states the objects of the Central Council which includes promotion and protection of the rights of the consumers. Section 6 of Consumer Protection Act, 1986, applies to both online and offline consumer. But in this electronic era the CP Act, 1986 appears ineffectual to protect the consumer in the e-tourism business. “E-tourism” is associated with buying and selling of information, tourism product and services via computer networks. The transaction of business is over the internet and provisions of the Electronic Contracts will be applicable on the buyer and the seller in e-tourism business equally.

The Niti Ayog has selected ‘Consumer Protection’ as one of the subject to be included as priority areas for the Twelfth Plan and formulate an inclusive set of policies, agenda and approach to launch a strong policy perception for consumer protection.³⁷ There is no law which directly deals with the e-tourism matters in India. This study will examine the different challenges/issues face by the recently developed e-tourism business like issues of Safety, Security and Privacy in e-tourism, major techno-legal Fraud such as Cyber Squatting, Scamming, Phishing etc, liberalisation of

³⁶ Section 6 of CP Act,1986- (a) the right to be protected against the marketing of goods [and services] which are hazardous to life and property;
(b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods [or services, as the case may be] so as to protect the consumer against unfair trade practices;
(c) The right to be assured, wherever possible, access to a variety of goods [and services] at competitive prices;
(d) The right to be heard and to be assured that consumer's interests will receive due consideration at appropriate form;
(e) The right to seek redressal against unfair trade practices [or restrictive trade practices] or unscrupulous exploitation of consumers; and
(f) The right to Consumer Education.

³⁷“*Report of the Working Group on Consumer Protection Twelfth Five Year Plan (2012-17) Volume –II*” Report, Government of India Department of Consumer Affairs Ministry of Consumer Affairs, Food and Public Distribution Reports. It is also available at :

http://planningcommission.gov.in/aboutus/committee/wrkgrp12/pp/wg_cp2.pdf,
(Accessed on 01/03/2016)

INTRODUCTION

e-Visa, jurisdictional issues while deciding the cases related to e-tourism, non availability of Assurance Policy in India etc.³⁸

There are different existing national laws which govern in part the newly developed e-tourism business such as CP Act, 1986, Indian Contract Act, 1872, Information Technology Act, 2000 and Competition Act 2002. The existing legal framework to govern “e-tourism” includes various laws and policy of government along with recently introduced Consumer Protection Amendment Bill 2015 in the Lok Sabha on August 10, 2015 by the Minister of Consumer Affairs, Food and Public Distribution, Mr. Ram Vilas Paswan. The bill is pending in Rajya Sabha.

There are certain International document talks about e-tourism these are United Nation Commission on International Trade Law (UNCITRAL) model laws for e-commerce, Organisation of Economic Co-Operation Development (OECD), United Nation Conference on Trade and Development (UNCTAD), United Nation World Tourism Organisation (UNWTO) has been discussed.³⁹

One cannot deny the role of Judiciary in any new developing field. Here also it played vital role for the protection of rights of the tourist in this digitalise era. The consumer Commission decided various cases on Consumer Protection Act, and other similar legislation decided on the complaints filed by the tourist.⁴⁰ Though, some issues are still pending before the Commission due to non availability of direct provision to govern e-tourism. The Consumer Protection laws are not enough for the protection of consumer in this digitalised area. The research contains six broad chapters including this introductory chapter. The brief outline of the research is as follows:

1.4. OBJECTIVES OF STUDY

This study will be helpful for the emerging e-tourism industries for understanding the legal issues in India. It will analyse the challenges faced by e-tourism consumer in

³⁸ Infra which are summarises in Chapter-Two on topic “ LEGAL ISSUES IN E-TOURISM”

³⁹ Infra Chapter-Three under topic “LEGAL FRAMEWORK OF E-TOURISM”

⁴⁰ Infra Chapter- Five under topic “JUDICIAL CONTRIBUTION IN E-TOURISM”

India. The researcher try to suggest Preventative as well as Remedial measures so that this can upshot the increase legal issues related to safety and security in the new places which they visited and of the generation of revenue out of the Indian tourism industry. The Research will also focus to understand and find out the basic deficiencies in the enforcement of Consumer Protection Act 1986 with regard to e-tourism and the other sub-ordinate Indian Acts and International Documents. In this panorama the following are the objectives of research.

1. To study the legal issues of e-tourism services.
2. To know current legal policies of the online consumer protection and existing consumer protection laws in India as well as the laws(Tourism laws) of the State of Sikkim and their applicability to the emerging issue of e- tourism.
3. To know the liabilities of service providers in e-tourism business.
4. To know the current dispute redressal mechanism on e-tourism.

1.5. RESEARCH QUESTIONS

This research study will analyze the issues that contribute the law for Indian tourists in e-tourism industries in order to create more value for the consumer. The issues will be investigated in two parts:

1. Firstly, tourists visiting within the country of India &
2. Secondly, tourists visiting from outside country of India.

These aspects/questions are namely:

- a. What are the various key issues of consumerism in e-tourism?
- b. What are the current legal policies of the online consumer protection for travel services or product and how far these consumer protection laws and policies are effective in dealing with the e-tourist/e-consumers issues in India and in the state of Sikkim particularly?

INTRODUCTION

- c. Who are service providers in e-tourism business and what is liability extent of these service providers?
- d. Who has Jurisdiction to settle the consumers dispute when tourists are within India and who, when the matter is of foreign tourist. Also which law will be applicable in settling the disputes?

1.6. HYPOTHESIS

Issues of consumer protection in e-tourism lack appropriate legal and regulatory framework.

1.7. RESEARCH METHODOLOGY

This research is based on primary as well as secondary resources. The researcher adopted empirical as well as doctrinal research methodology for the completion of entire research work. Library research is also conducted for collecting data which includes available literature on e-tourism issues, reports and articles of the different authors, surfing internet websites containing e-tourism data, and various court decision. Besides this, the researcher collected statistical data of domestic tourists arrival and the foreign tourists arrival in the State of Sikkim recorded by “Tourism and Civil Aviation Department,” Government of Sikkim. The researcher conducted an interview with Public Relation Officer (Grievance Cell) of “Tourism and Civil Aviation Department”, Government of Sikkim on the working of Cell. The researcher also collected the data about the complaints of the tourists as well as the Tourism Operational, settled ongoing disputes and also discussed the e-tourism issues with the minister of Tourism and Civil Aviation Department, Government of Sikkim.

1.8. CHAPTERS

1. Introduction :

In this first chapter the researcher discussed the historical background, definition of the various terms and growth of tourism and e-tourism in India and growth of tourism and e-tourism in the State of Sikkim especially.

2. Legal issues in e-tourism

In chapter two the researcher tried to find out the various legal, technical & technological issues including Safety, Security and Privacy issues, Fraud, Cyber Squatting, Phishing, Liberalisation of e-visa and Jurisdictional issues, non-availability of Assurance policy are the major issues faced by the e-tourism business.

3. Legal framework of e-tourism

In chapter three the researcher tried to analyse all the present national as well as international legal frameworks which govern the e-tourism business. The researcher discusses various provisions of the National legislation which is relevant to govern e-tourism business such as provisions under: a) Consumer protection Act, 1986, b) Indian Contract Act, 1872, c) Information Technology Act, 2000 and d) Competition Act, 2002. The researcher also discussed the relevant international Guidelines such as: a) The United Nation Commission on International Trade Law (UNCITRAL), b) Organisation of Economic Co-Operation Development (OECD), c) United Nation Conference on Trade and Development (UNCTAD), d) United Nation World Tourism Organisation (UNWTO).

4. E-tourism Industry in Sikkim and the Local Legislation

In fourth chapter the researcher discussed the tourism business in the state of Sikkim with special reference. This chapter analyses the present status of important legislation in Sikkim which govern the tourism industry and the Rules which are making for regulating the tourism business in Sikkim Such as: a) Sikkim Registration of tourist Trade Act, 1998, b) Sikkim Registration of tourist trade Rules, 2008 and, c) Sikkim Registration of Home Stay Establishment Rules, 2013.

5. Judicial contribution in e-tourism

In the fifth chapter the researcher discussed the interpretation given by the courts; the decided cases related to tourist by misrepresenting or giving misleading

INTRODUCTION

advertisement by tourism stakeholders, deficiency in services by the travel agencies or the tour operators and fraud etc.

6. Conclusion and Suggestions

In this last chapter the researcher concludes its findings of the studies and gives the suggestions regarding the growth and legal values of e-tourism industry in India.

CHAPTER-TWO

LEGAL ISSUES IN E-TOURISM

The proverb ‘all the glitters are not gold’ can be applied here in various extent. The e-tourism infrastructures are developing rapidly in the third world countries like India. The system of Communication Technologies has rapidly increased throughout Indian tourism sectors. The word “e-tourism” is modified name of “tourism” when they run their business by implementing new ICT. Now in India, the online travel bookings and associated travel services are recognized as one of the most successful e-commerce operation. The right to freedom of movement/travel is internationally guaranteed right¹ facilitated by the tourism industry for better convenience to the tourist by implementing modern technique. But misuse of the tools and technique by the tourism operators raises many legal and techno-legal issues.

Growing e-tourism represents nothing more than the interaction between Industry, Organisation, Tourists and Government. The Government act as the mediator amongst them by providing the information to the tourist/ consumer and the tourism operational for their rights and obligations. This makes both the parties to be more responsible, which is why the Government bears a heavy responsibility in making rules adapted to the new requirement of business. But, current regulations are not available for covering enough protection of consumer rights in of e-tourism.²

The researcher is going to examine the various legal issues that are emerging from e-tourism business at national as well as international level including e-tourism Safety, Security and Privacy issues, Fraud, Identity Theft, e-Visa Liberalisation, and Jurisdiction of the court or Redressal Agencies for the protection of e-consumer. These are some issues and Indian national laws appear inadequate to handle the. Further, there is no international document like treaty, conventions and organisation to address the issues.

¹ Article 13 of Universal Declaration of Human Rights, 1948, and Article 12 of International Covenant on Civil and Political Rights, 1966

² Alexandru Nendelea and Alina Balan “*E-Tourism and Tourism Services Consumer Protection*” (28 June 2010) Stefan Cel Mare University, Suceava, Romania Vol No. XII.

In *M/s. Cox & Kings (I) Pvt. Ltd. V. Mr. Joseph A. Fernanes*³ Consumer Commission held “tourist is a consumer under Section 2(1) (d) (ii)⁴ of the Consumer Protection Act 1986. The tourist needs protection in this technical era. The development of business by the implementation of communication technology raises the legal protection of tourists quite challenging for the Government as well as the Private stakeholders. To have balance between the tourist and the business holders (Government or Private) is very difficult. There are two levels of serious issues which are coming up when we talk about the protection of the rights of tourists in the e-tourism business. These are the protection of tourists at the preventive level and protection of tourist at the remedial level. E-tourism has now realised the problem in terms of applicability of present laws.

There are two different boundaries in the application of the law. Firstly, the consumer rights protection in itself and, secondly, protection by fulfilling the obligations on the part of tourism operational in connection with carrying out their duties towards the tourist. There are so many non technical legal issues and the Techno-legal issues faced by the tourist after application of the information technology in the e- tourism business due to misuse of the technology by tourism operational. All the information which is available on the website i.e. displayed on the site is not available to the tourist after booking. There is deficiency in product/services displayed in the websites when availed.

Hence, tourist needs protection from all directions. This protection starts from very beginning when tourist decides their tour. They search for website offering those packages in their budget. Here there is a need of initial assurance as they expect better protection as users, from travel agencies and tour operators’ sites of the Government

³(Decided on 20 December, 2005) the consumer court held that “All the discussion are only theoretical options and the only real option available to the Respondents and the other tourists like them, is to mutely suffer the false and misleading advertisement given by the tour operators.

⁴Section 2(d)(ii) of the CP Act, 1986 stated that “hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; (but does not include a person who avails of such services of any commercial purpose;)” [Explanation.-For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]

or the Private Stakeholders as preventive level. Therefore at first place tourists should be assured for safe environment⁵ and also they should be informed of their legal consumer rights⁶and possibilities of experience of fraudulent deal before or during their tour hours.

They need remedial actions too i.e. for inadequacy in services provided by the tourism operational of the e-tourism. They may have complaint, grievances, un-satisfaction of the services, offered by the e-tourism speciality so, need protection of their consumer rights at remedial level. They need speedy settlement of their concern because they are guest of the state for few days only and it becomes obligatory on the part of state to secure them justice. Hence, there is a need of disputes settlement forum or grievances redressal body separately for tourism related cases. In the absence of any provision on the e-tourism issue, the situation increases the liability of the hosting country to operate the business smoothly. As already said above, the e-tourism issues can be non-technical legal issues as well as techno-legal issues. The following are the highlighted issues of e-tourism which has been discussed in detail below.

2.1. E-TOURISM SAFETY, SECURITY AND PRIVACY ISSUES

Safety and security have always been obligatory condition for e-tourism industry. The tourism industry cannot evade the negative impacts and consequences of the any such events. Some events marked the weakness of e-tourism both at global and regional levels. Therefore, this fact necessitates the research and study of the safety, security

⁵Government policies can have a dramatic effect on the Internet and its potential development, by introducing new policies and limitations. The privacy and security issues are also very significant. Therefore, Internet providers have to consider ethical matters and the usage of personal data stored within the networks. For the full commercial potential of electronic commerce and Internet to be exploited by the tourism and hospitality industry and its consumers, several issues have to be considered, which include an increase of security of transmissions, copyright issues, reduction of user confusion and dissatisfaction, establishment of pricing structures for distribution of information and reservations and enhancement of the standardisation of information and reservation procedures. Credibility and accountability of the information needs to be secured and equal access for smaller and larger partners should be developed.

⁶ Rights provided under section 6 of the CP Act, 1986

and privacy issues related to e- tourism business, including the creation of a new, up to date definition of the idea safety, security and privacy issue in e-tourism.⁷

The evolution of safety and security issues in travel and tourism came from the beginning of 1950s. In between 1950-1970, the safety and security in tourism was one of the basic problems. Only a small number of factors were given importance such as health and hygiene problems, drinkable water, necessity of vaccination, cleanness of toilets etc. It may affect the image of a city or country but not the image of a whole region. Travel related risks and problems are not raised at the international level of tourism industry. Solving problems of security depends mainly upon the regulations of the national authorities.

In between the period of 1970-1990 there was strengthening of security concept. With the implementation of new technology, the tourism industry converted the name of business by adding prefix “e” called as “e-tourism”. There were no such legal issues known before. The additional risk factors appear in travel and tourism such as airplane hijacking, terrorist actions as a tool of social move violently. The threats on security reach to regional level in some regions of the world. There was beginning of a wider international cooperation related to security issues. World Tourism Organisation (WTO) draws attention on safety and security of tourists.⁸

From the beginning of the 1990 period of complex observation of safety and security in e-tourism was the inevitable factors of globalization meaning that national/regional economies, cultures and societies become integrated through a worldwide network of communication (internet), mobility (e-tourism), trade of products and services (Personal data security).The security of travel has now become a global problem. Number of tourist destinations is affected due to lack of security for the tourists.

⁷ Istvan Kovari Krisztina Zimanyi “*Safety and Security in the Age of Global Tourism (The changing role and conception of Safety and Security in Tourism)*”, also available at: http://ageconsearch.umn.edu/bitstream/104672/2/10_Kovari_Safety_Apstract.pdf. (Accessed on 12/09/2016).

⁸“*Hague Declaration on Tourism 1989,*” available at: <https://www.google.co.in/webhp?sourceid=chrome-instant&ion=1&espv=2&ie=UTF-8#q=hague+declaration+on+tourism+1989>, (Accessed on 14/03/2016).

WTO safety and security⁹ plan for tourism requires deliberation of risks originated in following basic areas:

Firstly, human and institutional environment outside the tourism sector i.e. tourist may become victim of theft; pick pocketing, indiscriminate violence such as rape and harassment hence need protection. The tourist coming from the enemy country may perhaps face problem such as unlawful interferences and terrorism suspicion against the tourism hosting country such as wars, social conflicts and political unrest.¹⁰The hosting country cannot mitigate the entire individual/personal problem faced by the tourist which is interlinked with the tourism sector beyond the control of Tourism industry.

Secondly, tourism is a big industry with inclusion of so many branches of public utility services. Sometimes deficiency in functioning may be held accountable for damages to the tourists' private security, physical integrity and interference in economic interests of the tourist. The law is not applicable for the protection against unlawful interference, crime and delinquency in tourism facilities, fraud in advertisement, non-cooperation with contracts etc. is the vital risk faced by the tourist who visit new place and for the first time.¹¹

Thirdly, the tourists themselves may cause problems for their safety and security and for the hosts as well. Like some tourists do not bother their previous health conditions which may deteriorate during tour. Visiting the State of Sikkim which is a Hill Station and where the maximum of the tourist spots such as Lachung, Lachen and Yumthang in North Sikkim, Changu, Nathula, and Zalepla in East Sikkim, Ravangla, Chemchey, Namchi and Temi Tea Garden in South Sikkim and Pelling, Uttaray, Tashiding and Yuksum in west Sikkim are at high altitude and are cold during the tourist season (October to April), this factor becomes very imperative. The tourists coming from different altitude are not inhabited to such condition so their health condition causes threat to their health. There is a question of duty to take reasonable care on the part of

⁹ World Tourism Organisation(2006) "*Tourist Safety and Security Practical Measures for Destinations*," ISBN: 92-844-0152-6. Also available at: http://sete.gr/files/Media/Ebook/110301_Tourist%20Safety%20and%20Security.pdf (Accessed on 15/04/2016)

¹⁰ *ibid*

¹¹ *ibid*

tourism stakeholders and liability for giving proper information about the weather on tour operator which is unsettled. One active online portal having a minute details to be created by the Sikkim Tourism Department for general information of the weather and information of safety measure and for self security and knowledge for the tourist. And another crucial steps need to be taken is that the Sikkim Tourism Police¹² should actively work for the better services to the tourist who do not have an idea about the new places.

Fourthly, some of the Tourists' conflictive or unfriendly behaviour with respect to local populations or local laws may create immense problems. In the same way, due to careless nature of tourist they lose their personal belongings, travel document; money etc. which creates problem that cannot be recovered from the tourism company.¹³

Fifthly, tourist visit new places without having any information or the natural description of the destination and the effects. If the tourists are exposed to natural disasters arising from the physical environment, there is no responsibility of the tourism industry to compensate the loss faced by the tourists.

Specially, in state of Sikkim, there is no state legislation to govern the e-tourism industry and the issues of liability/obligation for the tourist.¹⁴ In case of complaints the tourism authorities take action against the tourism Stakeholders. Sometimes authorities confiscate trade license in small complaint cases.

In the state of Sikkim though there is grievances cell of Sikkim tourism and Civil Aviation Department yet if any tourism related serious issues arises, there is no law to punish the offender. The provision of the SRTT Act punishes the tourism operation by

¹² Malaysia is the only country that has dedicated units functioning as "tourist police", while such functions in some countries including Thailand are being undertaken by the civil defence and marshals. Tourist Police Unit in Malaysia was established by Royal Malaysian Police in 1985 and is led by a commandant rank of Superintendent of Police. Tourist Police also help prevent crime in the areas which tourists visit. Now recently in India, the State of Kerala (Kochi) was the first State recruited the Tourist police in the year of 2010.

¹³ *ibid*

¹⁴ The SRTT Act, 1998 only deals with the compulsory registration of tourism business within the Sikkim in the notified tourist areas.

only blacklisting their licenses for sometimes. There is one obligatory Act of 1998, for compulsory registration of Dealer, Travel Agent and the Hotels business in Sikkim. But this Act does not deal with the rights and an obligation towards the tourist.

The problem arises when the tourist after purchasing their online travel trips/packages come to determined destinations which he/she has selected for visiting. It is the nation's responsibility to provide the legal, regulatory and judicial framework that underpins tourism safety and security. A good way to solve the problem can be, the countries having popular tourist destinations may sit together to evaluate their legal situation regarding tourism safety and security and by organising a methodical review of the problems and discrepancies of their countries the guiding principles can be developed for the domestic laws.

Privacy is greatest and serious concern in tourism industry. When a person purchases e-tourism product/services online he/she mandatorily required to register in that particular e-tourism websites and comply with the terms and conditions of the same. The basic requirement of the booking of e-tourism product/services is to give in detail the name, address, phone number, designation date of birth etc, by transferring the personal detail of consumer to the e-tourism industry or to the service providers; it is truly threat to the people's privacy. While the services are being offered on the internet that provides protection in some areas, many people are more concerned about how personal information which they have given to e-tourism industry is being used. The issues are going beyond simple privacy concern to commission of crimes such as fraud, identity theft etc. and therefore have bearing on public security.¹⁵

Another issue is an obligation to protect the privacy of the guest during his stay at the hotel. The obligation to protect guest's privacy arises from the direct hotel-keeper contract and all other tourism law contracts concluded between the hotel-keeper and the tourist. After paying the consideration for the booking of the hotel, the tourists shall have right to privacy, which is the fundamental right provided under Article 21 of the Indian Constitution.¹⁶ If the hotel-keeper violates the tourist's privacy in any way

¹⁵ Nirvikar Singh "*Information Technology as an Engine of Broad-Based Growth in India*," (2002). Available at: <http://econ.usc.edu/~boxjenk/> (Accessed on 06/08/2016)

¹⁶ Article 21 of the Indian constitution says that "no person shall be deprived of his life or personal liberty except according to the procedure established by the law."

like makes unauthorized records, spies or wiretapped the tourist in the hotel, such violation of privacy is usually difficult to detect, and when it is detected, the tourist feels very uncomfortable and frustrating. There is no substantive law deals with issues of privacy violation and punishes for such offence. Also, in the case of knowledge of criminal acts, a hotel-keeper cannot send recorded conversations to the police without a search warrant in case of *People v. Soles*.¹⁷ Giving information (personal data, name, address, room number, credit card number) about the tourist, is the violation of tourist's privacy and also liability of hotel-keeper for non-proprietary damage. But the law lacks in such legislations.

2.2. FRAUD

Section 17 of Indian Contract Act, 1872 defines the word "Fraud".¹⁸ Here the main concern is the security of the financial information, such as credit card numbers, during electronic payment by credit cards. Credit cards have become the most common means of payment used in online transaction. These protections will improve consumer confidence in the online dealing and payment through cards in the global marketplace more common.¹⁹

¹⁷ (1977), 68 Cal. App. 3d 418.

¹⁸ Section 17 of Indian Contract Act, 1872, define the word "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into the contract. Section 17 (1) of the Act says that the suggestion as to a fact of that which is not by one who does not believe it to be true – is known as SUGGESTIO FALSI or suggestion of falsehood. Section 17 (2) of the Act provides that the active concealment of a fact by one having the knowledge or belief of the fact – is known as SUPPRESIO VERI or suppression of a fact. Section 17 (3) of the Act discuss about the promise made without any intention of performing it. It means a promise made falsely with the intention of inducing the other party to make a reciprocal promise and thereby enter into a contract. Section 17 (4) of the Act discussed about any other Act fitted or designed to deceive. Section 17 (5) says any such act or omission as the law specially declares to be fraudulent.

Explanation of the above section states a very important proposition of law. According to Explanation to Section 17 – the mere silence as to a fact likely to affect the willingness of a person to enter into a contract is not fraud. However, such silence is to be held as fraud, if the circumstances of the case that –

- It is the duty of the person keeping silence – to speak
- That his silence in itself is equivalent to speech.

¹⁹OECD Conference on Empowering E-consumers Strengthening Consumer Protection in the Internet Economy -Background Report Washington D.C., 8-10 December 2009

When it comes to online payment deception risk arises because neither the card nor the cardholder is present when after completion of online transaction. That means there is no signature or Personal Identification Number (PIN) introduced that can authenticate cardholder identity. For example, a valid card can be used without the right holder or cardholder and the valid cardholders may claim that he did not made the transaction. This leads to chargeback (non payment). The same cases will arise while using One Time Password (OTP) facilities in transacting money for purchasing some online facilities. In the context of e-tourism business, one risk assumed by online consumers is the trader/ tour operators himself can be fraudulent, in such case it recommends the entire payment or verification at each step of completing payment of the amount written on the site for booking of the ticket and after that in the last stage they change the prize without notifying the consumers.

Another most common fraud arises when the consumer pays for online ticket but the intermediaries agencies do not pay the real suppliers. This led to the suppliers' non issuance of ticket to the consumers.

One of the example of Internet fraud that came into light in the year 2007 was that, the complaint lodged by Kingfisher airlines with the Economic Offences Wing (Mumbai), which involved online booking of more than 15,000 tickets of Kingfisher Airlines, using specific codes of an equal number of credit cards, all issued by ICICI Bank. The fraud had come to light after thousands of credit card holders approached ICICI Bank saying they had never booked a ticket. The Airlines had charged the amount to the bank, which in turn, had passed on the tab to the customers. In this case, the gang had reserved tickets online using credit card numbers obtained from restaurants, hotels, shopping malls and retail outlets.

The main concern of online booking of the hotel is that both the parties cannot meet face to face. In one case tourists/unmarried couple booked hotel online in advance by paying consideration and disclosing their personal Identity with full address, which was needed for registration/booking of hotel. The hotel received the request made by them and registered hotel booking without asking the relationship of two persons/tourists. When they reached hotel, the hotel keeper sharply rejected the booking. This mediate hardship to tourist who is unknown to place raises serious issues. The situation raises number of serious concerns i.e. where can he goes for

complaint? What law will be applicable? Whether in breach of online contract, Indian Contract Act, 1872 can provide a valid and complete solution?

Another vital issue is misleading/ fraudulent advertisement of e-tourism business. As new business models have developed, a number of issues related to fraud are also emerging simultaneously. The tourism websites selling consumer Product/services showed irregularities in relation to:

- (i) Misleading information about tourist destination,
- (ii) Misleading information about the total cost of the product/services or,
- (iii) Incomplete contact details/address of the tour operator/service providers.

Most of the issues/complaints are of abuse of the credit card used for the booking of the travel tickets, the hotel accommodations, or the trip packages.

In the advertisement displayed by the website operator, they clearly mention that the packages are available in the money displayed in the website advertisement. The consumer needs to pay for the product/services via online and transacting money for booking of the product/services before availing the offline service from the service providers/agent. There is no need to pay extra money to the offline service providers, have been sharply written in the website where they display their package advertisement. In the mean time while availing the services from the service providers, they also asked for the tips/ money for the physical services provided by them. This leads to the loss of the tourist. Efforts are missing both at government's agencies end and private tourism industry level to improve consumer protection and assurance in online payment systems.

By using the internet to carry out the business, some of the techno-legal issues have also been seen which does not have the legal enactment to scrutinise the offences. There has been rapid increase in the online booking in the tourism industry (e.g., e-booking of hotel rooms, Airline tickets or travel packages etc.) due to the fact that the tourism industry is offering several public utility services which can be ordered online, Some of the techno-legal issues (online fraud) on the e- tourism are:

2.2.1. Domain squatting or Cyber Squatting

The squatters are now gathering the profit by misusing the trade names of popular travel portal by generating their indisputable Travel Portal. Thus, the unlawful occupants are misusing the goodwill of the reputed travel portal and generate revenues by creating negative publicity of reputed travel portal leading to loss of public faith.

2.2.2. Credit Card Skimming

The e-tourism industry is overwhelmed with the highest incidence of credit card skimming. Credit card skimming can be done by deceitfully swipe up a consumer's card through a device, similar in size to a monitor, to record the data of the Credit Card/Debit Card for the creation of fraudulent cards. Some of the service providers may be recruited by fraudsters. When you are giving your credit card to a dishonest waiter for payment of bill, by swiping card, in the restaurant, he also gives the card fast swipe through the fraudulent skimmer which is provided by the fraudster. The device records the card's information and stores it in their computer and sent to the fraudster who make duplicate credit card from the stolen information.

2.2.3. Fake Website looking like genuine website

The fraudster in order to catch the potential consumers launch a website which looks accurately the same as original site, like a valid website of the established hotel or travel agency with minor spelling dissimilarity which is very difficult to identify in quick look? The customers, who take the website as the authentic one, surf the website which diverts them to another site which may catch by the fraudster to extort responsive information of credit card detail from the consumers in the so-called reason of e-booking. Thus, the tourist credit card is being misused by the fraudster.

2.2.4. Online Air ticket Scam

There are fake airline ticketing websites which attract consumers by giving airline ticket prices offered by other airlines. When you're paying via credit card, they capture your credit card information. After that the consumer receives a message,

conveying that the credit card transaction has been rejected due to technical problems. They are obliged to submit the payment via other modes. In this way the victim passes on his credit card information as well as transfer which is not recoverable.

2.2.5. Unsecured websites without adequate security features

There is increasing number of cases in online booking of airline/railway tickets, hotel bookings through fake credit card number which is stolen by fraudster. Many hotel/airlines websites offering e-booking service are without sufficient security. Such type of websites is offering e-booking facility by operating on “http”²⁰ rather than “https.”²¹ It is a secure websites, which are used for payments and any sensitive transactions, have ‘https’, where ‘S’ stands for “Secure”. The unsecured page asks sensitive consumer information of credit card number, its expiry date and type of card etc. Any burglar sitting on the internet has full possibility to tap all data transfer happening in a clear text ‘http’ setting. This lead to a financial loss to the consumers and subsequently misused by the fraudster without knowing to the innocent consumer.

2.2.6. E-mail Phishing

Sometimes the fake e-mail has been delivered in your e-mail ID from an unknown company congratulating you for attractive an economical deal for vacation trip or tour packages. The e-mail would come with some highlighted link in the mail which would connect you with a site asking for your credit card/debit card number to attempt some personal information for abuse. This leads to phishing on the online business.

²⁰Hyper Text Transfer Protocol

²¹Hyper Text Transfer Protocol Secure

2.3. IDENTITY THEFT

Identity theft is the paramount of the consumer's name, address, Identity number, bank or credit card, account information without consumer knowledge. The e-tourism consumer discloses their identity while booking of the travel packages/tour Packages, hotel accommodation etc. Such information related to tourist's identity is used to commit fraud, theft, or other crimes.²² Similarly to other cybercrimes, identity theft offences often have an international dimension. If the performer and the victim are not based in the same country then the investigation requires the co-operation of law enforcement agencies in all countries that are involved.²³ The principle of national sovereignty does not in general allow one country to carry out investigations within the territory of another country without permission from the local authorities. The related formal requirements and especially the average time that is necessary to respond to requests from foreign law enforcement agencies often hinder the investigations.²⁴

2.4. LIBERALISATION OF E-VISA

Indian Association of Tour Operators (IATO) embarked that there is weak and poor implementation of the e-Tourist Visa (e-TV) system. Tourism operational who is an IATO members suggested that more countries should be added, validity of the visa should be made for 6 months from the 30 days, application period to be increased from 30 days to 6 months. The multiple entry visas to allow for inter-regional travel. Indian Government take impediment decision after liberalizing in visa rules which help a lot in long awaited demand of Indian tourism industry for the last 15-20 years. It can play a vital role in boosting Indian e-tourism industry for the welcoming of the foreign tourist to visit India. The decentralisation of e-visa relaxation of the rules to the tour operator adds challenging dimensions in the area of security. Travel Authorisation facility became operational²⁵ recently 6.8% growth in Foreign Tourist

²² Identity theft, available at: <http://www.consumer.gov>. (Accessed on 03/03/2016)

²³Putnam Elliott, "*International Responses to Cyber Crime*," (2001), Sofaer/Goodman-the Transnational Dimension of Cyber Crime and Terrorism. Available at: http://media.hoover.org/documents/0817999825_35.pdf (Accessed on 14/09/2016).

²⁴ibid

²⁵An online e-Tourist Visa facility was introduced on 27 November 2014. Details available at: http://sabt.org.in/npmb_india/downloads/visa-policy.pdf. (Accessed on 18/02/2016).

Arrivals in January 2016 over the same period in 2015 tourist visiting India.²⁶ It means the greater liberalisations of e-visas facilities disturb the border control rules and regulations and there will be the risk of Terrorism and increases the cross-border consumer cases. Before implementation of e-Visa facilities the government should think about the cross-border laws to constitute the grievances/disputes arising between the two nations for solving the cases related to the tourist. It is very dangerous to liberalised e-Visa on arrival issued to the enemy's nations. It is for the national security, the Government needs to think before this implementation.²⁷

There is inability of the judicial system to deal effectively with tourist related crimes. In order to be effective, judicial remedies obtained by a tourist from the courts of one country must be put into effect against the defendant, all over the place in the world. At present, there are serious obstacles for ensuring the monetary judgments obtained in cross-border consumer cases, ultimately the result is in lack of compensation to the consumers. It is only possible to obtain provisional pre-judgment measures, such as treaty, convention and agreement with a few countries.²⁸

International and two-sided actions to facilitate judicial assistance in these areas could increase the efficiency of tourist remedies in cross-border cases.²⁹ If it is not possible than the host country (India) should give importance to their political and economic safety in an attempt to gain the safe business relation of buyer (tourist) and seller/web operator around the world. Current provisions are inadequate to deter criminal activity in e- tourism offenses. The power of the judiciary is seemingly inadequate and incapable of dealing with tourist related matters. Bail system seemingly too liberal and needs to be carefully reviewed and improved. Negative responses to police department, lack of law enforcement agency, from where the initiatives to be focus adequately on needs of law to regulate e-tourism industry.³⁰

²⁶ *Press Information Bureau, Government of India.* Also available at: <http://pib.nic.in/newsite/pmreleases.aspx?mincode=36> (Accessed on 20/02/2016).

²⁷ Indian visa information available at: <https://indianvisaonline.gov.in/visa/tvoa.html>, (Accessed on 25/06/2016)

²⁸ Consumer Dispute Resolution and redress in the Global Marketplace (OECD Policy)

²⁹ *ibid*

³⁰ *Supra*

2.5. JURISDICTION

As long as different countries have dissimilar laws and cultures, there are no good principles for jurisdiction on online business. Every nation wants unity, but no nation wants to give up any of its tradition/habits. The concepts of jurisdiction on e-tourism include two legal aspects:

- (i) To what extent a court is legally capable to consider a cross-border dispute and on what basis the court apply the laws of the place where they are located; and
- (ii) When should a court or panel is entitled to emphasize jurisdiction as a result of a dispute arising between private parties.

For example A, in India decides to purchase the travel trip from a website and pays money through credit card and is found to be in the deficiency of the product/ services. He wants to sue the owner of the website. But the owner is in America. The site itself is based in the server of London. Where does the e-tourism Consumer file complain?

Meghalaya State Consumer Disputes Redressal Commission in case of *M.D.Air Deccan v. Shri Ram Gopal Agarwal*³¹ Said that there is no jurisdiction of the forum to decide the matters related to online transaction of internet. This case was lately decided by the commission because the judiciary face the problem in deciding the case due to non decided jurisdiction in the written provision of the national consumer legislation. This case was within the country of India. If the same matter is held by the foreign tourists against the Indian tour operator/service providers, which law is applicable? If the foreign tourist books the travel package from their own country and want to files complaint against the Indian tour operator/service providers in his own

³¹ (Decided on 7 December, 2013) Fact: the tourist/consumer booked ticket online from the Shilong District and travel for Delhi to Jaipur. On the mean time the baggage was lost due to the negligence on the part of Air Deccan staff. After complaining to them, the baggage was found in rotten condition and loses the weight of 13 Kg. The consumer/tourist files the FIR against the Airline Company at Shilong. The opposite party object that the District forum does not have their jurisdiction to decide the case. After being too late of 7 years, the dispute was finally decided by the Meghalaya State Commission by awarding compensation to the victim/tourist.

country which court will have jurisdiction? There is yet no special law to address jurisdictional issues on the Internet. Courts have been forced to apply traditional analyses of jurisdiction to the cases. In this new technological era, our traditional concept of jurisdiction has made a relatively smooth alteration into cyberspace. Previously, jurisdictional requirements have run on the activity of the parties as a means of powerful state's law to apply. The place of litigation is significant for several reasons.³²

Firstly, parties want to avoid difficulty. A trial that occurs away from the resident state can bring up issues of out of state witnesses, entry permit etc. Also travelling to and uphold a presence in a different state can be very costly and time-consuming.

Secondly, litigants might be disturbed about the discrimination of a judge or jury to their own party.

Thirdly, and most common, is the concern with which state's law applies to the suit. The forum state decides which state's law will be applicable and thus, the choice of forum becomes a very significant question.

With the advent of the Internet and the new boundary of cyberspace, recognized ideas about where and how interactions take place must be re-evaluated in this extraordinary, online atmosphere. These natures of issues affect a court's jurisdiction over parties interacting in cyberspace.

Unexpectedly, one predictable idea of jurisdiction has adapted by USA to this new cyber surroundings. This is illustrated by the report of the American Bar Association, which extends support to the 'minimum contacts' in case of *International Shoe Co v. Washington*³³. Cyberspace has extended the arena for communications of all kind, and has provided another forum in which parties can reach out to each other from different locations, and possibly create the minimum contacts necessary for personal

³² Tricia Leigh Gray "*Minimum Contacts in Cyberspace: The Classic Jurisdiction Analysis in a New Setting*" Available at: <http://euro.ecom.cmu.edu/program/law/08-732/Jurisdiction/GrayMinimumContacts.pdf>, (Accessed on dated 07/10/2016)

³³ US 310 at 316(1945)

jurisdiction. Traditional principles of jurisdiction are flexible to cyberspace because they consider the physical location of the parties and they conduct directly at the forum state. These factors remain crucial to our current analysis of jurisdiction in cyberspace. The idea that the minimum contacts standard will continue to guarantee the jurisdictional analysis is encouraging for domestic cases, but troubling for cases with international parties.

When something goes wrong with contracts between e-tourism industry and the tourist are from different countries, this gives way to conflict on where a court of action should be brought?

- i. Should it be in the country of the purchaser?
- ii. That of the seller or service provider?
- iii. And how can you enforce a court ruling when each party is in a different country?

Naturally everyone wants to sue in their home court, at that time who will decide where to file the case if the opposite party not bound to follow the suit filed against him in the another jurisdiction. At the same time the internet does not have their permanent boundary. The seller of one country sells their e-tourism product purchased by the tourist/consumer of another country. If any problem arises, who will decide the matters and which laws will be applied by the court to decide the matters is in question.

Other issue is contracts made over the internet are basically on the terms and conditions enclosed on the web site in question, and may regularly contain an option of law clause, which indicates the country in which a dispute will be decided. When at the time of contract, consumer without reading the conditions contain therein enters into the contract, in case of breach the consumer will prefer to sue in the home country court because he doesn't know about the terms and conditions. But an important deliberation is whether or not the terms and conditions are actually brought to the mind of the consumer. In any dispute the option of court can be serious. Naturally, everyone wants to sue in their home court. The creation of place is not the location of that arrangement, but is the place of business of the parties. The place of location of the computer system may be different from the place where the electronic record is

deemed to have been received.³⁴ This leads to jurisdictional disputes and uncertainty. There are no International treaties which will help to remove this uncertainty.

The issue of jurisdiction cannot be solved by any typical goal as to contact, but rather requires an investigation of both excellence & magnitude of Internet contacts. Physical borders can no longer function as symbol to individuals since users are unaware of the existence of any boundaries in cyberspace. Courts need to widen a hierarchy of different internet contacts in order to estimate the totality of a defendant's contacts with inhabitants of a country.³⁵

The key consumer protection issues in between e-tourism industry and tourists include:

- i. The question of trust among website owner of the product/services, and the service provider/tour operator facilitating the service to the tourist/consumers;
- ii. The responsibilities and legal obligations of individuals involved in facilitating the services and of the website stakeholders (Government or Private) that provide trading platforms.

More specifically, issues related to the role and responsibilities of Internet mediators to consumers include information disclosures and off-line deceptive activities by the service providers towards the consumer/tourist.

2.6. NO ASSURANCE POLICY

The law has already been made; there are different groups that e- tourism law is concerned with: Service providers, retailers, and travellers, supervisory body, and hosts country. Travel agents fall under the category of retailers of travel, a group that also includes tour operators, travel promoters, consolidators, telemarketers, travel clubs, travel agents, Internet websites, and companies; all may be insured their

³⁴ Rakesh Kumar and .Ajay Kumar “*Cyber laws*” (2011), APH Publishing Corporation New Delhi.

³⁵ Ibid

respective business with banks, surety, and the insurance companies.³⁶ It is the compulsory obligation to all travel agencies to conclude insurance policies with insurance companies for insurance reimbursement of repatriation and/or the amounts paid by tourists, in case of insolvency or bankruptcy of the travel agency. In case the e-tourism consumer claims their losses /damages regarding the product/travel services to the e-tourism company, and there is lack of funding/insured policy on the part of Tourism industry for the fulfilment of compensation claimed by tourists. There are no other possible sources of compensation fulfilment when the consumer do not received the Product/Travel Services they purchased online and are unable to obtain reimbursement through compensation up to the cost of original contracted Product/travel services from the other sources. The special tourism assurance policy is best for the betterment of tourism in India.

Our e-tourism business model lack guarantees (Assurance) infrastructures for the running of e-tourism mechanisms by satisfying the online consumer in India. The online Assurance fund should be necessary for the protection of the money loss due to non availability of the purchased product/services from the tourism operational. Special Assurance policy mitigates the travel and tourism product related risk.³⁷

By analysing the above issues, number of e-consumer is growing these days due to its user-friendly nature but at the same time the risk factors for using internet for e-tourism is also increasing and about to catch danger mark if not controlled and regulated appropriately by a time clear regulation on the same. In the whole, there are different measures required for the protection of the consumer in e-tourism such as appropriate information of the websites, information about the e-retailer/stakeholder

³⁶Phil Cameron “*Travel Agents: Their Role and Liability*”. Available at: http://www.americanbar.org/publications/gp_solo/2013/may_june/travel_agents_their_role_and_liability.htm (Accessed on 2/04/2016).

³⁷ The 2010 Philippine bankruptcy and insolvency law provides a predictable framework for the rehabilitation and liquidation of distressed companies. Rehabilitation may be initiated by debtors or creditors under court-supervised, pre-negotiated, or out-of-court proceedings. The law also sets the conditions for voluntary (debtor-initiated) and involuntary (creditor-initiated) liquidation. It also recognizes cross-border insolvency proceedings in accordance with the UNCTAD Model Law on Cross-Border Insolvency, allowing courts to recognize proceedings in a foreign jurisdiction involving a foreign entity with assets in the Philippines. Regional trial courts designated by the Supreme Court have jurisdiction over insolvency and bankruptcy cases. Available at: <https://www.state.gov/documents/organization/227069.pdf>, (Assessed on 07/02/2016)

either Government agencies or the Private companies of e-tourism, adequate information about the terms of the contract of e-tourism, information about the use of consumers' personal data, accuracy and validity of the information, confirmation of the transaction, fair contract, adequate regulations of unconscionable contract, adequate regulation of package quality and suitability, adequate regulation of liability issues, adequate regulation of returns, exchange and refund issues, adequate privacy protection, fair dispute resolution system and a realistic opportunity for legal action and an appropriate Alternative Dispute Resolution system within country or cross border cases for e-tourism consumer. There are so many issues such as Privacy of tourist in hotels, Security in the online tourism product, Fraud on the part of tour operator/service provider, and liberalisation of e-Visa. After all these serious legal issues discussed in relation to e-tourism business, the jurisdictional issue is more vital amongst them. For solving these issues international legal framework is needed.

CHAPTER – THREE

LEGAL FRAMEWORK OF E-TOURISM

The tourism sector is increasing day by day and now it has shaped into a large economic sector with changed traditional pattern of business by using new technologies via World Wide Web. The regulation of the tourism sector is different in India as compare to other countries. There are specific laws and there are various international regulations to legalize the tourism industry.¹

The concept of business has been changed due to modernisation of the technology. Hence one can call it as electronic tourism industry (e-tourism). Consumers can now directly participate in the global market. On the other hand globalization of markets made it very difficult for the law of Nation/ State to control the access of businesses beyond the boundaries. In our day to day life we become consumer by buying tourism products or hiring the services through computer network. In this era of science and technology, the globalization, urbanization and modernization develop rapidly which has resulted into vast competition in market.² As an e-consumer, we have much concern about the choice, purchase and consumption. Online market is always dominated by the website holders. The sale of tourism product is not the sale of tangible product such as Glass, Chairs, etc.; it is the sale of services. The packages consist of bundle of promises to deliver the services and to perform those promises offline by different person in different stages.

The National authorities have already taken up the primary responsibility for protecting the rights to freedom of movement/travel, liberty and security of tourists. This means that the State must guarantee that these rights are sufficiently protected as per national legislation and respected by all agents of the State at the national, regional and local levels. Article 13 of the Universal Declaration of Human Right

¹David Mark, “*The legal and regulatory framework of the travel and tourism sector.*” Available at: <http://www.slideshare.net/15/explain-the-legal-and-regulatory-framework-of-the-travel-and-tourism-sector>. (Accessed on 22/04/2016)

²Inaugural speech of Hon’ble Justice Ashok Bhan, President, National Consumer Dispute Redressal Commission, New Delhi on 14th &15th March, 2013

(UDHR) 1948³ makes right to liberty of the movement within the country or outside the country and come back to it as guaranteed human rights to everyone. The same provision has also been, provided under Article 12 of the International Covenant on Civil and Political right, 1966.⁴ At national level the right to freedom of movement is guaranteed under Article 19 of the Constitution of India. On the same way, right to business of tourism is a guaranteed right under Article 19(1) (g) of the Indian constitution. The above provisions guaranteed in the national as well as international legislations are not absolute. In India the grounds for restriction on right to freedom of movement is mention under Article 19(5) of the Constitution⁵ and the restrictions on freedom of trade and business is given under Article 19 (1) (6) of the Constitution.⁶ A reading of all International and National Documents containing various rights gives right to freedom of trade and the tourism business. These service providers on the basis of these guaranteed rights can offer their product and services

³Article 13 of UDHR, 1948- 1) everyone has the right to freedom of movement and residence within the borders of each State. 2). everyone has the right to leave any country, including his own, and to return to his country.

⁴ Part III under Article 12 of International Covenant on Civil and Political Right, 1966- 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. 4. No one shall be arbitrarily deprived of the right to enter his own country.

⁵ Article 19(5) of Indian Constitution- Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe

⁶Article 19(1) (6) of the Constitution of India-Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise].

to the consumer online. And at the same time this provides legal foundation for consumer claim/right protection against the website holders/suppliers of the e-tourism services. Besides Nation and International documents there are certain other important laws which comes into picture for the protection of rights of consumers, these are:

- a) Contract:
 - i) Is the promise a part of contract?
 - ii) Is the promise mere puff?
 - iii) Is there a breach of promise?
 - iv) Are the booking conditions effective to exclude liability?
- b) Negligence - Law of Tort imposes duty of care for failure to warn or provide collectively and failure to provide safe passage or secure physical environment.

Some of the Indian legislations as well as International guidelines which govern the e-tourism industry are discussed below:

3.1. INDIAN LEGISLATIONS

1. Consumer protection Act. 1986
2. Indian contract Act, 1872
3. Information Technology Act, 2000
4. Competition Act, 2002
5. Consumer Protection Bill, 2015

3.1.1. AN ANALYSIS OF CONSUMER PROTECTION ACT, 1986

In India the Consumer Protection Act, 1986 called in short (CP Act, 1986)⁷ along with the Consumer Protection Rules 1987 and Consumer Protection Regulations, 2005 constitute the domestic legal framework for the protection of Consumer Rights. The CP Act, 1986 is applicable to the disputes arising out of e-tourism but there exist certain practical impediments in its applicability i.e. in order to obtain protection under the domestic law, all the parties involved in e-transaction need to be based on within the national boundaries so that the jurisdiction of the domestic consumer

⁷ (68 of 1986) commence on 24th December, 1986.

protection law applies.⁸ The CP Act 1986 in its present form does not take into account the role of internet intermediaries. While the Act covers the trader and the corresponding defects and deficiencies in products and services, it is completely silent on the accountability of online market places such as e-tourism.

The tourist is a consumer of the products and the services as per definition given under Section 2 (d) (ii)⁹ of the CP Act 1986. By applying this definition, the National Consumer Disputes Redressal Commission had pointed out that the tourist is a consumer of the products and services in case of *M/S. Cox & Kings (I) Pvt. Ltd., v. Mr. Joseph A. Fernanes*¹⁰. Here, in the context of the e-tourism business the tourist purchases the tourism product/services by availing the consideration paying by transaction of money online to the tour operators or tourism stakeholders that is why the tourist is also called a consumer. In the CP Act, “Consumer Disputes” is defined

⁸Sashi Nath Mandal, “*Protection of E-consumers’ right in electronic transaction*”. Available at: <http://poseidon01.ssrn.com/delivery.pdf>, (Accessed on 04/04/2016).

⁹Under section 2(1)(d) of the CP Act 1986, “consumer” means any person who,—
(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purpose; Explanation.— For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment;

¹⁰ Judgment on dated , 20 December, 2005

under section 2(1) (e)¹¹ is relevant for the dispute between the tourist and the tourism websites stakeholders or the offline service providers such as Hoteliers, Airlines, Railways, Roadways, Food and Beverages and Entertainments etc. while exercising their public utility services. The dispute arises when the consumer is in defect of products and services supplied by the e- tourism stakeholders. The word “Defect” is defined under section 2(1) (f)¹² of the CP Act. It is applicable to the e-tourism consumers as well. They can claim any shortcomings in the quality of products or services which are promised at the time of booking of the travel packages or any other services under this section.

If the tourist finds any “Deficiency in services” as per the definition under section 2(1) (g)¹³ of CP Act he can claim it against the website holders or the offline service providers on the ground of promised at the time of contract. The word service here means “Service” as defined under section 2(1) (o)¹⁴ of the CP Act. Here it is relevant to mention that the e-tourism business is the combination of the different products and services which are also defined in the Consumer Protection Act. The service such as banking services is for the booking of the online tourism product. The three modes of transportation services such as Railways, Airways and Roadways which is included in the travel packages is also services. The booking of the Hotels and all the information about the destinations shown in the websites are covered under the definition of services under section 2(1) (o) of CP Act, 1986. Hence, if any fault,

¹¹Section 2(1) (e) “consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

¹² Section 2 (1) (f) of CP 1986- “any fault, imperfections or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service”.

¹³ Section 2(1) (g) of CP Act 1986- “any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

¹⁴Under Section 2(1) (o) of the CP Act "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

imperfection, shortcoming or deficiency in services on the part of e-tourism business holder arises, who has right to action or against them? And who has jurisdiction to decide the disputes.

Under Section 2 (1) (b) ¹⁵ of CP Act, those who file the complaint are called as “complainant.” And the matters submitted in writing is called the “Complaint” which is defined under section 2(1) (c) ¹⁶ of the Act. According to CP Act, if anything is unsatisfactory about the products and services provided by the tourism operational, tourist can allege to be made in writing to file the complaint under the District Consumer Redressal Forum, State Consumer Redressal Forum (Commission) or the National Consumer Redressal Forum (Commission) for the settlement of the disputes or grievances related to tourism.

¹⁵Section 2(1)(b) of the CP Act “Complainant” means—(i) a consumer; or (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force; or (iii) the Central Government or any State Government; or (iv) one or more consumers, where there are numerous consumers having the same interest;(v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

¹⁶ "Section 2(1)(c) of CP Act 1986-complaint" means any allegation in writing made by a complainant that- (i) an unfair trade practice or a restrictive trade practice has been adopted by (any trader or service provider ;] (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects; (iii)[the services hired or availed of or agreed to be hired or availed of by him] suffer from deficiency in any respect; (iv) a trader or the service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price- (a) Fixed by or under any law for the time being in force; (b) displayed on the goods or any package containing such goods; (c) displayed on the price list exhibited by him by or under any law for the time being in force; (d) agreed between the parties; (V) goods which will be hazardous to life and safety when used, are being-offered for sale to the public- (a) in contravention of any standard relating to safety of such goods as required to be with, by or under any law for the time being in force; (b) if the trader could have known with due diligence that the goods so offered are unsafe to the public;) (vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety;) with a view to obtaining any relief provided by or under this Act;

Under this Act, the consumer can complaint against the trader or service provider as the case may be has charged for the goods or for the services mentioned in the complaint, a price is more or greater than of the price fixed by or under any law for the particular time period displayed on the goods or any package containing such goods; displayed on the price list displayed by him by or under any law for the time being in force; or agreed between the parties.¹⁷

Tourist can seek compensation for a deficiency in service or for 'unfair trade practices'¹⁸ under the CP Act. The Consumer Commission decided the cases related to unfair trade practices by the tourism operational by providing the misleading advertisement of the tour packages in their advertisement in case of *M/s. Cox & Kings (I) Pvt. Ltd. V. Mr. Joseph A. Fernanes*¹⁹.

The tour operator needs to pay compensation to the tourist for loss caused by the misleading advertisement. The Karnataka State Commission decided to award Rs.50,000/- as compensation to the tourist which was paid by the tour operator and it was ordered to be complied within four weeks from the date of the receipt of the same or else it would have attracted 9% interest p.a.

Under section 6 of CP Act, 1986, the Central Council shall promote and protect the rights of consumer as:

- a) Right to Safety,
- b) Right to be Informed/Right to Representation,
- c) Right to Choose,
- d) Right to be heard
- e) Right to seek redressal,
- f) Right to consumer education,
- g) Right to give basic needs,

¹⁷ Definition of "Complaint" provided under section 2(1) (C) (b) of CP Act, 1986.

¹⁸Section 2 (r) of the CP Act 1986 (Subs. by Act 50 of 1993) (w.e.f. 18-6-1993)

¹⁹ *M/s. Cox & Kings (I) Pvt. Ltd. V. Mr. Joseph A. Fernanes* (From the order dated 24/11/04, in Appeal No.66/2004 of the State Commission, Karnataka) Revision Petition no. 366 of 2005 (Order on 20 December, 2005) Hon'ble mr. Justice K.S. Gupta Presiding member Mrs. Rajyalakshmi Rao, member.

h) Right to healthy environment.²⁰

Section 6 of CP Act, 1986 is also covers the e-tourism consumer cases.

There are three redressal agencies /machineries for resolving the matters of consumer according to the CP Act. The Act deals with the pecuniary jurisdiction of matters as well as territorial jurisdiction of matters. But in the technological era e-tourism facilitate changes in the booking system of different modes of transportation. It crosses the territorial boundary of jurisdiction. At this juncture CP Act becomes ineffectual & inadequate to decide the disputes.

Sections 12 to 15 of CP Act contain provisions of District Consumer Dispute Redressal Forum (District Forum) which has pecuniary limits of Rs.20 Lakhs. Sections 16 to 19 contains provisions of State Consumer Dispute Redressal Commission (State Commission) with the limit of value of Rs. 20 lakh to Rs.1 Crores, and National Consumer Dispute Redressal Agencies (National Commission) under sections 20 to 23 which deals with the claim exceeds 1 crores.

Against the finding of the District Forum the aggrieved party may go for an appeal to the State Commission within the thirty days from the date of the order of the District Forum. The limitation period can be condoned if the is Commission satisfied that there is sufficient ground for not filing the suit within the time period.²¹ The

²⁰ Section 6 of the Consumer Protection Act 1986 - Objects of the Central Council.- The objects of the Central Council shall be to promote and protect the rights of the consumers such as,-(a) the right to be protected against the marketing of goods and services which are hazardous to life and property; (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods[or services, as the case may be] so as to protect the consumer against, unfair trade practices; (c) the right to be 'assured, wherever possible, access to a variety of goods and services at competitive prices; (d) the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate Fora; (e) the right to seek redressal against unfair trade practices [or restrictive trade practices] or unscrupulous exploitation of consumers; and (f) the right to consumer education.

²¹ Section 19 of the Consumer Protection Act, 1986

important things is that, there shall be no appeal entertained by the State Commission unless the person who is required to pay any amount in terms of an order of the District Forum has deposited fifty percent of the amount so awarded or Rs.20,000/- whichever is less.

Any person who is aggrieved of the order passed by the National Consumer Redressal Forum may make an appeal to the Supreme Court within the 30 days from the date of order. But there is one criterion to be fulfilled by the aggrieved party that the person is required to deposit 50% of the amount or 50,000/- whichever is less as per the order of the National Commission.²²

The Supreme Court of India under Article 136 of the Constitution of India may entertain Special Leave Petition against the order of the National Commission passed under the Revision or Review petition. The limitation period of filing special leave petition to the Supreme Court is one month of the date of order.

Under the territorial jurisdiction of matters there are three different principles for filing of the complaint. Firstly, the private person against whom the claim is made actually and voluntarily resides or carries out their business or has a branch office or personally works for gain in that area.²³ Secondly where there are more than one opposite party, each of the party actually and voluntarily resides or carries on business or had a branch office or personally works for gain in that areas.²⁴ Thirdly, the cause of action, wholly or in part, arises in that area. The same principle applies when Consumer Redressal Commission decides the disputes which are raised while

²² Section 23 of CP Act,1986 (68 of 1986)- Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer appeal against such order of the Supreme Court within a period of thirty days from the date of the order: Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period: Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of that amount or rupees fifty thousand, whichever is less.

²³ Jurisdiction of the District Forum-Section 11(1) (2) of the CP Act,1986

²⁴ *ibid*

in online booking of the travel ticket/packages including luggage in case of M.D.Air Deccan v. Shri Ram Gopal Agarwal.²⁵

There are so many public utility services included in the travel packages which are booked through e-tourism websites. The business services such as Railways, Airways, Roadways services, Hotel accommodation, Food and Beverages and Entertainment etc. the complaint against the deficiency in service is one of the vital aspects of the Consumer protection Act. The complaint can be lodged against the tour operator/service providers if there is any deficiency in service or if the price is charged are higher or services provided are hazardous or unfair and restrictive trade practices are being followed.²⁶

By referring the CP Act, the Commission had decided number of cases filed by the tourist who had faced problem due to the reason of deficiency in services provided by the tourism operational at the mean time of the tour.

The inconvenient tour arrangements made by the travel and tour operators, who did not provide proper accommodation, who are obliged to ensure that the hotel facilities are available as promised, is deficient in services on the part of Tour Operator because of the breach of contract resulting in distress and disappointments suffered by the tourists. On complaint of the tourist made against the Tour Operator, in the Consumer Commission, the Commission declared Tour Operator liable to pay the compensation to the tourist in case of Arab Kr. Sarkar v. M/s. Seema Travels.²⁷

²⁵(Judgment on Dated 07.12.2013) In this case the District Forum also over-ruled the objections rose by the respondent to its territorial jurisdiction, that the Claimant had purchased the air tickets through the internet and made the payment through the credit card. The amount was deducted from the bank account of the Complainant at Vijaya Bank, Shillong which is within the territorial jurisdiction of this Forum.

²⁶Rajyalakshmi Rao "*Consumer is king*" Universal Law Publishing Co. New Delhi, on Topic "*Deficiency in Service*" Page No. 142.

²⁷ III (2002) CPJ177 (NC), Revision Petition No.2130 of 2000, decided on 21-12-2001

3.1.2. AN ANALYSIS OF INDIAN CONTRACT LAWS

The Indian Contract Act, 1872²⁸ occupies the most important place in the Commercial Law. Without contract Act, it would have been difficult to carry on trade or any other business activity. Contract law applies in day to day proceedings of life. The objective of the Contract Act is to guarantee that the rights and responsibility arising out of a contract are fortunate and that legal remedies are made available to those who are affected.²⁹ Hence Indian Contract Act is important to operate the e-tourism business industry because the passenger (tourist/consumer) and the e-tourism company must know that they are legally bound with each other. Under the Contact Act the travel company/tour operators/service providers have their right to claim the payment of services and consumer/tourist shall have right to claim the compensation if the e-tourism industry does not perform the promise as mentioned in the contract or the agreement at the time of booking etc.

E-tourism industry must inform the tourists that, the contact between them via e-mails, or any communication is legal and binding between them. A travel agency is also under and obligations to timely communicate them the terms and conditions of the contact to the tourists.

Section 2(a) of Indian Contract Act define proposal accordingly when one person shows to another his compliance to do something, with a view to obtain the consent of another person, he is said to make a proposal.³⁰ The section applies to online proposals as well. Consequently when Government Agencies or Private Stakeholders offers in their respective online websites for e-tourism business, they are said to made proposal/offer to the online consumers.

²⁸ Indian Contract Act (9 of 1872), enacted on 25th April, 1872. Date of Commencement 1st April,1872

²⁹ Available at : <http://www.netlawman.co.in/ia/indian-contract-act>, (Accessed on 22/04/2016)

³⁰ Interpretation clause –Section 2 (a) of Indian Contract Act 1872-“ When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

Section 2(b) of Indian Contract Act 1872 deals with whom the proposal is made and how it will convert into promise.³¹ Therefore the proposal made by the online website holder when agreed or booked by the consumer, the said Packages, Travel Trip, Travel Destination, Accommodation of Hotel & Entertainment etc, becomes promise on the part of e-tourism Stakeholders. Here performance of promise becomes an obligation on the part of the e-tourism website stakeholders. The tourism operational includes Tour Agent, Tour Operator, Tour Guide, Hotel's Service Providers, Transportation such as Airways, Railways, Roadways services providers etc.

Section 2 (C) of the Contract Act ³² defines the promisor and promisee. In this context of the provision, the e-tourism website owners makes an invitation to an offer by advertising it on their websites, which is scrutinized by the tourist and when tourist ask for that packages it becomes a proposal and here tourist becomes a promisor and when the same is accepted by the owner the owner becomes promisee. The payment on the part of tourist is his consideration and promise on the part of owner is his consideration.

According to section 2(e) of the Contract Act,³³ the e-tourism consumer accepts the proposal by paying the consideration is also an agreement between the e-tourism website holders/tour operator and the travel agent with the tourist, and the agreement which is enforceable by law is contract.

For a contract to be valid and legal to be applicable in the case of e- tourism ipso facto must be:-

1) Offer.

³¹ Section 2(b) of the Contract Act 1872 "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise".

³² Section 2(c) of Contract Act 1872- "the person making the proposal is called the promisor and the person accepting the proposal is called the promisee "

³³ Section 2(e) of the Indian Contract Act 1872- "Every promise and every set of promises, forming the consideration for each other, is an agreement"

- 2) Acceptance.
- 3) There must be consideration.
- 4) Create legal relationship between the parties
- 5) There are terms and condition.
- 6) The parties must be competent.

E-tourism websites makes an offer to the online consumer. If the consumer accepts the offers, then both parties enter into the contract. While making offer, there should be two or more parties existing in the contract. For example when any family goes on holiday trip and stays at hotel, the consumer will first of all book travel trip online for family by paying consideration and hence enter into a contact with travel agency or the e-tourism website owner. When a tourist likes the tour packages and he wants to buy the tour packages then it is called acceptance of offer. For the validity contact, there must be some payment (consideration).

Also, parties to the online contract must be competent. It is very difficult for the tour operator to find the actual age of parties entering into contract. Since minor's contract is not a valid contract it may be void if any of the party is minor. But this type of contract is rarely occurs because the parties to the contract in e-tourism must disclose their valid identity proof for booking of the travel trip.

If the contract is not certain then it will not valid. The contract of booking of travel Package trip, accommodation of hotel must be certain. In the online website the packages should be definite & certain. In e-tourism sector there are three types of contract exist with the tourist:-

- a) Contract for supply of goods/Products: Products can consist of one or more of the following:
 - i) Travel by Airways, Railways or Roadways,
 - ii) Hotel Accommodation,

iii) Ancillary services such as excursions, entertainment, food & beverages.³⁴

b) Contract for provision of services: The e-tourism industry display its services to the Consumer, continuously inventing new product/destination and refining old product to attract the consumer's concern and satisfying the Consumer/tourist. Participants in the e-tourism industry are the suppliers of the travel, accommodation, or additional services, sell product either directly through the e-tourism websites to the consumer or through an intermediary such as a Travel Agent or Tour Operators.³⁵

c) Contract related to Package Holiday: Tour Operators supply packages of travel, accommodation and ancillary services which they sell to consumers directly through their e-tourism websites or through Travel Agents. All agreement made online is contract if it is made by free consent of the parties without any coercion, misrepresentation, fraud, undue-influence and mistake.

3.2.1. STANDARD FORM OF CONTRACT-

The tourist/consumer does not have right to negotiate the contract between the e-tourism stakeholders, either to take it or leave it. There is no negotiation between the parties in the contract. The Contract Act has failed to assume the new dimension of the e-tourism contract. All the packages are fixed in the website.

The e-tourism consumers either have to book the packages or leave it. There is no bargaining in the online contracts. In online contract of bond, the individual does not have choice of their own but to accept the same; he cannot negotiate but adhere. Therefore, the individual deserve to be protected against the possibility of exploitation inbuilt in such contracts.

³⁴Cordato J. Anthony, (2007) "*Australian Travel & Tourism Law*" Butterworth, 3rd Ed.

³⁵ Ibid

Some of the modes of protection of consumers which are developed by the foreign court's decisions are discussed below:

In case of *Olley v. Marlborough court Ltds.*³⁶ the plaintiff and her husband hired room in the defendant hotel for one weeks boarding and lodging in advance. When they went to occupy, they found the notice displayed stating “*proprietor will not hold them responsible for article lost or stolen, unless handed to the management for safe custody*”³⁷. Due to negligence on the part of hotel staff, plaintiff's property was stolen from the room. In an action against the defendant to recover the compensation for loss; they sought exemption from liability on the basis of the notice display in the room. It was held that notice in the room was not forming the part of contract and therefore, the defendant was liable to pay compensation.

In case of *Parker v. South-Eastern Rail Co.*³⁸, the plaintiff deposited his bag to the cloak room at the railway station and received a ticket. On the face of the ticket it was printed “*see back*” and on the back there was the notice the company will be responsible for any package excluding the value of \$ 10. The notice to the same effect was also hung up in the cloak room. The plaintiff's bag was lost and he claimed the full value of his bag which was more than \$10. The company relied upon the exception clause. The plaintiff asserted that although he knew there was some writing on the ticket, he did not see what it was, as for his attention the ticket was mere receipt of the money he paid.

In case of *Henderson V. Stevenson*³⁹, the plaintiff brought a ticket on the face of which was these words only “*Dublin to Whitehaven*”, on the back were printed

³⁶ [1949] 1 KB 532 is an English contract law case one exclusion clauses in contract law. The case stood for the proposition that a representation made by one party cannot become a term of a contract if made after the agreement was made. The representation can only be binding where it was made at the time the contract was formed.

³⁷ *ibid*

³⁸ [1877] 2 CPD 416 is a famous English contract law case one exclusion clauses where the court held that an individual cannot escape a contractual term by failing to read the contract but that a party wanting to rely on an exclusion clause must take reasonable steps to bring it to the attention of the customer.

³⁹ 1875 2 R (HL) 71

certain condition one of which excluded the liability of the company for loss injury or delay of passenger or of his luggage. The plaintiff did not see the back of the ticket, nor was there any indication on the face about the conditions on the back. The plaintiff's luggage was lost in the shipwreck caused by the fault of the company's servant. This was laid down by the House of lord that the plaintiff is entitled to recover the loss which he suffered from the company in spite of the exemption clause.

Section 73 of the Contract Act, ⁴⁰ provides compensation for damage or loss caused by breach of contract. When a contract has been broken; the party who suffers by such breach is entitled to receive compensation or damage caused to him from the party who has broken the contract. By explaining this provision, to assess the loss or damage arising from a breach of contract, the means which existed of remedying the difficulty caused by the non-performance of the contract must be taken into further explanation. The above provision governs the offline consumer only. There are various e-tourism related cases unsolved due to breach of contract between the e-tourism operational and the tourist due to non-availability of laws.

Section 73 also governs when the e-tourism company/agency make any breach of contract, the compensation should be paid to the consumer who loss or damages due to breach of contract. The complications of modern business are such that it is not possible for any individual to run all the e-tourism activities personally. The business man has to depend on the services of the other in order to run day to day affairs.

⁴⁰ Section 73 of Indian Contract Act 1872-.Compensation for loss or damage caused by breach of contract.- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. Compensation for failure to discharge obligation resembling those created by contract.-When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Under section 182 of Indian Contract Act,⁴¹ "Agent" and "Principal" are defined. This section is also applies to the e-tourism contract. The term Agent and Principal are same as the travel operator, travel agent, tour operator or service providers appointed by the tourism stakeholders.

To understand the role of travel agents, one must understand the contract law. An *agent* is a person or company authorized to act on authority of and on behalf of the *principal*. The agent remains under the control of the principal in industry with third parties, and all the allowed acts of the agent are attributing back to the principal as if they were done by the principal and not the agent. The agent's authority is limited to the agency with the principal.⁴² With the implementation of new Information and Communication Technology, the use of computer networks developed with the significant popularity in the recent past. Computer networks serve as channels for electronic trading across the globe. By electronic trading, we do not just mean the use of computer networks to enter into transaction between two human trading partners by making possible contact but also means those contracts which are entered between two legal persons along with the help of a computer program which acts as an agent even when it is not aware of its own activities but also by initiates it.⁴³

An e-tourism business-related transaction can be divided into three main stages:

1. The advertising and searching stage,
2. The booking and payment stage and
3. **The delivery of services stage.**

Above two stages of these may be carried out electronically and therefore, covered under the concept of 'electronic commerce' and the last stage may be performed

⁴¹ "Agent" and "principal" defined under section 182 of Contract Act, 1872.-An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal".

⁴² "Travel Agent their role and liability" Available at: http://www.americanbar.org/publications/gp_solo/2013/may_june/travel_agents_their_role_and_liability.html, (Accessed on 2/04/2016)

⁴³ "E-Contracts and issues" Available on website at: <http://www.legalserviceindia.com/article/1350-E-contracts-&-issues-involved-in-its-formation.html>, (Accessed on 22/04/2016)

offline by providing services through the service provider/ tour operator /tour agent etc.⁴⁴

Due to the development of technology, old contract law is not adequate to administer the issues of electronic commerce. The Contract has been made between the two or more parties through computer network are called the Electronic Contract (e-contract). Due to this reason, the new legislation called as “Information Technology (IT) Act 2000”⁴⁵ has been enacted. But the issues of e-contract cannot be only covered under IT Act it need covering of the Contract Act 1872.

IT Act, 2000 provide legal recognition for e-business carried out electronically, called as "electronic commerce,” and the e-tourism is the small part of it. The computer based business substitutes the paper-based methods of statement and storage of information, and it makes easy and transparent electronic documents with the Government agencies and the private stakeholders.

The IT Act deals with the Contract form through electronic medium. It shall extend to the whole of India and, it applies to any offence or infringement which is committed outside India by any person.⁴⁶ It essentially seeks to address three areas or perceived requirements for the digital era:

- (a) To make potential e-commerce transactions—both business to business and business to consumer.
- (b) To make promising e-governance transactions—both government to citizen and citizen to government

⁴⁴ *ibid*

⁴⁵ Information Technology Act, 2000 (21 of 2000), enacted on 9th June, 2000 and date of Commencement of the Act on 17th October, 2000

⁴⁶ Section 1 and 2 of IT Act,2000.

(c) To curb cyber crime and regulate the Internet business.⁴⁷

Chapter IV of the IT Act, 2000 contains sections 11, 12 and 13 covering Attribution, Acknowledgment and Despatch of Electronic Records. Under this Act, Attribution of record under Sections 11⁴⁸ says “*an electronic record shall be attributed to the Originator.*” According to section 2(1)(za) of the IT Act, originator is “*a person who sends, generates, stores or transmits any electronic message or causes any electronic message to be sent, generated, stored or transmitted to any other person.*” Here the term “originator” does not include an intermediary. The facility of exchanging the views via e-mail for the booking of any tourism product which is generated by the intermediary services is through internet.

Acknowledgment of Receipt is described under section 12 of the Act.⁴⁹ Section 13 of the Act contains the provisions relating to ascertainment of time and place of dispatch and receipt of electronic records. According to the provision, an electronic record is to be mail at the place where the originator’s place of business, and is to be received

⁴⁷ Didar Singh, “*Electronic Commerce: Issues of Policy and Strategy for India*” (September, 2002) Working Paper No. 86. Also available at: <http://icrier.org/pdf/WP-86.pdf>. (Accessed on 03/04/2016)

⁴⁸Section 11 of IT Act 2000 Attribution of electronic records:
An electronic record shall be attributed to the originator—
(a) if it was sent by the originator himself;
(b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or
(c) by an information system programmed by or on behalf of the originator to operate automatically.

⁴⁹ Section 12 of the IT Act- Acknowledgment of receipt:
(1) Where the originator has not agreed with the addressee that the acknowledgment of receipt of electronic record be given in a particular form or by a particular method, an acknowledgment may be given by—
(a) any communication by the addressee, automated or otherwise; or
(b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.
(2) Where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgment of such electronic record by him, then unless acknowledgment has been so received, the electronic record shall be deemed to have been never sent by the originator.
(3) Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgment, and the acknowledgment has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then the originator may give notice to the addressee stating that no acknowledgment has been received by him and specifying a reasonable time by which the acknowledgment must be received by him and if no acknowledgment is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.

at the place where the addressee's place of business. If the originator or the addressee has more than one place of business, the principal place of business shall be the place of business. If the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business.⁵⁰ Accordingly the jurisdiction of the Consumer Commission will be decided in online business. Under section 14 of the Act, where at a specific point of time any security procedure has been applied to an electronic record such record shall be secure electronic record from such point of time to the time of authentication.⁵¹

The IT Act 2000 attempts to change non-operational laws and provides ways to deal with cyber crimes. India is in need of such laws so that people can perform online

⁵⁰ Section 13 of IT Act -Time and place of despatch and receipt of electronic record:

(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator.

(2) Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely :—

(a) if the addressee has designated a computer resource for the purpose of receiving electronic records,—

(i) receipt occurs at the time when the electronic, record enters the designated computer resource; or

(ii) if the electronic record is sent to a computer resource of the addressee that is not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;

(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.

(3) Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

(4) The provisions of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).

(5) For the purposes of this section, —

(a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;

(b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;

(c) "Usual place of residence", in relation to a body corporate, means the place where it is registered.

⁵¹ Section 14 of the IT Act- Secure electronic record:

Where any security procedure has been applied to an electronic record at a specific point of time then such record shall be deemed to be a secure electronic record from such point of time to the time of verification.

transactions over the internet through credit cards without worrying about the misuse. The Act offers the much-needed legal skeleton so that information is not denied legal effect, validity or enforceability, is exclusively on the ground of which it is in the form of electronic files.⁵²

From the viewpoint of e-commerce in India, the IT Act, 2000 and its provisions contain many encouraging aspects. Firstly, the implication of these provisions for the e-businesses is that the e-mail would now be an authenticate form of communication in our country that can be duly produced and approved in a court of law. The IT Act also addresses the important issues of security, which are so significant to the success of electronic transactions. It has specified a legal definition to the concept of securing digital signatures⁵³ that would be necessary to have been passed through a system of a security procedure, as predetermined by the Government at a later date.⁵⁴

The Act covers the 'Computer Related Offences' under section 66⁵⁵ which was inserted in the IT Amendment Act 2008⁵⁶ for punishing for act done under section 43.⁵⁷ For the purpose of this provision, the word "dishonestly" shall have the meaning

⁵² Thomas J. Smedinghoff Baker & McKenzie "The Legal Requirements for Creating Secure and Enforceable Electronic Transactions" (August 30, 2002) available at: <https://www.imf.org/external/np/leg/sem/2002/cdmfl/eng/smedin.pdf> (Accessed on 3/6/2016)

⁵³ Section 3(1) of IT Act,2000

⁵⁴ Ibid

⁵⁵ 66. Computer Related Offences. -

If any person, dishonestly, or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to 5 lakh rupees or with both.

⁵⁶ Substituted vide Information Technology Amendment Act,(ITAA) 2008

⁵⁷ Section 43-Penalty for damage to computer, computer system, etc:

(a) If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network, —

(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

(e) disrupts or causes disruption of any computer, computer system or computer network;

(f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

assigned to it in section 24 of the Indian Penal Code,⁵⁸ and the word "fraudulently" shall have the meaning assigned to it in section 25 of the Indian Penal Code.⁵⁹ But the above provisions is not sufficient to curb the problem arises in e-tourism business.

Section 43 (a) of IT Act 2000 deals with "Compensation for failure to protect data".⁶⁰ In this section, if any types of company (including –tourism company) hold, selling or managing any responsive personal data recorded in the computer which it owns, controls or operates only for the company is careless in perform and maintaining reasonable security practices and causes wrongful loss or illegal gain to any person or body corporate has to be liable to pay damages by way of compensation of up to five crore rupees, to the person so affected.⁶¹ For the purposes of this section 43 of the Act "Body Corporate" means any company and includes a firm, agencies or other association of individuals engaged in commercial or proficient activities. From the above context, the e-tourism company is also a body corporate cover under the word "*Body Corporate.*"

Section 43 (a) of IT Act also deals with the security of personal data and personal information of online computer network and compensate for failure to protect data. While the consumer buy the e-tourism product by providing the personal details about the Name, address, Phone Numbers, E-mail ID, Designation and pay the

(g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made there under;

(h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network, he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected. Accesses or secures access to such computer, computer system or computer network;

⁵⁸ Section 24 of IPC "Dishonestly"- whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing "Dishonestly".

⁵⁹ Section 25 "Fraudulently"- A person is said to do a thing fraudulently if he does that thing with intend to defraud, but not otherwise.

⁶⁰ Inserted vide Information Technology (Amendment) Act 2006

⁶¹ Change vide Information Technology (Amendment) Act 2008

consideration through the Credit Card, or Debit Card. If the information is hacked by the person via computer and unauthorised use for his personal benefits, this section 43(A) of IT Act is applicable in these circumstances.

A well notified incident of December 2004 clarifies it. Four employees of a call centre working as subcontracting facility operated by MphasiS in India, acquire PIN codes from four customers of MphasiS' client of Citi Group. The employees of MphasiS were not authorized to obtain the PINs. In association with others, Call Centre employees opened new accounts at Indian banks using false identities. These Call Centre employees have transferred the money within two months from the bank accounts of Citi Group customers to the new accounts they opened at Indian banks, by using the PINs and account information during their employment at MphasiS. Within April 2005⁶², the Indian police had caught to the cheating by a U.S. bank, and speedily recognized the individuals involved in the tricky scam.⁶³

In this case the police was successful in arrests when those individuals attempted to withdraw stolen amount of, \$426,000 cash from the inaccurate accounts; but the amount recovered was \$230,000 only. The Court held that Section 43(a) was applicable here due to the nature of unauthorized access involved to make transactions.⁶⁴ Section 43 of IT Act is not enough for these types of the scam occurred while operating the e-tourism business.

The Sensitive Personal Information Rules notified in 2011⁶⁵ impose an obligation on organizations to protect personal sensitive information that is gathering and afford remedy against losses caused by the escape or inappropriate use of data.

Likewise, Section 72 of IT Act provides "breach of confidentiality and privacy". The above section says that, any person who is accessing any electronic record, or

⁶² Available at: <http://niiconsulting.com/checkmate/2014/06/it-act-2000-penalties-offences-with-case-studies/> (Accessed on 29/01/2017)

⁶³ Times of India, <http://timesofindia.indiatimes.com/home/sunday-times/deep-focus/Indias-first-BPO-scram-unraveled/articleshow/1086438.cms> (Accessed on 29/01/2017)

⁶⁴ Available at : <http://niiconsulting.com/checkmate/2014/06/it-act-2000-penalties-offences-with-case-studies/>, (Accessed on 01/05/2016)

⁶⁵ Information Technology (Reasonable security practices and procedures and sensitive personal data or information) Rules, 2011

register, correspondence, information, or other document without the consent of the particular person shall be penalize with imprisonment for a term of two years or which may extend, or with fine upto one lakh rupees, or both.⁶⁶Section 72(a) of IT Act provides the “Punishment for disclosure of information in breach of lawful contract.”⁶⁷ The provision says that, any person or intermediary shall be punished if the personal information of the Tourist is disclosed in an illegal manner.

Section 67(c) provides the preservation and retention of information by intermediaries.⁶⁸ Under section 2(w) of IT Act 2000 defined the word "Intermediary."⁶⁹ It means any person who on behalf of another person receives mails or any other important documents and stores and transmits or provides any service with respect to that recorded documents which includes telecommunication service providers, mobile network service providers, and connection of internet service providers, web hosting service providers, search mechanism, online payment sites, online market places and cyber cafes. Therefore here the word “intermediary” means the government tourism Agencies or Private Tourism Stakeholders or the website

⁶⁶ Section 72 of IT Act 2000-Penalty for breach of confidentiality and privacy: Save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made hereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book. Register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

⁶⁷ Section 72(A) of IT Act 2000 (Inserted vide ITAA-2008)” “Save as otherwise provided in this Act or any other law for the time being in force, any person including an intermediary who, while providing services under the terms of lawful contract, has secured access to any material containing personal information about another person, with the intent to cause or knowing that he is likely to cause wrongful loss or wrongful gain discloses, without the consent of the person concerned, or in breach of a lawful contract, such material to any other person shall be punished with imprisonment for a term which may extend to three years, or with a fine which may extend to five lakh rupees, or with both.”

⁶⁸ Section 67 (C) of IT Act 2000-Preservation and Retention of information by intermediaries (1) Intermediary shall preserve and retain such information as may be specified for such duration and in such manner and format as the Central Government may prescribe.(2) Any intermediary who intentionally or knowingly contravenes the provisions of sub section (1) shall be punished with an imprisonment for a term which may extend to three years and shall also be liable to fine.(Added vide ITAA-2008)

⁶⁹ Substituted vide ITAA-2008

holders on behalf of its Service providers, agents or tour operators shall have to preserve and retain the information given by the consumers. E-tourism website holders (intermediaries) receives, stores or transmits that record or provides any services with respect to that record of booking, details information of the tour packages network service providers shall preserve and retain such information for such duration and in such manner as the Central Government may prescribe. Any intermediary (Government Agencies or Private Stakeholders (Tour Operator/ Website holders) who intentionally or knowingly contravenes the provisions of section 67(C) (1) may be punished with an imprisonment for three years and also the a term of imprisonment may be extended further and shall also be liable to pay fine or both⁷⁰.

E-tourism consumer when booking their online travel package shall disclose their e-mail ID to the available online form. And the tour operator may confirm their tour package via e-mail. Sometimes the e-mail account is hacked and attack by unnecessary spam messages. Though there are provisions for the protections in IT Act in such a situation but it is not sufficient for to govern the e-tourism consumers.⁷¹

E-mail Scams- It involves fraudulently obtain sensitive information through concealed a site as a trusted entity. (E.g. Passwords, credit card information) in this case Section 66, 66A and 66D of IT Act and Section 420 of IPC is applicable.

Fraud relating to Credit Cards -unsuspicious victims would use infected computers to make online transactions. In this case there are several Sections in the IT Act and section 420 of the IPC is applicable to file the case against the person. But there is no separate provision to govern the E-tourism consumer.

3.1.3. THE COMPETITION ACT 2002

Before the Competition Act 2002⁷² was enacted, the Monopolies and Restrictive Trade Practice (MRTP) Act, 1969, was enacted to prevent monopolies and restrictive trade practices in the economy. Section 36 (A) of the MRTP Act listed unfair trade

⁷⁰ Section 67 © of the IT Act, 2000

⁷¹ Sections 43, 66, 66A, 66C, 67, 67A and 67B of IT Act, 2000.

⁷² The Competition Act, 2002 (12 of 2003) commence on 13th January, 2003.

practices. In the year of 1984, MRTP Act was amended by adding new Chapter-V introducing the new concept of unfair trade practices on the basis of high powered Sachar Committee. It also created a body called the Director General of Investigation and Registration (DGIR). This is the substantive ground on which the DGIR could start investigations and bring the matter before the MRTP Commission. The Act prohibits the practice of price fixing amongst the dominant participant of the market which it termed as enterprise.

The Act brought the concept of ‘combination’ where one person who owns a competitor enterprise cannot get merger/amalgamation in a way which adversely affects the competition. The Competition law constitutes a statutory body called Competition Commission of India (CCI) which is fully active from May 2009. CCI has wide powers to enter into the matters of the Act even without any application to it. The Act provides heavy penalty for the offense. The Appellate Tribunal is constituted to file appeal against the order of competition commission too. The ultimate objective of competition is to secure the interest of the Consumer .It empowers the consumer, best guarantee for consumer protection.

The Planning Commission now called as Niti Ayog has selected ‘Consumer Protection’ as one of the subjects to be included as priority areas for the Twelfth five year Plan .It comprises of Working Group to formulate a broad set of policies, programmes and strategies for launching a strong policy paradigm for consumer protection. The Working Group in its first meeting constituted six sub groups. Amongst them two groups are very important for the protection of consumer (i) Consumer Protection & Redressal, Alternative Dispute Resolution and Consumer Counselling; and (ii) Consumer Awareness and Education.⁷³

The main objective of the strategic plan for 2012 to 2015 by the Department of Consumer affairs are to empower consumers by making them aware about their rights and responsibility, to provide effective, reasonably priced and speedy redressal

⁷³ Report of the Working Group on Consumer Protection Twelfth Five Year Plan (2012-17) Volume –II Report, Government of India Department of Consumer Affairs Ministry of Consumer Affairs, Food and Public Distribution Reports.

system to the Consumers. The main agenda of Twelfth Five Year Plan is to understand and find out the basic deficiencies in the enforcement of Consumer Protection Act 1986 especially in the functioning of Consumer Forum and the councils at State and District Level and to understand best practices in other countries in providing consumer protection, product safety, and Alternative Disputes Resolution procedures.⁷⁴ So far by analysing pros and cons of the Consumer Protection Act, the outcome for the progression is not fruitful for the online consumer.

There is no law which directly deals with the e-tourism matters in India. This study is for the investigation of the legal issues and gives probable suggestion/ solutions for the improvement of structured laws/Legal Framework at Preventive as well as Remedial level for protecting the consumer in e-tourism contracts.

3.1.4. CONSUMER PROTECTION BILL 2015

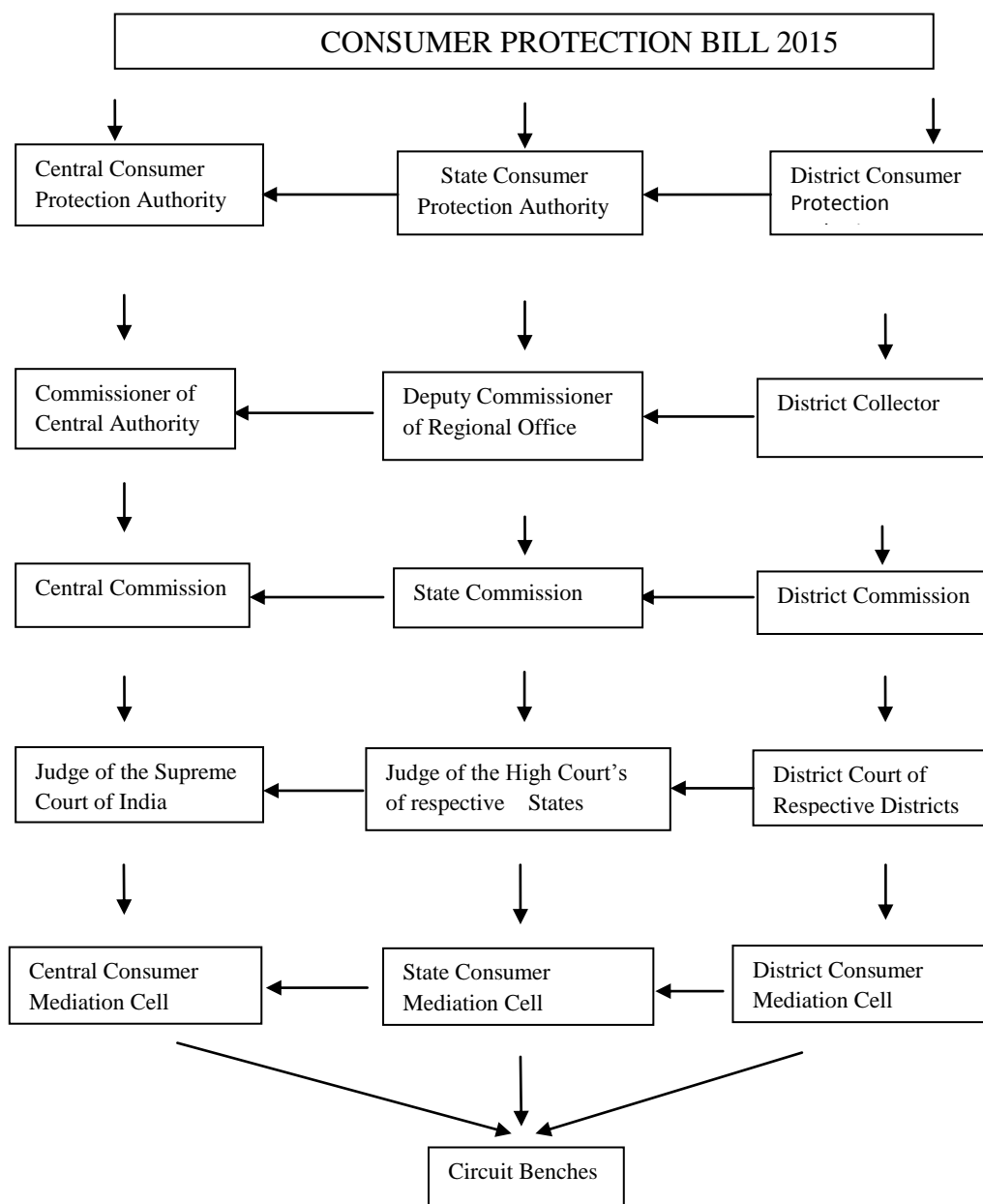
The existing legal framework to govern “e-tourism” issues in India appears to be very weak. The Government of India took initiatives for combating the Regulatory, Preventive and Remedial measure for solving the problems of e-consumer by introducing Consumer Protection Amendment Bill 2015 in the Lok Sabha on August 10, 2015 by the Minister of Consumer Affairs, Food and Public Distribution, Mr. Ram Vilas Paswan. The bill is pending in Rajya Sabha.

The Bill wants to replace the Consumer Protection Act, 1986. The Statement of objects and reasons of the Bill is to widen the scope and modernise the law on consumer protection due to the changes in the marketplaces. In this Bill, there are different stages of redressal agencies for the protection of Consumer.

Under this Bill there are so many stages for Consumer Redressal Authorities, Commissions, Mediations Centres and Circuit Benches of their own. The below flow chart describes the official stages of the different redressed establishments are as follows:⁷⁵

⁷⁴ *ibid*

⁷⁵ Consumer Protection (Amendment) Bill, 2015. Also online available at:



3.2. INTERNATIONAL GUIDELINES AND ORGANISATION

1. The United Nation Commission on International Trade Law (UNCITRAL)
2. Organisation of Economic Co-Operation Development (OECD)
3. United Nation Conference on Trade and Development (UNCTAD)

<http://www.prsindia.org/uploads/media//Consumer/Consumer%20Protection%20bill,%202015.pdf>.(Accessed on 10/02/2016).

4. United Nation World Tourism Organisation(UNWTO)

3.2.1. UNITED NATION COMMISSION ON INTERNATIONAL TRADE LAW (UNCITRAL)

UNCITRAL, an inter-governmental organ of the United Nations General Assembly, issued the Model Law in 1996, to provide a satisfactory guideline to assist legal modernization problem now faced by the world in implementing technical or electronic government and e-commerce ambitions.⁷⁶

The Model Law of e-commerce, drawn up by the UNCITRAL, is currently being used by various countries to modernize existing legislation. India is also applying this model laws for better protection of e-consumer in this modern world. The Model Law facilitate electronic commerce, as well as certain aspects of “e-government” initiatives, to be carried out with greater legal certainty.⁷⁷

It works particularly in setting the circumstance for computerization of government function (in particular as regards the interface between government and business), as well as for electronic commerce measures as between private parties, including electronic conclusion of contracts.⁷⁸

In addition to enactment of the Model Law, an appraisal should be conducted in order to identify more specific amendments and additions to the legal framework may be needed to enable electronic legal commerce, and related aspects of the e-government initiative. There are various issues to be addressed by the Model Law such as: consumer protection; additional legislative and regulatory aspects (e.g., in the areas of banking law, and transport law and documentation); regulatory aspects of internet

⁷⁶ “Building a Basic Legal Framework for Electronic Commerce (and E-Government)” in Jordan, Final Report on (August 2000), available at: http://pdf.usaid.gov/pdf_docs/Pnacp032.pdf.(Accessed on 09/08/2016)

⁷⁷“UNCITRAL Model Law on E-Commerce,” Available at: http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html. (Accessed on 09/09/2016)

⁷⁸ “Building A Basic Legal Framework for Electronic Commerce (and E-Government) in Jordan” Available at: http://pdf.usaid.gov/pdf_docs/Pnacp032.pdf (Accessed on 08/09/2016)

service providers (ISP's) and electronic-commerce providers; cybercrime; web content and liability; jurisdiction over cyber activity;

Cyber-workplace issues and; data privacy.⁷⁹

Adoption of legislation based on the UNCITRAL Model Law would be vital and far successful in building a legal framework for electronic commerce, as well as for e-government initiatives, in thorough as the latter involve the interface between government and business. However, it is obligatory to consider a range of potential additional steps in the structure of such a legal framework.⁸⁰

The Model Law talks about the Consumer protection legislation where the issues raise due to development of Electronic commerce, such as simplicity and eye-opener concerning internet service providers and electronic commerce operators, description and handiness of contract terms, capability of consumers to decide on out of unsolicited messages. But the Model Law is not intended to disturb consumer protections found in national law.

To govern the illegal activity in the cyberspace, it is necessary to develop criminal law and procedural aspects of combating crime in cyberspace. That would include: defining against the law of various types of offending behaviour against computer systems, networks and data; ensuring that legislation is in place to empower investigative authorities to act accordingly; establishing appropriate jurisdictional bases; establishing individual and corporate liability; and providing international cooperative mechanisms for assistance and enforcement.

To combat the jurisdictional issues, the international settings needs appropriate jurisdictional bases is constructing a legal framework for electronic commerce.

⁷⁹ Ibid

⁸⁰ Ibid

Legal framework for electronic commerce is the question of developing policy and rules on data privacy. This is a crucial area which requires a proper balancing and protection of the interests of the various parties involved (e.g., the data subject's right to access data, to know the origin of data, to obtain rectification of errors in data, to have recourse in the event of unlawful processing of the data, and to withhold permission to use data (e.g., to opt out of junk e-mail) and involves various other issues. The main issues dealt with in Model Law are the e-contracts which enable electronic formation of contracts by application of non discrimination principle, and default rules (i.e., rules subject to derogation or variation by the parties) on attribution of data messages, acknowledgement of receipt, and time and place of sending and receipt of data messages.

Need of laws to govern Cyber workplace because it raising a variety of issues that may be considered in constructing a legal framework for electronic commerce besides this IT Act, 2000. To name just a few, those range from concerns raised by employee, misuse of e-mail or placement of illegal content on the web, for which the employer may ultimately be held liable.

Main features of the UNCITRAL model law is to minimal intrusion into and modification of existing legislation. Harmonization of law and international standards is the another feature because of the smooth flow and development of electronic commerce, which by definition is borderless and international, would be hindered to the extent that national legal regimes are fragmented and do not apply internationally developed and acceptable rules and legal notions.⁸¹

3.2.2. ORGANISATION OF ECONOMIC CO-OPERATION DEVELOPMENT (OECD)

The OECD adopted voluntary Guidelines for Consumer Protection in the Context of Electronic Commerce in the year 1999. There are 34 member countries that joined OECD and India is key Partner of it. There are 200 committees, working groups covering economic and social issues. India is the member of the committee on consumer policy; party on consumer product and safety. Internet could be more

⁸¹ Ibid

effectively used to benefit society, recognised these transformative effects, noting that: “*As the services it [the Internet] supports become enveloping, omnipresent and more essential in everyday life, the economy is increasingly the Internet economy*”.⁸²

The main things discussed in OECD was that “*in considering whether to modify the existing framework, governments should seek to ensure that the framework provides fairness to consumers and businesses, facilitates electronic commerce, results in consumers having a level of protection not less than that afforded in other forms of commerce, and provides consumers with meaningful access to fair and timely dispute resolution and redress without undue cost or burden*”.⁸³

The following topics are addressed in the OECD Conference⁸⁴

- I. Evolution of e-commerce and the role of international guidelines:
 - a. E-commerce trends and outlook: Consumer aspects.
 - b. Promoting e-commerce: Role and effectiveness of international guidelines.
- II. Developments and challenges:
 - a. E-commerce regulatory frameworks.
 - b. B2C: Business as sellers - recent developments.
 - c. Mobile commerce.
 - d. C2C: Consumers as sellers.
 - e. Digital content products.
 - f. The participative web: Consumer-driven content in e-commerce.

⁸² OECD’s 2008 Seoul Ministerial on the Future of the Internet Economy, P. 4

⁸³ “*Recommendation of the Council concerning Guidelines for Consumer Protection in the Context of Electronic Commerce*” (9 December 1999) Available at: <http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=183&InstrumentPID=179&Lang=en> (Accessed on 26/05/2016)

⁸⁴ “*Empowering E-Consumers: Strengthening Consumer Protection in the Internet Economy Background Report to the 2009 OECD Conference on E-Commerce.*” (DSTI/CP(2009)20/FINAL) also available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP\(2009\)20/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(2009)20/FINAL&docLanguage=En) , accessed on 23/05/2016

- g. Protecting children on-line.
- h. Accountability in e-commerce.

The Internet economy has grown dramatically since the 1999 and the guidelines were adopted. It has opened up new commercial opportunities for business and consumers. Consumers have benefitted considerably through enhanced capacity to research and compare products, expanded choice in products that may be purchased at any time and from anywhere, and more possibilities to customise products to better meet personal preferences. In addition, increased transparency has intensified competition, oftentimes resulting in lower prices for consumers. Airline and hotel bookings by consumers using the Internet have grown sharply, while a broad range of other items, including cars, food, appliances and electronic equipment are also being sold online. In the services sector, financial services, including online banking, have been expanding rapidly.⁸⁵

OECD countries are taking action to mobilise investment for tourism development in areas such as accommodation, equipment and infrastructure, innovation and e-tourism. Tourism organisations are working more closely with investment agencies, to deliver tourism investment attraction programmes, set up tourism investment funds bridging public and private investment, and promote favourable regulations and investment conditions in order to build business confidence and foster private sector investment in tourism. Important is that OECD discussed about the most important challenges facing countries in the tourism sector from a marketing and promotion perspective.⁸⁶

The Principle IIIA of the OECD Guidelines provides any business engaging the electronic commerce with the consumer should be:

⁸⁵ OECD Available at: <http://www.oecd.org/ict/econsumerconference/44050135.pdf> (Accessed on 20/08/2016)

⁸⁶ OECD Tourism Trends and Policies 2016 Workshop 10:30-12:30, Thursday, 10 March 2016 Room R2, City Cube, ITB Berlin, OECD Tourism Trends and Policies 2016 (Part II)

- a. To provide the consumers with information about themselves that is accurate, clear and easily accessible and is sufficient to allow identification of the business;
- b. Prompt, easy and effective consumer communication with the business;
- c. Appropriate and effective resolution of the dispute;
- d. The service of legal process; and
- e. Location of the business and its principles by law enforcement and regulatory authority.⁸⁷

According to the above Guidelines, India does not have the proper legislation to curb the e-tourism business which is one of the parts of the electronic commerce.

According to the Principle IIIC of the OECD Guidelines, the website accepts several forms of the payment card, charges an additional service fee to those consumer who use payment card rather than e-money. After finishing the transaction the itemisation of the transaction details using of the payment card details should be intimated to the consumer.⁸⁸

The further problem is that, the current legal and regulatory regimes sometimes also differentiate between domestic and cross- border transaction.⁸⁹ The differentiation between the cross-border transactions is especially important in dealing with e-commerce because e-commerce is breaking down the barriers between the jurisdictions. A lack of resolution could leave consumers either confused as to when protection applies in the case or over confident in the protection of another.⁹⁰

⁸⁷ OECD Guidelines for the protection in the context of Electronic-Consumer(1999)Principle IIIA

⁸⁸ Best Practice Example under the OECD Guidelines on Consumer Protection in the context of Electronic Commerce DSII/CP (2002)2/FINAL (2002). Also available at: [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP\(2002\)2/FINAL&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DSTI/CP(2002)2/FINAL&docLanguage=En) (Accessed on 25/05/2016)

⁸⁹ *ibid*

⁹⁰ *ibid*

3.2.3. UNITED NATION CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

UNTCAD has launched a websites dedicated to the e-tourism initiative for connecting tourism and ICT for development. These initiatives gives help to developing countries which take change for their own tourism promotion by using Information and Communication Technology tools. Tourism has an opportunity for developing as the world's largest industry, a pillar of sustainable economic development (employment generation) especially for Less Developing Countries (LDCs).

According to UNCTAD, e-tourism is paving the ground to autonomy and success for developing destination countries and Information and Communication Technology is for tourism, tourism for development, and e-Tourism for all.⁹¹ The UNCTAD e-tourism initiative is about to integrate developing countries into international competition and to empower them to respond to new demand of consumers (last-minute, shorter, frequent, independent, web, thematic, customized) searching globally for products. To lead Information and Communication Technology-driven innovation in tourism through the design and implementation of new e-business form and answer to enhance competitiveness and independence of tourism destinations thereby contributing to minimize leakages and maximizes linkages. It is to disseminate and facilitate adoption of business models in local communities.⁹²

It promotes new forms of sustainable co-operation and competition schemes to the e-tourism, UNTCAD is utilising man power as an agents of change by initialising an Information and Communication Technology for the development and dissemination of Free or Open Source Software and knowledge based destination management system which is able to carry out different stages of e-business and to deliver a customized experience.⁹³

⁹¹ The UNCTAD “*E-Tourism Initiative*” Available at: <http://etourism.unctad.org>, (Accessed on 06/05/2016)

⁹² Ibid

⁹³ Ibid

Capacity building has provided the provision of advice on the strengthening of capacities of national stakeholders in the tourism sector through training courses and allowing stakeholders in a country to interact through intranet and extranet features through a sustainable use of Free or Open Source Software (FOSS) tools.⁹⁴

3.2.4. UNITED NATION WORLD TOURISM ORGANISATION (UNWTO)

As said by Taleb Rifai, UNWTO Secretary-General, *“UNWTO is guided by the belief that tourism can make a meaningful contribution to people’s lives and our planet. This conviction is at the very heart of the Global Code of Ethics for Tourism, a roadmap for tourism development. I call on all to read, circulate and adopt the Code for the benefit of tourists, tour operators, host communities and their environments worldwide.”*

The World Tourism Organization is the leading international organization in the field of travel and tourism, serve as a global forum for tourism policy, issues and a practical source of tourism know-how. Its headquarters is in Madrid. United Nations entrusted WTO responsibility of promotion and development of tourism. It is international agency responsible for the promotion of sustainable and universally accessible tourism.

UNWTO contains Global Codes of Ethics for Tourism (GCET)⁹⁵, which is a fundamental framework of reference for responsible and sustainable tourism. It is a comprehensive set of principles designed to guide key-players in tourism development. It aims to help maximize the tourism sector’s benefits while minimizing its potentially negative impact on the environment, cultural heritage and societies across the globe.⁹⁶ Various provisions of GCET are analysed hereby-

⁹⁴ Available at: www.unctad.org/, etourism.unctad.org (Accessed on 20/02/2016)

⁹⁵ Available at: ethics.unwto.org, accessed on 05/09/201

⁹⁶ Available at: www.e-unwto.org, accessed on 02/09/2016

Article 1 of GCET deals with the Tourism's contribution to mutual understanding and respect between peoples and societies. It provides the guidelines to the tourism stakeholders that the tourism activities should be performed in harmony with the quality and traditions of the host regions and countries and in respect for their laws, practices and customs. The tourists and visitors have the responsibility to accustom themselves, even before their departure, with the characteristics of the countries they are preparing to visit; they must be aware of the health and security risks intrinsic in any travel outside their usual environment and behave in such a way as to minimize those risks.⁹⁷

Article 2 of the GCET describes Tourism as a vehicle for individual and collective fulfilment. Tourism activities should respect the equality of men and women and they should promote human rights and the individual rights of the most vulnerable groups, the handicapped, ethnic minorities and indigenous peoples.

Article 3 deals with the factor of sustainable development in Tourism. Tourism infrastructure and tourism activities should be designed & programmed in such a way as to protect the natural beauties and of ecosystems and biodiversity and to preserve endangered species of wildlife.⁹⁸

Article 4 of the GCET deals with the Tourism, a user of the cultural heritage of mankind and contributor to its enhancement the tourism resources belong to the common heritage of mankind; the centre of population in whose territories they are situated have particular rights and responsibility to them..⁹⁹

Article 5 of GCET deals with tourism a beneficial activity for host countries and communities. Special attention should be paid to the specific problems of coastal areas and island territories and to vulnerable rural or mountain regions, for which

⁹⁷“*Global Codes of Ethics for Tourism*” (GCET) also available at: <http://ethics.unwto.org/en/content/global-code-ethics-tourism>.(Accessed on 02/09/2016)

⁹⁸ Ibid

⁹⁹ Ibid

tourism often represents a rare opportunity for development in the face of the decline of traditional economic activities. GCET emphasises that the Tourism policies should be applied in such a way as to help to raise the standard of living of the populations of the regions visited and meet their needs. And the planning and architectural approach to and operation of tourism resorts and accommodation should aim to integrate the local people to the extent possible, in the local economic and social fabric.

Article 6 of the GCET provides the obligations of stakeholders in tourism development. Accordingly, the Tourism professionals should contribute to the cultural and spiritual fulfilment of tourists and allow them, during their travels, to practice their religions. Also they are co-operated with the public authorities, for the security and safety, accident prevention, health protection and food safety.¹⁰⁰

Article 7 GCET provides the Right to tourism. These rights are associated with the social tourism, and in particular associative tourism, which facilitates widespread access to leisure, travels and holidays. These rights should be developed with the support of the public authorities. The universal right to tourism, including the limitation of working hours and periodic holidays with pay is guaranteed by Article 24 of the UDHR and Article 7(d) of the International Covenant on Economic, Social and Cultural Rights.¹⁰¹

Article 8 of GCET provides the human right and liberty of tourist movements all over the world. These rights are applicable in accordance with Article 13 of the UDHR. The rights include access to places of visit and stay. The tourist shall have right to visit in the cultural sites without being subject to extreme official procedure or discrimination. It is the human rights declared by the UDHR that Tourists should be treated equally as the citizens of the country concerning the privacy of the personal data and information concerning them, especially when these are stored electronically

¹⁰⁰ Ibid

¹⁰¹ Global Code of Ethics for Tourism - Article 7

but some of the rights remain only in the written paper. These guidelines also include access to allowances of exchangeable currencies needed for the travelling.¹⁰²

Article 9 of GCET provides the Rights of the workers and entrepreneurs in the tourism industry which includes the protection of fundamental rights of salaried and self-employed workers in the tourism industry under the supervision of the national and local administrations.¹⁰³

Article 10 of GCET provides the implementation of the principles of the GCET. The public and private stakeholders in tourism development should cooperate in the implementation of these principles provided by the GCET and monitor their effective application including the WTO and other NGO with competence in the field of tourism promotion and development, the protection of human rights, the environment or health, etc.¹⁰⁴ on the basis of this the government is only the facilitator and the NGO and the Tourism Stakeholders only developed the business without any effective measures to curb the human rights health and environment.

Undeniably there are numerous laws, so many legislations, regulations some at National level other at International level. But these documents are not adequate to handle or curb all the issues of e-tourism. They lack the straight provisions/law governing the various modes of e-tourism product and services. Being developing country India has rapid growing infrastructure of e-tourism which may build it as strong economy because of number of its beautiful and worth visiting tourist destinations, but proper guidelines and limitations to protect the consumer/tourist for their basic rights is affecting it. Advancement in communication technology brought new issues which needs laws. In absence of appropriate laws the Consumer Commission may fail to ensure justice to new era consumers. At present, there is only Indian Consumer Protection Act which governs the disputes related to e-tourism consumers. Sometimes it's being inadequate to handle the matters of online transaction of the e-tourism business. United Nations Commission on International Trade Law (UNCITRAL) provided model law for legalising e-commerce. The

¹⁰² Global Code of Ethics for Tourism - Article 8

¹⁰³ Global Code of Ethics for Tourism - Article 9

¹⁰⁴ Global Code of Ethics for Tourism - Article 10

UNTCAD has also launched the website dedicated to the e-tourism initiative for connecting tourism and ICT for development. These initiatives help to developing countries which want to change their way to promote tourism by using Information and Communication Technology tools. The UNWTO is the leading international organization in the field of travel and tourism. UNWTO issued GCET can be of good help in increasing tourism activities with protection of rights of tourists and service providers. These ethical guidelines can reduce geographical boundaries not in virtual world but in real world for tourists when visiting a place and can give a global village if incorporated in the National laws. India is having numerous legislations but not a single law to handle e-tourism issues. In this regard Consumer Protection Bill, 2015 can become good solution at national level if passed to handle the cross border issues. But Uniform Consumer law can be the best solution for the issues of cross-border consumers.

CHAPTER-FOUR

E-TOURISM INDUSTRY IN SIKKIM AND THE LOCAL

LEGISLATIONS

Sikkim became the 22nd state of the country since 1975. It is located in the north east of India. Sikkim is a landlocked state spread across 7,096 km that shares three international borders, with Nepal to the west, Bhutan to the east, and Tibet Independent Region of China to the north and east. Sikkim is the host of the tourism since before the merger in India. The Queen of the last king was American and it was her influence too in Sikkim to entertain and welcome visiting dignitaries from United States of America and beyond who came up to see the nature's beauty over Kanchendzonga's five wonderful peaks.¹

From the Second Five Year Plan (1961-66) 0.8% of the budget has been allocated for development of tourism sector in Sikkim. In the Eight Five year Plan (1992-97) the Government spent highest amount (15.2%) of the budget allocated for development of tourism sector.²

For the smooth operation of the tourism business, the law making body (Sikkim Legislative Assembly) decided to pass an Act in the year 1998 for Sikkim. The Act is known as Sikkim Registration of Tourist Trade Act (SRTT) Act, 1998 it has received assent from the Governor and it extends to the whole of Sikkim.

As a natural corollary, Sikkim is progressively underpinning its place in the national as well as international tourism plan as a hot spot for attractive beauty, and an ideal destination for adventure tourism, eco-tourism and spiritual tourism.³ The source of revenue of Sikkim from the tourism business is indirect. Sikkim declared tourism as an industry during the Tenth Five Year Plan (2002-07). In Eleventh Five Year Plan

¹ Andrew Duff "*Sikkim Requiem for a Himalayan kingdom* (2015), Random House Publishers Pvt.Ltd. Cyber City Guargoan.

² Sunita Kharel and Jigme Wangchuk Bhutia, "*Gazetteer of Sikkim*"(2013),Published by Home Department of Sikkim Government, Gangtok, Page No.410

³ Ibid, Page No.427

(2007-12) 2.2% out of the total budget has been allocated for the tourism Sector.⁴ In the mean time, SRTT Rules, 2008 has also been passed by the Sikkim Government by exercising the power conferred under Section 50 of the SRTT Act, 1998. It also extends to the whole of Sikkim.

Tourism is the most viable for the state to make it self sufficient economy. Sikkim bagged the National award for the best performing State in the North East for 'Most innovative and Unique Tourism Project Awards 2010-11, Best State Award for Comprehensive Development in Tourism 2010-11 and Best State in Champaign Clean India 2010-11. It is also significant in mentioning that Sikkim has won the National Tourism Award 2012, and has been known as the best state for the carrying out of rural tourism projects by Union Ministry of Tourism. Adding another jewel to Sikkim, the reputed travel book 'Lonely Planet' has described the Sikkim as the best place to visit.

For the further development of the tourism, the Government of Sikkim by exercising the power conferred by the SRTT Act, 1998 under section 50, sub-section (3), state government make rules called SRHSE Rules, 2013. These rural home stays are a big fascination for foreign tourists as well as the nature-lovers in our country. Sikkim was the first Indian state to frame an eco-tourism policy with the help of Japanese and American experts. It started popularising village tourism a few years ago and impressively developed tourist destinations, route and a cluster of activities to create a centre of attention for tourists.⁵

By the employment of IT in the tourism industries, the tourism product has been displayed on the websites created by the tourism stakeholders. The business is transparent as all the information about the destinations, time period of coverage of the destination and available services have been provided in the internet. According

⁴ Supra

⁵ Jaideep Mazumdar, "Why Sikkim tops in 2014 Lonely Planet list", Available at: <http://timesofindia.indiatimes.com/india/Why-Sikkim-tops-2014-LonelyPlanetlist/articleshow/25155980.cms>, (Accessed on dated 24/05/2016)

to the information provided, the tourists can come and visit the unknown places without any hesitation.

Due to changes in the system of tourism business by deploying IT, the analysis of the present legislation related to tourism becomes necessary for better operation of the industries. Hence the chapter examines various important provisions of the local laws of the State of Sikkim.

4.1. AN ANALYSIS OF THE SIKKIM REGISTRATION OF TOURIST TRADE (SRTT) ACT, 1998

Sikkim Legislative Assembly received the assent from the Governor on 21st days of January 1999 for making of the Legislation called “*The Registration of Tourist Trade (SRTT) Act, 1998*”. The main objective of the Act is “*to provide for the registration of persons dealing with tourists and for matters connected therewith.*” This Act is divided into seven chapters.

Chapter- I deal with the Short title, Extent and Commencement of the Act. Section 1 provides that, this Act extends to the whole of Sikkim. “*It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.*”

Definitions are given under the section 2 of the Act. Section 2(b) of the Act defines the word “dealer” which means “*a person carrying on in a tourist area the business of selling any notified article, whether wholesale or retail and includes his agent or employee transacting business on his behalf.*” According to the definition under section 2(b) of the Act, dealer is a person who carries their tourism business by selling tourism product and services by engaging his agent or worker for transacting business on behalf of him.

While under section 2(c) of the Act, the word “hotel” has been defined. It says “*any premises, establishment or part or part of premises including holiday home, resort, restaurants, lodges, dhabas, bar, tent where lodging with or without board or other service is provided for a monetary consideration.*” According to the definition

provided under section 2(c), hotel means any establishment which provide the services of fooding and lodging or with or without lodging, holiday home or resort provided by paying consideration on the part of tourist for availing services. Further section 2(d) of the Act defines "*hotel keeper, means any person who owns or operates a hotel as proprietor and includes a person managing or operating the affair of a hotel for and on behalf of the proprietor*". Here, the word proprietor means the owner of a business, or a holder of property under whom the hotel business operates. He employs a person who manages the operation of the hotel business.

The word "malpractice" is defined under section 2(e) which includes "*dishonesty, cheating, touting, impersonation, obstruction in allowing free choice for shopping or stay or travel arrangements, charging a price higher than that displayed on the label or remuneration higher than that fixed under this Act, or by any other competent authority, failure to execute an order within the stipulated time or according to the terms agreed.*" When any service providers of tourism industry provides the tourism services negligently, cheats, obstruct free travel or stay, and fail to implement the duty towards the tourist according to the term prescribed by the authority the act is called malpractice according to the definition given under this Act. Explanation 1 of section 2(e) says "*For the purpose of this clause, labelled prices shall be reasonable prices with stock number recorded on each label of each item as reflected in the stock books of dealer/manufacturer maintained at their places of business which shall be open for inspection by the buyer (s) of the item(s) or by the prescribed authority.*" By applying this provision , the tourist may asked for the reasonable prices of the items related to tourism which is recorded in the stock books of the business dealer in place of the business which shall be open for the tourist for the inspection.

Further under section 2(e) Explanation- II The expression "*touting' means coercing for shopping, accommodation, transportation, luggage carrying, sight-seeing or pestering for any particular premises by a person, establishment or manufacturer with considerations of personal benefit.*" Here the word touting is used to describe malpractices in tourism. Therefore if anybody demands excessive amount for the accommodation of hotel, transport services, extra charges for luggage for personal

profit it will amount to touting. The word “cheating” used under Section 2(e) of the SRTT Act, 1998 has similar definition of section 415 under Indian Penal Code, 1860⁶ i.e. a dishonest concealment of facts is a deception within the meaning of this section 2(e) of the Act.

The punishment for cheating shall be with imprisonment of either description for a term which may extend to one year or with fine or with both as under section 417 of IPC, 1860.⁷ Cheating by “personation” is also included in ‘malpractice’ under section 2(e) of the SRTT Act, 1998 and has similar meaning as under section 416 of IPC 1860.⁸ The cheating by personation shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both has been mentioned under section 419 of IPC, 1860.⁹

Section 2(j) of the Act; define the word “tourist”, *which means “a person or group of persons including pilgrims visiting the State from any part of India or outside India.”* For the purpose of the Act, tourist is a person who is travelling or visiting a place for pleasure, whether he/she is visiting the religious places or for sightseeing. It could be abroad or in their own country. In the SRTT Act, section 2 (k) define the “tourist area” which means *“any area notified by the Government in the Official Gazette to be*

⁶ Section 415 of IPC says “Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.”

⁷Section 417 of IPC, 1860-“Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine. or with both.”

⁸ Section 416 of IPC,1860-A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation -The offence is committed whether the individual personated is a real or imaginary person.

Illustration:

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

⁹ Section 419 of IPC, 1860-“Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

a tourist area for the purpose of this Act". In Sikkim various areas are notified by the Government as tourist destination/area for ease of tourist.¹⁰

According to section 2 (1) "travel agent" means "*a person engaged in the business of conducting tours and travel, trekking, camping, tour operating or other arrangements for tourist for a monetary consideration and includes a tourist guide, excursion agent, or tour operator or cargo agent.*" From the above definition a person engaged in selling and arranging transportation, accommodations, tours, or trips for tourist is called 'travel agent.'¹¹ The main role played by the travel agent is to conduct the tourism business by guiding the tourist who is unknown about the destination, providing arrangement of travel such as tracking, camping etc. Under this definition travel agent means and include tourist guide, tour operator, service provider, excursion agent etc.

Chapter-II contains Sections 3 to 9 and deals with the "Registration of Dealers".¹² Those who want to carry out the business as Dealer under this Act are compulsorily required to register their business to the prescribed authority in the prescribed form.¹³ Any person carrying his business of sell in the tourist notified area cannot sell any business article without registration, such business article is required to be notified under section 2(f)¹⁴ of the Act. The business article shall be compulsorily applied for the registration within five month of the establishment of business.¹⁵ If the prescribed

¹⁰ Tourist visiting area in Sikkim such as Gangtok, Tshangu, Zuluk, Nathula in the East, Lachung, Lachen, Yumthang, Gurudungmar in the North, Ravangla, Namchi in the South and Yuksum, khechupari, Tashiding in West Sikkim.

¹¹ The travel industry has celebrated 'Travel Agent Day' on the first Wednesday of May, with Canadian travel agencies and the Association of Canadian Travel Agencies (ACTA) leading the way. India also needs to encourage. It is for the designing to bring awareness and appreciation to Travel Agents by dedicating a special day to celebrate and recognize the profession. India also needs to do same for the encouragement of the profession of travel agent.

¹² The word dealer is defined under section 2(b) of SRTT Act, 1998

¹³ Section 3(1) of SRTT Act, 1998- "Any person intending to carry on business of dealer under this Act, shall, before he commences such business, apply for registration to the prescribed authority in the prescribed manner."

¹⁴ Section 2(f) of SRTT Act, 1998 - "notified article" means any article notified by the Government in the Official Gazette for the purpose of this Act;

¹⁵ Section 3(2) of SRTT Act, 1998- " Notwithstanding anything contained in sub-section (1) any person already carrying on business of selling any notified article in a

authority is satisfied with the application for the registration of dealer by providing name and particulars to be required for the purpose of maintenance of the register, the authority shall issue the certificate of registration as per section 4 of the Act.¹⁶

All the applications of registration should be verified by the authority before issuance of the certificate. After the careful investigation, sometimes the authority may refuse the registration of the dealer. Section 5 of the Act provides the reasons for the refusal of the registration of the dealer.¹⁷ But no application will be refused without giving an opportunity of being heard on the side of dealer.

The authority under this Act shall have the power to remove the name of dealer from the register and cancel the certificate issued by them under section 6 of the SRTT Act, 1998.¹⁸ Any offences committed by the dealer is punishable under the Chapter XIII and XIV of the Indian Penal Code,(IPC) 1860 or under any law for the prevention of hoarding, smuggling or profiteering or adulteration of food or drugs or corruption. If the dealers found guilty of the above, the authority shall have power to remove the name of dealer from the register. The word black-list used under section 7 of the

tourist area on the date such article is notified under clauses (f) of section 2 shall apply for registration under this Act within five months from the aforesaid date.”

¹⁶Section 4 of SRTT Act, 1998- “The prescribed authority, shall, unless registration is refused under section direct that the name and particulars of the dealer be entered in the register maintained for the purpose and shall issue a certificate of registration to the dealer in the prescribed form within the period of three months from the date of the receipt of the application.”

¹⁷ Section 5 of the SRTT Act- (1) The prescribed authority may refuse registration of a dealer under this Act Register if he is convicted of any offence punishable under any law providing for prevention of hoarding, smuggling or profiteering or adulteration of food or drug or offence under chapter XIII and XIV of the Indian Penal code, 1860 and three years have not elapsed since the expiry of any sentence imposed upon him.

(2) No application for registration shall be refused unless; the person applying for registration has been afforded a reasonable opportunity of being heard.

¹⁸ Section 6 of the SRTT Act –(1) “The prescribed authority may by an order in writing remove the name of a dealer from the register and cancel his certificate of registration on any of the following grounds, namely,-

- (a) if he ceases to be a dealer ;
- (b) if he is convicted of any offence punishable under Chapter XIII and XIV of the Indian Penal Code, 1860 or under any law providing for the prevention of hoarding, smuggling or profiteering or adulteration of food or drugs or corruption;
- (c) if he is black-listed by the prescribed authority.

(2) Any dealer whose name is removed from the register under sub-section (1) shall forthwith cease to be a dealer.

Act¹⁹ describe that if the authority found any proof of malpractice or for any other offence committed under this Act, the dealer should be black-listed for certain time prescribed by the authority. The particulars of the dealer black-listed shall be exhibited at places in all tourist areas and notify to the all travel trade and other concerned organisation after the order of the black listing.

All of sudden the authority cannot remove the name of the dealer from the register. Before removing the name of dealers from the recorded register, the prescribed authority shall have right to black-list him first under section 7 of the Act. The notice shall be given to the dealer by mentioning the ground of black-listing his registration and after holding the enquiry on the part of the prescribed authority in presence of the dealer and give him an opportunity of being heard or show cause it under section 8 of the Act.²⁰ After giving an opportunity to be heard on the part of dealer, if the authority found any shortcoming on the part of the dealer, authority shall have right to remove the name of black-listed dealer from the register. But the black-listed dealer shall have right to apply the fresh certificate of registration on payment of the prescribed fees and by giving fresh certificate of registration. The authority shall notify the same for the information of all business dealers.²¹

¹⁹ Section 7 of the SRTT Act-(1) the prescribed authority may, on proof of complaint of malpractice or for of dealers. Any other offence committed under this Act, for reasons to be recorded, black-list a dealer, after taking into consideration the nature of malpractice or the gravity of offence for such period as the prescribed authority deem fit. (2) The particulars of a dealer black-listed shall be exhibited at conspicuous places in all tourist areas or spots and notified to all travel, trade and other concerned organisations after the order black-listing him has become final. (3) Notwithstanding action taken under sub-section (1), the dealer shall be liable to be prosecuted under the provisions of law if deemed necessary.

²⁰ Section 8 of the SRTT Act- “Before removing the name of a dealer under section 6 or black-listing him under and section 7, the prescribed authority shall give notice to the dealer of the ground of dealer, or grounds on which it is proposed to take action and hold an enquiry in the presence of the dealer giving him a reasonable opportunity of showing cause against it.”

²¹ Section 9 of the Act- If the prescribed authority is satisfied that there are sufficient grounds for removal of from the black-list, he may, after recording the reasons order his removal from such list and issue a fresh certificate of registration on payment, of prescribed fees and notify the same for the information of all concerned.

Chapter-III of the Act deals with the “Registration of Hotels”²² within sections 10 to 18 of the Act. Those who want to operate a hotel in the tourist area shall before operating the business, may apply for the registration of the hotel business to the prescribed authority. If a person already running his hotel business in the notified tourist area²³ he shall apply for registration of hotel within three months from the notified dates to the prescribed authority.²⁴ In the process of registration of hotel the prescribed authority records the name and the particulars of the hotel keeper to be entered in the register maintained for the purpose and shall issue the registration certificate of the hotel to the owner.²⁵

The prescribed authority verifies the hotels before issuing the certificate of registration. If the hotel keeper is found guilty, the registration of hotel shall be refused by the prescribed authority. The reasons for refusal of the registration of hotel can be- If the hotel keeper does not hold license required for operating hotel business under any law or, if the hotel keeper is found having any unlawful possession or any explosive²⁶ items which can endanger the life and property. If the hotel keeper is convicted of any offence under the “*Arm Act, 1959*” for the offences punishable under the “*Prevention of Illicit Traffic in Narcotic Drug and Psychotropic Substance Act, 1988*”, and convicted of any offence punishable under the “*Immoral Traffic (Prevention) Act, 1956*”, and five years have not elapse since the expiry of the sentence imposed upon him, the registration of the hotel business shall be refused by the authority. If the hotel keeper is convicted of any offence under Chapter XIII and XIV of IPC, 1860, three years have not been elapsed since the expiry of the sentence

²² Hotel is defined under section 2© of the SRTT Act, 1998.

²³ Section 2(k) of the SRTT Act, 1998.

²⁴ Section 10 of the SRTT Act-(1) any person intending to operate a hotel in a tourist area shall, before operating apply for registration to the prescribed authority in the prescribed manner. (2) Notwithstanding anything contained in sub-section (1), any person already operating/running a hotel in a tourist area on the date of the notification under clause (k) of section 2 is issued, shall apply for registration within three months from the aforesaid date. (3) Every application made under sub-section (1) shall be disposed off within a period of one month from the date of receipt of the application failing which the application shall be deemed to have been accepted for registration.

²⁵ Section 11 of the SRTT Act-The prescribed authority shall, unless registration is refused under section 12 direct that the name and the particulars of the hotel and the hotel keeper be entered in the register maintained for the purpose and shall issue a certificate of registration to the hotel keeper in the prescribed form.

²⁶ Here, the word explosive substance used in the Act means any equipment or machine, adopted for causing, aids in harm.

imposed on him is also refused the registration. However, the prescribed authority shall not have right to refused the registration of the hotel without being providing an opportunity of heard.²⁷ The authority shall have the right to remove the name of the registered hotel within Sikkim under SRTT Act. The authority records the order for removal of name of hotel in writing and cancels the certificate of already registered hotel on the ground that the hotel keeper closes the hotel operation in the tourist area for period of one year.²⁸

²⁷ Section 12 of the SRTT Act-(1)The prescribed authority may refuse registration of a hotel under this Act on any of the following grounds, namely-

(a) if the hotel keeper does not hold a licence or certificate required to be held by him under any law for the time being in force;

(b) if the hotel keeper is found to be in unlawful possession or under his control of any explosive substance of a nature likely to endanger life or to cause serious injury to property;

Explanation:- Explosive substance shall be deemed to include any material for making any explosive substance; also any apparatus, machine, implement or material used, or intended to be used or adapted for causing, aiding in causing, any explosion in or with any explosive substance; also any part. of any such apparatus, machine or implement.

(c) if the hotel-keeper is convicted of any offence under the Arms Act, 1959, and five years have not been elapsed since the expiry of the sentence imposed upon him;

(d) if the hotel keeper is convicted of any offence punishable under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988; and five years have not elapsed since the expiry of the sentence imposed upon him;

(e) If the hotel keeper is convicted of any offence punishable under Immoral Traffic Prevention) Act, 1956 and five years have not elapsed since the expiry of the sentence imposed upon him;

(f) if the hotel-keeper is convicted of any offence under Chapter XIII and XIV of the Indian Penal Code, 1860 and under any law providing for the prevention of hoarding, smuggling, gambling or profiteering or adulteration of food or drug and three years have not elapsed since the expiry of the sentence imposed upon him;

(g) if the hotel keeper has been declared an insolvent by a court of competent jurisdiction and has not been discharged;

(h) if the name of hotel keeper has been removed from the register under any, of the clauses (a) to (i) of sub-section (1) of section 13 and six months have elapsed since the date of removal;

(i) if in the opinion of the prescribed authority, there is any sufficient ground, to be recorded in writing for refusing registration.

2. No application for registration shall be refused unless the person applying for registration has been afforded a reasonable opportunity of being heard.

²⁸Section 13 of the SRTT Act-(1) The prescribed authority may by an order in writing, remove the name of hotel from the register and cancel its certificate of registration on any of the following:

(a) if the hotel-keeper ceases to operate the hotel for a period of one year in the tourist area for which it is registered;

(b) if any complaint of malpractice is received and proved against a hotel-keeper;

(c) if the hotel is black-listed under section 14;

The authority have right to black-listing of the name of hotel if found indulged into any malpractice or the offences committed under this Act. The authority by recording the reason for black-listing hotels after taking into consideration for such period which the authority deems fit. The hotel keeper shall also be liable for prosecution under any provision of the law if necessary in case of serious issues.

The black-listed hotel name shall be circulated in all tourist area and notify all the travel and trade organisation, foreign mission in India and Indian Mission abroad. The Act has a provision for the right to black-list hotel keeper for applying fresh registration of certificate on payment of the demanded fees submitted to the prescribed authority.²⁹

Before removing the name of hotel keeper in the recorded register under sections 13 and 14 of the Act, the authority shall give notice under section 15 of the Act,

(d) if the hotel-keeper is found to be in unlawful possession or under his control of any explosive substance of a nature likely to endanger life or to cause serious injury to property;

(e) if the hotel-keeper is convicted of any offence under the Arms Act, 1959 and five years have not elapsed since the expiry of the sentence imposed upon him;

(f) if the hotel-keeper is convicted of any offence punishable under Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988; and five years have not elapsed since the expiry of the sentence imposed upon him;

(g) if the hotel-keeper is convicted of any offence punishable under the Immoral Traffic (Prevention) Act, 1956 and five years have not elapsed since the expiry of the sentence imposed upon him;

(h) if the hotel-keeper is convicted of any offence under Chapter XIII and XIV of the Indian Penal Code, 1860 and under any law providing for the prevention of hoarding, smuggling, gambling or profiteering or

adulteration of food or drug and three years have not elapsed since the termination of the sentence imposed upon him;

(i) if the hotel-keeper has been declared an insolvent by a court of competent jurisdiction and has not been discharged.

(2) Any hotel the name of which is removed from the register under subsection (1) shall forthwith cease to operate.

²⁹Section 14 of the SRTT Act- (1) The prescribed authority may on proof of complaint of malpractice or for any other offences committed under this Act, for reasons to be recorded, blacklist a hotel after taking into consideration the nature of malpractice or the gravity of offence, for such period as the prescribed authority may deem fit.

(2) The particulars of a lack-listed hotel shall be exhibited at conspicuous places in all tourist areas and notified to all travel, trade and other concerned organisations, foreign missions in India, Indian missions abroad.

(3) Notwithstanding action taken under sub-section (1), the hotel-keeper shall be liable to be prosecuted under the provisions of law if deemed necessary.

(4) If the prescribed authority is satisfied that there are sufficient grounds for removal of a hotel from the black list he may, after recording the reasons, order its removal from such list and issue a fresh certificate of registration on payment of prescribed fees and notify the same for the information of all concerned.

mentioning the grounds on which the anticipated action is taken and hold enquiry in presence of the hotel keeper by giving them an opportunity to be heard.³⁰

The authority with the consultation of the hotel keeper fix the rate of food, accommodation and services provided by the hotel keeper and also enquire about that the boarding and lodging services opted by the hotel keeper is only provided to the person staying in the hotel or the other customers too under section 16 of the Act.³¹ It is also compulsory to render the detailed bills to the consumer residing in the hotel and other consumer shall give the receipt in the acknowledgement of the payment.³²

Chapter-IV of the Act deals with the “Travel Agents”.³³ If any person of Sikkim wants to carry the business of travel in the tourist area it shall be compulsory for him to register under SRTT Act. Before carrying out the business the travel agent need to apply for the registration to the prescribed authority under this Act within the three months from the date mention in the Act.

The application for registration as Travel Agent shall be disposed within the three month from the date of receipt of the application.³⁴ The prescribed authority after

³⁰ Section 15 of the SRTT Act-Before removing the name of a hotel from the register under section 13 or blacklisting it under section 14, the prescribed authority shall give a notice to the hotel-keeper, of the ground or grounds on which it is proposed to take action and hold an inquiry in the presence of the hotel-keeper giving him a reasonable opportunity of showing cause against it.

³¹Section 16 of the SRTT Act-The prescribed Authority may, in consultation with the hotelkeeper by notification in the Official Gazette, fix in respect of each hotel the reasonable maximum rate and the service charges, if any, commensurate with the standard of hotel and quality of food, accommodation and service, which may be charged by the hotel-keeper for board or lodge or for both from the person staying therein or from other customers.

³² Section 18 of the SRTT Act-Every hotel-keeper shall render detailed bills to the person residing in the hotel and other customers and shall give receipts in acknowledgement of all payments.

³³ Travel Agent defined under section 2(l) of the SRTT Act, 1998.

³⁴ Section 19 of the Act- (1) No person shall carry on the business of a travel agent in a tourist area unless he is registered in accordance with the provisions of this Act. (2) Any person intending to act as a travel agent in a tourist area shall, before he commences to act as such, apply for registration to the prescribed authority in the prescribed manner. (3) Notwithstanding anything contained in sub-section (2), any person acting as a as a travel agent in a tourist area on the date a notification under clause (k) of section 2 is issued, shall apply for registration within three months from the aforesaid date.

verifying the direction given under section 21 of the Act, directs the name and particulars of the travel agent to be entered into the register and issue a registration certificate to travel agent.³⁵

Section 21 of the SRTT, Act³⁶ describes the grounds of refusal of the registration for the certificate. The same ground has been prescribed for the refusal of the registration of the Dealer, Hotels and the travel Agent under the respective heading of the Act.

The reason for the removal of the name of travel agent from the recorded register of the prescribed authority has been provided under section 21. All the other grounds mention under section 21 of the Act is same as the refusal of registration of the dealers under section 5 and the refusal of registration of hotels under section 12 of the Act.

For the removal of the name of the travel agent from the register of the prescribed authority the reason should be recorded by writing along with the particular ground

(4) Every application made under sub – section (2) shall be disposed off within a period of three months from the date of receipt of the application, failing which the application shall be deemed to have been accepted for registration.

³⁵ Section 20 of the SRTT, Act-The prescribed authority shall, unless registration is refused under section 21 direct that the name and particulars of the travel agent be entered in the register maintained for the purpose and issue a certificate of registration to the travel agent in the prescribed form.

³⁶ Section 21 of the SRTT, Act-(1) The prescribed authority may refuse the registration of a travel agent under the Act on any of the following grounds, namely:-

- (a) if he does not possess any of the prescribed qualifications;
- (b) if he has been convicted of any offence under chapters, XIII, XIV XVI and XVII of the Indian Penal Code, 1860 or under any of the provisions of this Act of any offence punishable under any law for the time being in force providing for the prevention of hoarding, smuggling or profiteering or adulteration of food or drugs or corruption and two years have not elapsed since the termination of the sentence imposed upon him;
- (c) if he has been convicted of any offence punishable under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 ' and five years have not been elapsed since the termination of sentence imposed upon him;
- (d) if he has been convicted of any offence punishable under Arms Act, 1959 and five years have not elapsed since the expiry of sentence imposed upon him;
- (e) if he has been convicted of any offence punishable under Immoral Traffic (Prevention) Act, 1956 and five years have not elapsed since the expiry of sentence imposed upon him;
- (f) if he has been declared an insolvent by a Court of competent jurisdiction and has not been discharged;
- (g) if his name has been removed from the register under this Act and one year has not elapsed since the date of removal.

(2) No application for registration shall be refused unless the person applying for registration has been allowed an opportunity of being heard.

namely, if he ceases to act as a travel agent in the tourist area. The provisions are same for the removal of the name as a tourist dealer under section 6, removal of the name of the hotel keeper under section 13 and the removal of the name of the travel agent under section 22.³⁷ Also the grounds of black-listing of the travel agent is to some extent same as of the Dealers under section 7, hotels under section 14 and of travel agent under section 23.³⁸

The prescribed authority, by notifying in the official gazette may fix the rate which shall be charged by the travel agent by rendering services for the tourist.³⁹ The travel

³⁷ Section 22 of SRTT Act-The prescribed authority may, by an order in writing, remove the name of a travel agent, from the register and cancel his certificate of registration on any of the following grounds,; namely:

- (a) if he ceases to act as a travel agent in a tourist area;
- (b) if he is convicted of any offence under Chapters XIII and XVII of the Indian Penal Code, 1860 or under any of the provisions of this Act or of any offence punishable under any law providing for the prevention of hoarding, smuggling or profiteering or adulteration of food or drugs or corruption;
- (c) if he is declared an insolvent by a Court of competent jurisdiction and has not been discharged;
- (d) if any complaint of malpractice is received and proved against him;
- (e) if he is black-listed by the prescribed authority;
- (f) if he has been convicted of any offence punishable under the Prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 five years have not elapsed since the expiry of sentence imposed upon him;
- (g) if he has been convicted of any offence punishable under Arms Act, 1959 and five years have not elapsed since the expiry of sentence imposed upon him;
- (h) if he has been convicted of any offence punishable under Immoral Traffic Prevention Act, 1.956 and five years have not elapsed since the expiry of sentence imposed upon him.

(2) Any travel agent whose name is removed from the register under subsection (1) shall be forthwith ceased to be a travel agent.

³⁸ Section 23 of the SRTT Act- (1) The prescribed authority may, on proof of any complaint of malpractice or any other offence committed under this Act, for reasons to be recorded blacklist a travel agent after taking into consideration the nature of malpractice of the gravity of offence, for such period as the prescribed authority deem fit.

(2) The particulars of a travel agent black-listed shall be exhibited at conspicuous places and notified to all travel, trade and other concerned organisations, foreign missions in India and Indian missions abroad.

(3) Notwithstanding action taken under sub-section (1) the travel agent shall be liable to be prosecuted under the provisions of law if deemed necessary.

(4) If the prescribed authority is satisfied that there are sufficient grounds for removal of a travel agent from the black-list, he may, after recording the reasons, order his or its removal from such list and issue a fresh certificate of registration on payment of prescribed fees and notify the same for information of all concerned.

³⁹ Section 25 of the SRTT Act-The prescribed authority, may, by a notification in the Official Gazette, fix reasonably maximum rates which may be charged by a travel agent for the services rendered by him to a person engaging him as such.

agent should not demand any tips, gratuity or commission for rendering his services towards the tourist given under section 26 of the Act.

Chapter-V of the Act under sections 27 and 28 contains provisions of “Appeal”. If the matter is not resolved by the prescribed authority under this Act, the appeal will go to the Appellate Authority appointed by the Government. The appeal shall be filed within 30 days from the date of decision of the prescribed authority. The authority may entertain an appeal even after the expiry of such period if the appellant was prevented and there exists sufficient ground of the same. The matters shall be take-up by appointing the legal counsel by the appellant and the prescribed authority may also appoint the counsel on behalf of the Government. The Appellate Authority after giving an opportunity of being heard and taking proper enquiry dispose of the matters and the reasons shall be recorded by the authority. The whole proceeding shall be completed within four month of its institution.⁴⁰

The Appellate authority shall have the power of the Civil Court under the Code of Civil Procedure, 1908 for the summoning and enforcing the attendance of the complainant against whom the complaint is made. The authority may verify the production of the document, examining the witnesses, and takes *suo moto* decision.⁴¹

⁴⁰Section 27 of the SRTT, Act- (1) Subject to the provisions of sub-section (2) an appeal shall lie from every order of the prescribed authority under this Act to the appellate authority to be appointed by the Government.

(2)Every such appeal shall be preferred within thirty days from the date of communication of the order: Provided that the appellate authority may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing it within the prescribed time limit.

(3)The appellant shall have a right to appear through a counsel and the prescribed authority may be represented by such officer or person or a counsel as the Government may appoint.

(4)On receipt of any such appeal, the appellate authority shall after giving the appellant a reasonable opportunity of being heard and after making such enquiry as it deems proper, dispose off the appeal for reasons to be recorded.

(5)The proceedings before the appellate authority shall -be completed within four months of its institution.

⁴¹ Section 28 of the SRTT, Act-The prescribed authority shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:-

(1) Summoning and enforcing attendance of the complainant or the person against whom complaint is made under this Act and witnesses required in connection therewith;

Chapter-VI under sections 29 to 38 of the Act deals with “Offences and Penalties.” Penalty for the default in registration of business by dealers, hotel keeper and the travel agent is given under Section 29 of the Act. If without proper registration under this Act, the dealers, hotel keeper or the travel agent carries their business in the tourist area is the violation of the provision of the Act he shall be punishable with fine which may extend to Rs. 5000/-, if the breach continues, the fine of Rs.200/- will be added for each days. The fine imposed under sub-section (1) shall be recovered as if it is a fine recoverable under the provisions of the Code of Criminal Procedure, 1973.⁴² Explanation says if the person made an application for the registration within the prescribed period and is pending before the prescribed authority he shall not be the defaulter of this provisions.

Under investigation by the authority if any person is found suppressing the material fact or misleading the authority, he shall be punished for the imprisonment of six months or with fine not exceeding Rs. 1.000/- or with both.⁴³ And if any person transfers the certificate of registration of business without the permission of authority

-
- (2) Compelling the production of any document;
 - (3) examining witnesses on oath; and
 - (4) may summon and examine suo moto any person whose evidence appears to be material.

Explanation: For the purpose of enforcing the attendance of witnesses and other persons mentioned above, the local limits of the jurisdiction of the prescribed authority extends to the whole of the State.

⁴² Section 29 of the SRTT, Act- (1) Any person carrying on the business of a dealer, hotel-keeper or travel agent without a proper registration under this Act or in violation of any of the provisions of this Act shall be punishable with a fine which may extend to Rs.5, 000/- and if the breach is continuing one with a fine of Rs.200/- for each day. (2)The fine imposed under sub-section (1) shall be recovered as if it is a fine recoverable under the provisions of the Code of Criminal Procedure, 1973.

Explanation: A. person who has made an application within the prescribed period and is pending disposal shall not be a defaulter for the purposes of this section.

⁴³ Section 30 of the SRTT, Act- If any person required to make a statement under this Act wilfully makes or suppresses a statement material fact with an intention to mislead the authority, he shall be liable to punishment with simple imprisonment for a term which may extend to six months or with fine not exceeding Rs. 1, 000/- or with both.

shall be liable for imprisonment for a period of six months or with fine not exceeding Rs.5,000/- or both.⁴⁴

Any dealer, hotel-keeper, travel agent or any other person, under this Act, commits a malpractice in the tourist area for which no specific penalty has been provided, shall be liable to be punished with imprisonment for a term which may extend to three months or with fine not exceeding Rs. 1,000/- or with both.⁴⁵ The complaint shall not be registered against any person for the offence under this Act except on a complaint made by the prescribed authority.⁴⁶ The complaint shall be filed within the one year of the date of offence. The Chief Judicial Magistrate of the First Class under this Act shall take cognizance of an offence.⁴⁷

Chapter- VII under sections 39 to 51 contains “Miscellaneous” provisions. If the certificate is lost, destroyed or damaged, the authority on application made on behalf of the person may issue the duplicate certificate.⁴⁸

The prescribed authority or any person authorised by him in this behalf or any other lawful authority may, inspect the premises in which a dealer, travel agent or hotel keeper carries on his business to produce any document, for inspection.⁴⁹ The person shall not prosecute legal proceeding against the Government or any person in respect

⁴⁴ Section 31 of the SRTT, Act-Any person who lends, transfers or assigns the certificate of registration issued under this Act, shall be liable to punishment with imprisonment which may extend to six months or with fine not exceeding Rs. 5, 000/- or with both.

⁴⁵ Section 31 of the SRTT Act-Any dealer, hotel-keeper travel agent or any other person to whom this Act may be made applicable, commits a malpractice or contravenes any other provisions of this Act in the tourist area for which no specific penalty has been provided, shall be liable to punishment with imprisonment for a term which may extend to three months or with fine not exceeding Rs. 1,000/- or with both.

⁴⁶ Section 35 of the SRTT Act, 1998

⁴⁷ Section 36 of the SRTT Act, 1998.

⁴⁸ Section 41 of the SRTT Act- If a certificate of registration issued under this Act is lost, damaged or destroyed, the prescribed authority shall on an application made on that behalf by the person holding such certificate and on payment of the prescribed fee, issue a duplicate certificate.

⁴⁹ Section 44 of the SRTT Act-The prescribed authority or any person authorised by him in this behalf or any other lawful authority may within the tourist area, inspect at all reasonable times, the premises in which a dealer or a travel agent carries on his business or any premises where a hotel is operated and require such dealer, travel agent or a hotel-keeper to produce any document, kept in pursuance of this Act or the rules made there under for inspection.

of anything which is done in good faith under SRTT Act.⁵⁰ The State Government shall have power to make rules from time to time under this Act for maintenance of register and books and forms by a hotel-keeper, dealer or travel agent for conduct of business.⁵¹

The SRTT Act, 1998 deals only for the registration of tourism product such as hotels and service providers such as dealers, hotel keeper and travel agent in Sikkim. If there are malpractices in operating the business the Act provides limited penalties to the dealer, hotel keeper and the travel agent. Like the authority may refuse to register the dealer, hotel and the travel agent if found guilty under the provisions of Chapters XIII, XIV XVI and XVII of the IPC, 1860, only if the period of three years have not been elapse at the time of application for the fresh registration. In case he is guilty under the Prevention of Illicit Traffic in Narcotic

Drugs and Psychotropic Substances Act, 1988, Immoral Traffic (Prevention) Act, 1956 and Arms Act, 1959, the refusal of the registration is only if the five years has not been elapsed since the expiry of the sentence imposed on him. After the elapsed of the time, they can reapply for the registration of the business related to tourism. The severe punishment is only the removal of the name from the register of the

⁵⁰ Section 48 of the SRTT Act,1999.

⁵¹ Section 50 of the SRTT Act-(1) The Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act. (2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for:- (a) The maintenance of registers books and forms by a hotel-keeper, dealer or travel agent for conduct of business; (b) the form of application for registration and certificate of registration; (c) the fee for registration; (d) the manner of giving notices under this Act; (e) classification of hotels and travel agents; (f) qualifications for registration as travel agents; (g) manner of publication of the names and addresses of the persons and of the hotels removed from the register or to whom registration has been refused; (h) manner in which a dealer, a hotel and a travel agent shall be blacklisted and the publication of names and addresses of such dealer hotel and travel agent; (i) the place where the prescribed authority shall hold enquiry under this Act; and (j) all manners expressly required to be prescribed under this Act. (3) The rules made under this Act shall be subject to previous publication in the Official Gazette.

Government if proven any guilt. Black-listed name of the dealer, hotels, hotel keeper and travel agent can be circulated to the notified area of tourist. The penal provision under Chapter –VI deals with non-registration of the dealer, hotels and the travel agent of who shall be punished with limited fine, not sufficient for the present situation. This Act is applicable in the State of Sikkim and does not cover the vital issues of the present era of the electronic commerce. In order to handle the issues of information and communication era these Act needs to be amended.

This Act does not deals with the complaint grievances, un-satisfaction of the services provided by the hotel keeper, travel agencies, travel guide, tour operator against the tourist who is visiting the state only for the few days. The basic needs for the protection of tourist are not covered under this Act. Now days, the system of operation of the hotel business is by advance online booking via internet. Sikkim is the hot spot of the tourist, sometimes they may face some shortcomings of the services or any problem at the mean time of the tour in Sikkim By exercising the power conferred under Section 50, sub-section (1) and (3), the Government of Sikkim make two different rules discussed below.

4.2. AN ANALYSIS OF SIKKIM REGISTRATION OF TOURIST TRADE (SRTT) RULES, 2008

Government of Sikkim by exercising powers conferred under sub – section (1) of the section 50 of the SRTT Act, 1998, (10 of 1998) makes the following rules called The SRTT Rules, 2008. *“It applies to the whole of Sikkim which shall come into force on such date as the State Government may, by Notification in the Official Gazette, appoint.”*⁵² The rules contain 52 sections, divided into nine chapters.

Chapter-I provides the title of the Rules and extents and commencement of the Rules. Section 2 of the Rules contains definition. These definitions are same as mentioned in the SRTT Act, 1998.

⁵² Section 1 of the SRTT Rules-(1) these rules may be called the Sikkim Registration of Tourist Trade Rules, 2008.

(2) It extends to the whole of Sikkim

(3)It shall come into force on such date as the State Government may, by Notification in the Official Gazette, appoint.

Chapter-II from sections 3 to 11 prescribes the “Application for Registration of a Dealer”. For the registrations of dealer the application shall be made to the Prescribed Authority in the Form –I.⁵³ Dealer already carrying on the business of sale of any notified article in the tourist area shall apply within the period of three months from the date of application.⁵⁴ If prior to the announcement of this Rule, any person carries business in the tourist notified area he shall apply for compulsory registration by filling up of the Form No. II, III and IV according to the SRTT Rules of 2008. In case of any contravention on the part of dealer he shall be punished according to the provision of the Rule.⁵⁵ The registration fee to be paid through demand draft /*challan* /B.R., as the case may be, is to be deposited by any person as a Dealer, Travel Agent, Hotels, Bar etc., in favour of Tourism Department.

The gradation of the hotel/restaurant/travel agent /Tour Operators etc. will be on the recommendation of the Committee constituted under Section 25 of the SRTT Act, 1998,⁵⁶ by notification in the official gazette who will fix the maximum and minimum prices respectively.⁵⁷

⁵³ Section 3(1) of the SRTT Rules- Any person intending to carry on business as dealer under the Act shall before the commencement of such business; apply for the registration to the Prescribed Authority in the Form –I.

⁵⁴ Section 3(2) of the SRTT Rules, 2008.

⁵⁵ Section 3 (3) of the Rules- Any person or persons who is directly involved or already involved or doing business or allied business in terms of provision under clauses (d) (i) or (m) of rule 2 of these rules prior to the commencement of these rules shall apply for the registration Forms II, III and IV, respectively, appended to these rules within one month from the date of publication of these rules. Contravention of these rules or non compliance of these rules shall be punishable as prescribed under these rules.

⁵⁶ Supra

⁵⁷Section 3(4) of the SRTT Rules- An application for registration as a dealer, hotel, travel agent, proprietor of a restaurant/bar, hotel guide or outdoor photographer, shall be accompanied with the following fee, through demand draft /*challan* /B.R., as the case may be, to be deposited in favour of Tourism Department, as onetime payment.

(1) Registration Fee: Rs.

(a) Dealer Rs.1000/-

(b) Hotel.

(i) Grade A Rs.10000/-

(ii) Grade B Rs. 8000/-

(iii) Grade C Rs. 6000/-

(iv) Grade D Rs. 5000/-

(v) Grade E Rs. 2000/-

(c) Restaurant.

(i) Grade -A Rs.6,000/-

The prescribed authority shall issue Certificate of Registration to the dealer in the Form VI within the period of three months from the date of receipt of application.⁵⁸ No application for registration shall be refused or Certificate of registration shall be cancelled unless, the person applying for registration and the person whose certificate of registration is to be cancelled has been afforded a reasonable opportunity of being heard by giving notice in Form IX⁵⁹.

Chapter –III from sections 12 to 18 of the SRTT Rules prescribes the format of “application of the registration of the Hotel”. Those who operate a hotel/Restaurant

- (ii) Grade--B Rs.4,000/-
- (iii) Grade -C Rs.2,000/-
- (iv) Grade -D Rs.1,000/-
- (d) Travel Agent and Tour Operators:-
- Grade-A Rs.10,000/-
- Grade-B Rs. 5,000/-
- Grade-C Rs. 3,000/-
- Grade-D Rs. 1,000/-
- (e) Tourist Guide and outdoor photographer Rs.1,000/-
- (f) Fees for issuance of Duplicate Certificate Rs.2,000/-

Provided that for the purpose of clauses (a), (b), (c) & (d), the gradation of the hotel/restaurant/travel agent /Tour Operators etc. will be on the recommendation of the Committee constituted under Section 25 of the Registration of Tourist Trade Act,1998. The Committee, so constituted, shall examine the amenities/facilities and standards of accommodation available in the hotel/restaurant/travel agent as furnished in the respective Forms. The Prescribed Authority on the recommendation shall award classification / gradation to Hotels/ Restaurants/Travel Agents/Tour Operators etc.

2. Annual fees for renewal of Registration Certificate.

- (a) Dealer Rs.500/-p.a.
- (b) Hotel
- (A) Rs.2,000/-p.a.
- (B) Rs.1500/- p.a.
- (C) Rs.1,200/-p.a.
- (D) Rs.1,000/-p.a.
- (E) Rs. 500/-p.a.
- (c) Restaurant/Cafeteria/etc.
- (A) Rs.2000/-
- (B) Rs.1500/-
- (C) Rs.1000/-
- (D) Rs. 500/-
- (d) Travel Agent and Tour Operators:-
- Grade-A Rs.2 ,000/-
- Grade-B Rs. 1,500/-
- Grade-C Rs. 1,000/-
- Grade-D Rs. 500/-

- (e) Tourist Guide and Outdoor photographer Rs.500/-
- (f) Fees for issuance of Duplicate Certificate Rs.2,000/-

⁵⁸Section 6 of the Rules-The Prescribed Authority, shall unless registration is refused under rule 7, shall issue Certificate of Registration to the dealer in the Form VI within the period of three (3) months from the date of receipt of application.

⁵⁹ Section 7(b) of the SRTT Rules,2008

shall, before operating can apply for registration to the Prescribed Authority in Form II and Form IV, respectively.⁶⁰

The Authority or his authorized person shall have power to inspect the premises without any search warrant from the Magistrate or court of law. The authority shall also have the power to inspect the Premises, if the complaint is received in writing for involvement of any offence defined under these rules without search warrant.⁶¹ The power of the imposition of fine and seizure of the materials is given to person not below the rank of Under Secretary or the Assistant Director of the Tourism Department, Government of Sikkim.⁶²

Under Chapter –IV from Sections 19 to 23 the Rules prescribes “*the Removal of the Name from the Register*”. The procedures are as same as mention in the SRTT Act of 1998. The black- listing shall be within the prescribed period not exceeding the period of ten years.⁶³

Chapter-V from Sections 24 to 35 prescribes “*An application for registration of Travel Agent /Tour Operator.*” The Agent/tour operator in a tourist area shall, carry their business before the commencement of the Act as such; apply for registration by

⁶⁰ Section 12(1) of the Rules- Any person intending to operate a hotel/Restaurant shall, before operating apply for registration to the Prescribed Authority in Form II. and Form IV, respectively.

⁶¹ Section 15 of the SRTT Rule-The Prescribed Authority or his authorized person of the premises in writing shall have power of inspection of the premises without any search warrant from the Magistrate or court of law before issuance of the certificate of registration and entry in the register for his satisfaction at any convenient and reasonable time. (2) The Prescribed Authority shall also have the power of inspection in the Premises, if the complaint is received in writing for involvement of any offence defined under these rules without search warrant.

⁶² Section 16 of the SRTT Rules-During the inspection of the premises, the Prescribed imposes fine. Authority or any of the authorized person not below the rank of Under Secretary /Assistant Director shall have the power of seizure of any articles or any materials of offence as defined under this Act as materials of evidence for subsequent trial and if the prescribed authority or authorized person has found anything in contravention and violation of the Act and any of the rules, he shall impose the fine thereof as per the provision under the Act.

⁶³ Section 21 of the SRTT Rules, 2008.

filling up of Form III.⁶⁴ The prescribed authority shall issue a Certificate of Registration to the Travel Agent/Tour Operator in the prescribed Form III.⁶⁵

The procedure of the removal of the name from the register or cancellation⁶⁶ of name of tour operator, travel Agent, Service providers are alike as that of dealer mentioned above.⁶⁷ The summons and show – cause notice shall be issued by way of registered post service or by way of service personally with acknowledgment of the receipt through the authorized person of the prescribed authority.⁶⁸ The power of the inspection against the travel agent, tour operator or service providers is same as dealer as mentioned under section 27 of the Rules.⁶⁹ The reason for black-listing of Tour operator/ travel agent/agencies is also same as of dealer and the black- listing shall be within the prescribed period not exceeding the period of ten years.⁷⁰

⁶⁴ Section 24 (1) of the SRTT Rules-Any person intending to carry on the business of a travel agent/tour operator in a tourist area shall, before he commences to the act as such, apply for registration to the Prescribed Authority in Form III.

⁶⁵ Section 25 of the SRTT Rules- The Prescribed Authority shall, unless registration is refused under Section 12 of the Act, direct that the name and particulars of the Travel Agent/Tour Operator be entered in the register maintained for the purpose and shall issue a Certificate of Registration to Travel Agent/Tour Operator in the prescribed Form III.

⁶⁶ Section 31 of the SRTT Rules-(1). The Prescribed Authority may by order in writing, from the register remove the name of a travel agent/ tour operator from the and cancellation register and cancel the Certificate of Registration on any of the following grounds namely:- a) if the travel agent/ tour operator ceases to operate for a period of two year for which it is registered; b) if the travel agent/ tour operator is black – listed under the Act; c) if any complaint of malpractice is proved against the travel agent / tour operator; d) if travel agent/ tour operator is found to be in illegal possession of any explosive substance and other articles forbidden by law; e) if the travel agent / tour operator is involved, arrested and convicted under any law within the State of Sikkim and within the territory of India; f) if the travel agent/ tour operator has been declared an insolvent by a Court of competent jurisdiction and has not been discharged;

⁶⁷ Supra

⁶⁸ Section 32 of the SRTT Rules -Provided that no order shall be passed without giving an opportunity of hearing and in the default of the appearance of the offender the Prescribed Authority may pass ex-parte order against the offender.”

⁶⁹ Section 27 of the SRTT Rules-The Prescribed Authority or his authorized person in writing shall have power of inspection of the premises without any search warrant from the Magistrate or court of law before issuance of the certificate of registration and entry in the register for his satisfaction at any convenient and reasonable time. 2. The Prescribed Authority shall also have the power of inspection in the Premises, if the complaint is received in writing for involvement of any offence defined under these rules without search warrant.

⁷⁰ Section 33 of the SRTT Rules-Provided that no such order may be passed unless a reasonable cause is shown in writing to the satisfaction of the Prescribed Authority or reasonable opportunity of being heard is given before passing such order for black-

Chapter –VI under sections 36 and 37 prescribes the rules of “*Procedure for an appeal*”. The aggrieved party may file an appeal against the order of the prescribed authority. The appellate authority can be appointed for the decision. The appellate authority is Secretary or equivalent of the Tourism Department. The appeal shall be favoured within thirty days from the date of statement of the order given by the prescribed authority. If there is sufficient cause to prove that appellant was prevented from filing it within the prescribed time limit, the appeal shall be allowed after 30 days. The proceeding can be completed within three month from the date of filing of an appeal.⁷¹

The Prescribed Authority and appellate authority shall have power of the civil court under Civil Procedure Code.1908.⁷²

Chapter –VII from sections 38 to 50 prescribes the details rules about “power of Cognizance of offence,⁷³ and penalties,⁷⁴ production of No Objection Certificate,⁷⁵

listing. The black- listing shall be within the prescribed period not exceeding the period of ten years.

⁷¹ Section 36 of the SRTT Rules-(1)Subject to the provision of sub- section (2) of section 27 against the of order of the Act an appeal shall lie from every order of the Prescribed Authority under the Act to the Appellate Authority to be appointed by the Government, by notification. (2) The Appellate authority shall be the Secretary or equivalent of the Tourism Department; (3) Every such appeal shall be preferred within thirty days from the date of communication of the order; Provided that the Appellate authority may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the Appellant was prevented by sufficient cause from filing it within the prescribed time limit. (4) The appellant shall have a right to appear through a counsel and the Prescribed Authority may be represented by such officer or person or a counsel as the Government may appoint. (5) On the receipt of any such appeal, the Appellate Authority shall give the appellant and respondent a reasonable opportunity of being heard and after making such enquiry as it deems proper, dispose off the appeal for reason to be recorded. (6) The proceeding before the Appellate Authority shall be completed within three months of its institution. However, time may be extended as the case may be, giving the reason in writing.

⁷² Section 37 of the SRTT Rules- The Prescribed Authority and Appellate Authority have the powers of a Civil Court under the Code of Civil Procedure 1908 (5 of 1908) in respect of the following matter, namely: (1) summoning and enforcing of attendance of the complainant made under the Act and witness required in connection therewith; (2) compelling the production of any document ; (3) examining witnesses on oath ; and (4) may summon and examine suo- moto any person whose evidence appears to be material. Explanation: For the purpose of enforcing the attendance of witnesses and other persons mentioned above, the local limits of the jurisdiction of the Prescribed Authority extends to the whole of Sikkim.

⁷³ Section 38 of the SRTT Rules-No cognizance shall be taken unless complaint is received or filed by any person or persons against the offenders before the Prescribed

procedure for institution of proceeding,⁷⁶ period of the payment of fine,⁷⁷ power of the court to try cases summarily,⁷⁸ forfeiture of the property,⁷⁹ notice to be sent by the registered post to the person,⁸⁰ Display of information and maintenance of registered documents of the business such as name of the Hotels, Travel Agent/ Agency or tour operator, registration number of the respective persons or hotels, total information of the accommodation of rooms, availability and check out timing at 12:00 Noon shall be displayed in the noticeable place .⁸¹

Chapter IX from sections 54 to 58 prescribes “*miscellaneous*” provisions. Under this provisions when any person wants to change any particular of his business register

Authority. The Prescribed Authority has reasons to believe about the offence or of contravention of any provision of the act, he shall have the power to take cognizance on suo-moto.

⁷⁴ Section 39 of the Rules-If any person is found carrying on the business of a dealer, hotel- keeper or travel agent in contravention of any provision of the Act and rules made hereunder, the registration shall summarily be cancelled and penal action can be initiated against him under the provision of the Act.

⁷⁵ Section 40 of the SRTT Rules- Any person, who applies under sub- section (1) of section 3 and under section 10 and 19 of the Act, shall produce the No Objection Certificate from the Forest, Environment and Wild Life Management, Department, the Health Department (PFA), Water Security and Public Health Engineering Department, Power Department, Sikkim Fire Services, Labour Department and Pollution Control Board.

⁷⁶ Section 42 of the SRTT Rules- A person shall be liable for the proceeding, if he defaults for payment of fine imposed by the Prescribed Authority and or by any contravention of any of the provisions under the Act and rules made hereunder. The Prescribed Authority or his authorized person may also proceed with the institution of the proceeding before the competent Court of law by filing complaint under the provision of Criminal Procedural Code, 1973 and/or may file complaint before the Police Station for registration of the criminal case against the offender.

⁷⁷ Section 44 of the SRTT Rules- The offender shall pay the fine imposed by the Prescribed Authority instantly to the Prescribed Authority or his subordinate officer duly authorized by him and after recording in writing the reason may give time not less than five days from the day of offence detected or apprehended or receipt of notice for payment of fine.

⁷⁸ Section 45 of the SRTT Rules- No Court shall take Cognizance of any complaint unless it the try cases summarily is filed in writing by Prescribed Authority or his authorized person before a Judicial Magistrate of First Class who shall try any offence punishable under the Act.

⁷⁹ Section 47 of the Rules- Where any person is convicted or fined under the rules for contravention of any provision of the rules made hereunder, such articles, items, shall be forfeited to the Government.

⁸⁰ Section 48 of the SRTT Rules- All notices or Orders issued under the foregoing registered post rules, shall be sent by registered post to the address of the person registered under the Act as shown in the application form and all such notices or orders, as the case may be, shall be deemed to have been validly communicated when so sent.

⁸¹ Section 50 of the SRTT Rules- Every registered hotel shall display, conspicuous place, in respect of his hotel, at the entrance of the hotel or at the reception counter of the hotel, on a notice board etc.

under the Act, he can within sixty days of the date of such devolution of change, shall notify the fact in writing to the prescribed authority. If the successor is not qualified for the same, the authority cannot issue the certificate of registration.⁸² If the certificate of Registration is lost, damaged or destroyed, the Prescribed Authority on payment of the prescribed fee, issue a duplicate certificate to the applicant.⁸³ The power and the duties of the police in respect of offences and assistance to the prescribed authority are mentioned in section 58 of them SRTT Rules.⁸⁴

The Government of Sikkim has given the rule making power under section 50(1) of the SRTT Act, 1998. The rules are called as SRTT Rules, 2008. Definitely the Government of Sikkim operates tourism business by providing the prescribed format of forms for applying the registration of Dealers, Travel Agent/Tour operators or Hotels who operate their respective business in the tourist notified area. The amount for the registration of their respective business shall be fixed by the Government in the Rules. These Rules prescribes laws only for the registration of business. The Government through the prescribed authority verifies and inspects the area before issuance of the trade licence certificate to the Dealers, Travel Agent/Tour Operators or hotels. The power of the prescribed authority is equal to that of civil court as given

⁸² Section 54 of the SRTT Rules- (1) any person or undergoes a change in respect of any particular person entered in the register under the Act, such person shall, within sixty days of the date of such devolution of change, notify in writing the fact to the prescribed authority. (2) The Prescribed Authority shall make necessary changes in the register maintained for the purpose and in the Certificate of Registration. (3) The Prescribed Authority may remove from the register the name of the person in whose favour the certificate was issued and cancel the certificate of registration if the successor is not qualified to be registered under this Act.

⁸³ Section 56 of the Rules- If a Certificate of Registration issued under the Act is lost, damaged or destroyed; the Prescribed Authority shall on an application made on that behalf by the person holding such certificate and on payment of the prescribed fee, issue a duplicate certificate.

⁸⁴ Section 58 of the SRTT Rules-Every Police Officer shall give immediate, information to the Prescribed Authority of an offence coming to his knowledge which has been committed against the provisions of Rule and shall assist the Prescribed Authority in the exercise of his lawful authority.

under the Civil Procedure Court, 1860. But there is no provision for the punishment or compensation provided under the Rules, for the wrong committed by the Dealer, Travel Agency/Tour Operator. The Tourism and Civil Aviation Department has appointed the Public Relation officer to handle the complaint related to tourist through mediation.

4.3. AN ANALYSIS OF “SIKKIM REGISTRATION OF HOME STAYS ESTABLISHMENT (SRHSE) RULES 2013

This Rules were drafted under the section 50 (3) of the SRTT Act, 2013 notified by the Government of Sikkim in the Department of Tourism and Civil Aviation, called as SRSHE Rules, 2013. It has 19 sections in total and it shall extend to the whole of the Sikkim. These Rules specifies the standard of services to be provided at home stays, including the fixing of rates, standard services, and Standard kitchen and require home stay business to be registered according to SRTT Act, 1998. These Rules aim to regulate the Home Stay tourism business by managing business or attract the tourist inflow in Sikkim. By operating this business without any regulations or Rules, giving rise to revolting competition, which defeats the very idea of the Home Stays concept. For the smooth running of the Home Stay Establishment in the rural villages in Sikkim, the SRHSE Rules, 2013 came into existence.⁸⁵

As per definition provided under Section 2 of the Rules, the word “Department” means the Tourism and Civil Aviation Department of the Government of Sikkim.⁸⁶ The Tourism Department of Sikkim looks after the matters related to the tourism and notify the rules for the smooth operation of the business.

As per the definition provided under Section 2(1) (b) of the Rules, a “*Home stay*” means any private house located in a rural area where the house owner or his/her

⁸⁵ Section 1 of the SRHSE Rules,2013

⁸⁶ Section 2(1) (a) of the SRHSE Rules- “Department” means the Tourism and Civil Aviation Department, Government of Sikkim.

family are physically residing in the unit and some rooms are allocated absolutely for the use of tourists.⁸⁷

The word “*Prescribed Authority*” defined under this Rules means the Secretary of Tourism and Civil Aviation Department, Government of Sikkim or any other person authorised by him.⁸⁸ The “Rural Area” is defined as the area outside the jurisdiction of Nagar Panchayat, Nagar Parisad and Municipal Corporation.⁸⁹

These rules explain one of the compulsory conditions for the running of the Home Stay Establishment in the rural area i.e. the owner of the Home Stay has their own landed property.⁹⁰ That means the business of home Stay is only operated by the original Sikkimese people.

According to the provisions of the rules, any individual or families who have house in good condition in rural area can run the Home Stay business. A room of the house has to meet certain minimum service standard and eligibility criteria. This rule recommend, at least one room or spare a maximum of 5 rooms for tourist accommodation. Rules say that the house should be as per traditional Sikkimese architecture and designed by using local materials such as wood, Bamboo etc. One of the family members should communicate in English or in Hindi. There has to be an attached toilet and it is stipulated that the standard size for double and single bed room accommodation be 150 square feet and 100 square feet respectively and the size of the bathroom/toilet be of 30 square feet. For the convenience of the tourist, houses

⁸⁷ Section 2(1) (b) of the SRHSE Rules-“Home stay” means any private house located in the rural areas where the house owner or his-her families are physically residing in the unit and earmarks some rooms exclusively for the use of tourists bearing certain basic minimum service standards and eligibility criteria as prescribed in these Rule

⁸⁸ Section 2(1) (c) of the SRHSE Rules- “Prescribed Authority” means the Secretary of the Tourism and Civil Aviation Department, Government of Sikkim , or any other Authority as may be authorized by him.

⁸⁹ Section 2(1) (d) of the SRHSE Rules-“Rural areas” means outside the jurisdiction of a duly constituted urban local body i.e. Municipal Corporation, Nagar Parishad and Nagar Panchayat

⁹⁰ Explanation of Section 2 sub-section 2 of the SRHSE Rules-Explanation:-It is mandatory that the Home Stay owner is the owner of the landed property where the home stay is functioning/or proposed to function. The following shall be the eligibility criteria for registration of Home Stay establishment.

should have access to road or footpath in good conditions. Any home Stay having more than 5 rooms can be categorised as Village Lodge.⁹¹ Any owner of the Home Stay shall apply for the registration to the prescribed authority under whose jurisdiction it falls for. The authority before issuing the registration certificate, make the verification of the location, surrounding environment, hygiene, security and safety of the tourist.⁹²

The responsibility of the Home Stay owner is following the moral code of conduct of the department. Each and every Home Stay shall be registered under the tourism department and follow the guidelines which are provided and explained at the time of registration. The undertaking of the Home Stay Owner shall be submitted to the department (Annexure II) by filling up the particulars and willingness to undergo any training programme conducted by the department to the service providers.⁹³

⁹¹ Section 3 of the SRHSE Rules- (1) Any Individual or families who own a house of good condition in rural areas and can spare at least one room and maximum of 5(five) rooms exclusively for tourist accommodation and who agree to provide basic minimum infrastructure standards and provide the basic assured quality in services. (2)Only those house owner/promoters shall be eligible who along with his/her family is physically residing in the same unit. (3)The house under the scheme should conform to local Sikkimese architecture and design. (4)At least one member of the family should be able to communicate in English or in Hindi. (5)Accommodation under the scheme would mean room accommodation of minimum standard sizes with attached toilet facility reasonably furnished and ready for letting out to the tourist or guests as prescribed. The standard size for double and single bed room accommodation is 150 square feet and 100 square feet respectively and the size of the bathroom/toilet is 30 square feet. (6) The Home Stay Establishment must have minimum of one room for letting out and maximum four rooms with attached toilet. Houses of rooms which are leased or rented out will not be eligible. (7)Houses should have easy access from the road by a footpath in good condition.

⁹² Section 4 of the SRHSE Rules-(1) Any owner of a private house having the requisite documents to show ownership of land/house, located in a rural area of the State may apply in a prescribed Proforma (Annexure I) to the Prescribed Authority under whose jurisdiction the area falls for registration of the Home Stay Establishment under these rules. (2)The Prescribed Authority before registering such Home Stay Establishments shall ensure the physical verification of location, facilities, surrounding environment, hygiene, cleanliness, security, architectural design and safety of the tourist.

⁹³ Section 5 of the SRHSE Rules- (1) Every Home Stay Establishment owner shall get their unit registered with the Department. (2)Every Home Stay shall follow guidelines framed, maintain the basic infrastructure and quality standards and adhere to the Code of Conduct. A copy of these will be provided and explained to him or her at the time of registration. (3)Home Stay Owners shall submit an undertaking in a prescribed format in Annexure – II for fulfilling the terms and conditions of running a Home Stay Establishment and willingness to undergo any training programme conducted by the Department or service providers.

The classification of the Home Stay Establishment has been declared according to the quality of services provided by them as Class A (Gold house) at the appropriate fees of Rs.3000/-, Class B (Silver house) at the rate of Rs 2000/-and Class C(Bronze house) at the rate of Rs. 1000/-. This classification is only valid for two years from the issue of the order. In case of renewal of the classification, the owner shall re-apply the application to the authority before the three month from the expiry of the period. The re-classification shall be Rs.1000/- for Class A, Rs.750/- for Class B and Rs. 500/- for Class C classes of Home Stays.⁹⁴

The Authority shall refuse to register Home Stay Establishment under the Rule if the owner is convicted of any offence under Chapter XIII and XIV of Indian Penal Code, 1860 and the time of three years since the expiry of any sentence imposed upon him has not been elapsed.⁹⁵ If the prescribed authority did not find any fault on the part of the Owner of the Home Stay shall issue certificate of registration in the form given at Annexure IV.⁹⁶

If any owner of the Home Stay establishment ceases to cater the tourists, convicted of any offence punishable under IPC, 1860, or blacklisted by the authority or found guilty of overcharges to the tourist, keeps home in unhygienic condition, misbehaves, indulges into malpractice against the tourist and did not maintain the required quality, the name of the Home Stay Establishment shall be removed from the register. And after giving an opportunity of being heard to the owner the registration of Home Stay

⁹⁴ Section 6 of the SRHSE, Rules, 2008.

⁹⁵ Section 9 of the SRHSE Rules-(1) The Prescribed Authority may refuse registration of a Home Stay Establishment under the rule if he or she is convicted of any offence under any law providing for prevention of hoarding, smuggling or profiteering or any adulteration of food or drug under Chapter XIII and XIV of the Indian Penal Code, 1860 and that three years have not elapsed since the expiry of any sentence imposed upon him or her.

(2)No application for registration shall be refused or certificate of registration cancelled unless, the person applying for registration and the person whose certificate of registration is to be cancelled has been afforded a reasonable opportunity of being heard.

⁹⁶ The Prescribed Authority shall unless registration is refused under rule 9 shall issue Certificate of Registration to the Home Stay Establishment Owner in the Prescribed Form given at Annexure IV .

will be cancelled.⁹⁷ The prescribed authority blacklists the owner of the Home Stay Establishment on proof, recorded in writing and direct for the removal of such unit from the recorded register and cancellation certificate of registration. It can be notified in all the travels, trade and concerned organisations.⁹⁸

An independent monitoring or evaluation committee shall be formed by the Department to provide assured services standard provided by Home Stay Establishment. On the basis of quality of services provided by Home Stay and the proper analyses of the Feedback form, committee declare the Standard grade of Home Stay. The committee will also suggest for the improvement of business and keep record profile of the Owner.⁹⁹

The authority on demand of the record to the Owner shall produce Guest/tourist visitor register, bill book received in duplicate shall be provided. The feedback form prepared by the Department will be given to all Home Stay owners. These forms shall be displayed at the Home Stay counters along with other information. Tourists not

⁹⁷ Section 10 of the SRHES Rules-(1)The Prescribed Authority may by an order in writing remove the name of a Home Stay Establishment from the Register and cancel his Certificate of Registration on any of the following grounds, namely:-

(a)if the Home Stay Establishment ceases to cater to tourists;
(b)if he or she is convicted of any offence punishable under the relevant sections of the Indian Penal Code,1860 or under any law providing for the prevention of hoarding, smuggling or profiteering or adulteration of food and drugs or corruption or
(c)if he or she is blacklisted by the Prescribed Authority;
(2) In case of overcharging, unhygienic conditions, misbehaviour, malpractices and failure to maintain required standards the Registration of Home stay unit will be cancelled after giving reasonable opportunity of being heard.
(3)Any Home Stay Establishment which is removed from the register under sub rule (1) shall forthwith cease to be a Home Stay Establishment.

⁹⁸ Section 11 of the SRHSE Rules-(1) The Prescribed Authority may, on proof of complaint and due process of law and justice, of malpractice or any other offence committed under these rules for reasons to be recorded, blacklist a Home Stay Unit ,after taking into consideration the nature of malpractice and direct forthwith the removal of such unit from the register and cancellation of the certificate of registration.

(2)The particulars of such blacklisted Home Stay Units which are issued by written orders shall be notified to all travel, trade and concerned organizations.
(3)Notwithstanding any action taken under sub-rule (1) the Home Stay unit owner shall be liable to be prosecuted under the provisions of the law if deemed necessary.

⁹⁹ Section 13 of the SRHSE Rules-There shall be an independent panel for Monitoring and Evaluation of Home Stays in the State of Sikkim for the purpose of consistent efforts to provide assured service standards. This shall be done by a Monitoring and Certifying Committee which shall be duly notified by the department so that assured minimum standards are continued to be maintained in these Home Stay Establishments. The panel shall be drawn from various stakeholders and agencies involved in tourism and eco tourism fields.

having duly filled out their details in the register are not to be allowed of accommodation. Reservations for more than four days are to be charged not more than 50% for confirmation of booking in advance. If there is no confirmation of booking by the tourist the entire advance should be refunded within 7 days. Depending on the period of cancellation of reservation different rates of the advance can be retained with a minimum of 10% advance amount in case of cancellation within 72 hours, 25 % in case of 48 hours and maximum of 50% in case of 24 hours before the booking dates is permissible. In case the cancellation is less than 24 hour from the date and time of the arrivals, the deposit shall be forfeited by the owner.¹⁰⁰

The general terms and conditions and the basic assured qualities of Home Stay Establishment can be discussed under the sections 16 and 17 of this Rules.¹⁰¹ In case of up- gradation of the Home Stay categorised as Village Guest house, the separate rules shall be notified to them by the Department.¹⁰²The Investors Support Cell (ICS)

¹⁰⁰ Section 15 of the SRHSE Rules- (1) In case advance reservation is made for more than four days, the Home Stay Establishment shall not demand more than 50% of the amount of the approved rent as advance. After the receipt of the advance money he shall confirm booking. The entire amount of advance money shall be refunded within 7 (seven) days where confirmation is not done. In case of cancellation of advance reservation by the guest, the following amount can be retained by the Home Stay Owner, namely:

- i) Cancellation within 72 (Seventy two) hours from the date and time of arrival....10% advance amount.
- ii) Cancellation within 48 (forty eight) hours from the date and time of arrival...25% of the advance amount.
- iii) Cancellation within 24 (twenty four) hours from the date and time of arrival...50% of the advance rent.
- iv) Cancellation if less than 24(twenty four) hours the deposit shall be forfeited at the discretion of the home stay owner.

¹⁰¹ Section 16 of the SRHSE Rules-(1) Every Home Stay Establishment should maintain clean and hygienic environment. (2)Floor surface should be clean and in good condition. (3)Comfortable bed with good quality linen and bedding. (4)Guest rooms and bathrooms should be clean, airy, pest free, without dampness and with adequate/required ventilation. (5)Guest toiletries and bath towel or hand towel (minimum one) to be provided per guest.

(6)Sanitary bin to be provided in each toilet.

(7)Hot and running cold water should be available 24 (twenty four) hours.

(8)Kitchen should be well maintained, smoke free, clean, hygienic, pest free and having good ventilation.

(9)Proper garbage disposal arrangements should be made.

(10)Every Home Stay should provide doctor on call facility to guests.

¹⁰² Section 18 of the Rules- Cases for home stay upgradation will be considered for each home stay which function for a minimum period of 5(five) years of registered under Tourism and Civil Aviation Department. If such upgradation cases do not fall

has been established and functional under the Department to assist for Marketing guidance/support, technical guidance and capacity building.¹⁰³

These Rules are made in exercise of the power conferred under the section 50(3) of the SRTT, 1998 to the Government of Sikkim Government of Sikkim for the purpose of operation and maintenance of the Home Stay business in the rural Area. An analysis says that the only qualification for running of the Home Stay business in rural area is the home should be in good condition and at least one of the family members must be expert to communicate in English or Hindi. The rules prescribes the mandatory criteria for the functioning of the business in rural area with minimum rooms of the home stay, it should be attached with the home residence of the owner with his families. The focus of rules is how to register the Home stay, what types of qualities of services and food is to be provided to the tourist, hygienic condition of the establishment, infrastructure and prescribed standard of the Code of Conduct but there is no provision in Rules for the payment of Compensation/fine or punishment in case of any default on the part of owner or the service provider against the tourist. The rule is silent about the compensation and punishment on the part of both the tourist and the owner of the Home Stay.

4.4. AN INTERVIEW WITH THE PUBLIC RELATION OFFICER (PRO) OF TOURISM AND CIVIL AVIATION DEPARTMENT, GOVERNMENT OF SIKKIM

To identify the major legal challenges faced in the development of e-tourism, the researcher applied the interview method for the collection of the information regarding the working of the Tourism Grievances Cell under the Department of Tourism and Civil Aviation, Government of Sikkim. As per the interview with the PRO, the Grievances Cell initiates an action on the tourist complaints as well as the complaint against the tourist too. The data provided by PRO says that, there are several types of complaint filed by the tourist against the Hotelier, Travel Agencies, Tour Operators, and Drivers etc. The Hotelier, Travel Agencies, tour operators and

under hotels, then such places will catagorised as village Guest house for which separate rules shall notified later.

¹⁰³ Section 19 of the SRHSE Rules, 2013.

the Drivers can also lodge the complaint against the tourist. Though there is less number of complaint file against the tourist in 2015-2016 but these are of non-payment of the outstanding fund as fixed in the tour packages. The present status of cases as recorded in the register of the Department and (2015 till 9 November, 2016) (both pending cases as well as decided cases says there are about 70 different written complaints which were received by the Department in the years 2015-2016. As per the information received from the Department there is less number of complaint received by the Department as comparison to the previous tourist season. The complaints are of a variety of range which is recorded in the register maintained by the Grievances Cell who is handling the cases related to:

- a) The overcharging of the tour Packages by the Travel agencies
- b) Misbehaviour of the Driver during the tour such as Drinking and smoking while driving
- c) Unsatisfactory tour packages or poor quality services
- d) Hotel staff harassment and ill treatment of the tourist
- e) Non refund of the money on tour cancellation by the travel agencies
- f) Non refund of the money on cancellation of hotel booking
- g) Advance account deposit non- refundable
- h) Harassment and misbehaviour by the driver
- i) Forceful payment and confinement of the tourist.
- j) Complaint against the hotel manager regarding the misleading about the Nathula Pass
- k) Physical and mental harassment
- l) Cheating and duping of money by the drivers, travel agent or tour operators in advance
- m) Complaint against the theft at hotel
- n) Revoke of permit to visit the Tsomgo Lake and Babamandhir which is included in the tour packages.
- o) Regarding the false promise made by the tour and Travel Agent
- p) Against unethical tour practices followed by the tour operator.

- q) Misbehaviour by the hotelier and non fulfilment of the promise made by the hotelier
- r) Claim for refund of the money
- s) Non-shifting of another hotel.

The written complaint is filed by the tourist directly to the different officials of the tourism department, such as Tourism Secretary, the Tourism Minister, the Director, or the PRO of the Tourism and civil aviation Department. All the tourism officials immediately co-ordinates with each other as and when issue comes to them, some are shutout by the officials themselves then and there while some complaints are forwarded to the PRO of Tourism Grievances Cell, office situated at MG Marg, Gangtok. The forwarded complaints is filed in the normal procedure to the concerned officials in the tourist handling and grievances cell such as the Information Assistant or the Senior Information Official and which is then forwarded to PRO, who solves the matters according to the complaint received.

Regarding the procedure for the settlement of the grievances, un-satisfaction and the complaint related to tourism, the grievances, complaints and un-satisfactions are settled by the process of mediation in the presence of both the parties in front of the PRO or the other tourism authorities. The decision always relies on the principles of natural justice. The tourism authority if finds guilty may punish the Hoteliers, Travel Agencies and the Dealers under the provision of the SRTT Act, 1998, by blacklisting the business license or cancel the registration of the business for such period as the authorities deem fit. If the tourist is found guilty, the authority shall approach to pay the necessary amount to the tourism operational for the non-payment of the outstanding money of the tour by the tourist.

The Department of Tourism Grievances Cell is facing cross-border issues due to advance online booking of the travel packages, hotel accommodation or through the travel agencies which are not registered under the SRTT Act, 1998. The tourists are facing lots of problem during the tour in Sikkim because sometimes the irresponsible travel agencies do not fulfil their liabilities. In such filling complaint against the travel agents or the tourism website holders here at Gangtok, is the major issues. The

power to handle the cases does not lie in the hand of Sikkim Tourism Grievances Cell, because they don't have any jurisdiction in the matters. There are number of complaints lodged by the tourist in Gangtok, Grievances Cell of Tourism Department is against the New Jalpaiguri (NJP) based Travel agencies, which is not in the jurisdiction of Sikkim. The Sikkim Tourism Department is helpless to serve the proper direction to settle the matters which is not in the jurisdiction in Sikkim. When dispute is inter-state it becomes very difficult for cell to ensure justice to tourist travel agent or any other sufferer. The Grievances Cell is also handling some verbal complaint. There are very few number of online complaints has been registered by the tourist. And amongst the few number of complaints only less number of the cases has been taken up for further initiatives, because at times the tourist lodge the complaint to the Department via mail and when the Department responds back the mail to the tourist, they do not respond back again to the Department for further initiatives. Sometimes tourist does not want to lodge some of the major issues they face in the tour.

In the year of 2016, there are only two major cases registered against the tours and travel agencies here in Gangtok. Where one complaint was lodged by the tourist against Yak and Yeti Tours and Travel Agency, in another case, German tourist has been cheated by Himalayan Adventure Tours and Travel. The fact of the case was that, the owner of the travel agency promised for arranging tracking in the west Sikkim received the amount but the agent disappears on the date of tracking. The tourist could not undertake the tracking which he spend money for booking of the same. The tourists filed a complaint to the Tourism Department, Government of Sikkim for requesting the refund of the money which they paid for the booking of the tracking in west Sikkim. Amongst the recorded cases in between the year of 2015 to till 9th November, 2016, the more number of the cases is pending.

Definitely there is need of the special tourism legislation to govern the modern e-tourism business. Being the peaceful state, Sikkim is in need of Grievances Cell having independent In-charge of the office of tourism PRO in four Districts of the Sikkim for better serving the tourist visiting from outside Sikkim. Day to day

influences of e-tourism brought major changes in the activities of the person engaged in tourism business. Though there is transparency in business but sometimes due to misuse of the technology they face difficulty at the time of booking till the end of the journey. The scholar thought that the tourism infrastructure is well developed for Commercialisation of tourism in Sikkim. Tourists are attracted to the natural beauty and also beautiful artificial destinations in Sikkim. A tourist visits here to enjoy the place not to be indulged in any dispute but deficiency in services may spoil his experience hence needs to settle their un-satisfaction, grievances and complaint by the tourism departmental within short span of time. The law needs reconsideration.

CHAPTER-FIVE

JUDICIAL CONTRIBUTION TO E-TOURISM

The judicial system has an important role to play in ensuring better public utility services and corporate governance. There are so many regulations, rules and procedures; but ultimately when disputes arise, they have to be settled in a court of law. For the protection of the consumer there could be, of course, alternative dispute resolution mechanism such as Conciliation or Arbitration, but in country like India, it is the Judiciary/ Consumer Redressal Agencies that have to step in and ensure that healthy practices prevail. And the ultimate interpreter is court.¹ The Consumer Protection Act, 1986 of India provides the three tier Redressal Agencies² for solving the cases related to the consumers. The matter related to e-tourism services also dealt under this Act.

The Consumer Redressal Commission had settled the matters of Tourist/consumer who availed services of Airways, Railways and, Roadways etc. by paying the consideration on the part of consumer under the Consumer Protection Act. And Consumer Commission held in *M/s. Cox & Kings (I) Pvt. Ltd. V. Mr. Joseph A. Fernanes*³ that the “tourist” is a consumer under Section 2(1) (d) (ii)⁴ of the CP Act

¹ District Consumer Dispute Redressal Commission, State Consumer Dispute Redressal Commission, National Consumer Dispute Redressal Commission, and High Court of the respective states and finally the matter goes on appeal in the Honb’le Supreme Court of India.

² District Consumer Rederssal Commission; State Consumer Redressal Commission and; National Consumer Redressal Commission discussed under Consumer Protection Act, 1986, Chapter III under topic “Consumer Disputes Redressal Agencies.)

³ Revision Petition NO. 366 of 2005(From the order dated 24/11/04 in Appeal No.66/2004 of the State Commission, Karnataka) (Decided on 20 December, 2005) the Consumer Court held that “All the discussion are only theoretical options and the only real option available to the Respondents and the other tourists like them, is to mutely suffer the false and misleading advertisement given by the tour operators.

⁴Section 2(d)(ii) of the consumer protection Act 1986 stated that “hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 4[hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; (but does not include a person who avails of such services of any commercial purpose;)” [Explanation.-For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]

1986. In this case the Commission used the word “**Tourist**” as a consumer in two places in the original judgement. The Commission also pointed out that only few tourist/consumer knows about the rights given under the CP Act.⁵

The court interpreted “Services” under section 2(1) (o)⁶ of the consumer Protection Act 1986, and held the word “transport” has been included in it. The modes of transportation have been divided into Airways, Railways, and the Roadways. Hence those who availed the services by paying the consideration are called the consumer, whether the consumer is of daily travellers in any modes of transport or the tourist. The e-tourism related cases such as Misleading Advertisement,⁷ Deficiencies in Services⁸ by the service providers or the tour operator and matters related to online transaction in relation to e-tourism from the time of booking till the end of the tour has already been decided by the consumer courts in this light.

The vital issue came before the commission on misleading advertisement and unfair trade practice was that the tourism stakeholders(Government or Private) attracts tourist/consumer by misleading advertisement provided in the e-tourism websites. Unfortunately, a number of tourists are unaware to knock the door of consumer forum for their rights. If the tourist knows any wrong has been happened to them, they have right to file the complaint against the person tourism operational. The consumer commission awarded Rs.50,000/- as compensation paid by the tour operator to the

⁵ The Commission said that “It is only a rare tourist/consumer who is vigilant and conscious of his rights under the Consumer Protection Act and who prepared to take the route of legal proceedings, which knocks at the consumer fora”. Further it says that the “real option available to the Respondents and the other tourists like them, is to mutely suffer the false and misleading advertisement given by the tour operators.”

⁶ Section 2(0) of the consumer protection Act 1986 defines the "service means service of any description which is made available to potential (users and includes the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both,[housing construction] entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service”.

⁷ M/s. Cox & Kings (I) Pvt. Ltd. V. Mr. Joseph A. Fernanes, (Order on 20 December, 2005), Club 7 Holiday Pvt. Ltd. V. Rajesh Gupta and Pradeep Gupta RP.No.1661 of 2007.(Discuss below in detail.)

⁸ Arab Kumar Sarkar v. M/S Sheema Travels III (2002) CPJ 177(NC), Revision Petition No. 2130 of 200, Decided on 21/12/2001; Indian Airlines Ltd. V. Col.(Retd.) P.K. Choudhury S.C.Case No.FA/288/2009, State Consumer Redressal Commission, West Bengal (matter decided on 29 January, 2010); Express Travels vs. M.R. Shah and Ors. National Consumer Disputes Redressal, (Decided on 6 May, 2002); Spice jet Corporate office V. Mr. Assis Calderia FA No.76/2014 (Order dated on 14.10/2015); (Discuss below in detail).

JUDICIAL CONTRIBUTION TO E-TOURISM

tourist and the order was required to be complied with within four weeks from the date of the receipt of the same or else it would attract 9% interest p.a. in case of *M/s. Cox & Kings (I) Pvt. Ltd. V. Mr. Joseph A. Fernanes.*⁹

The facts of the above case are that the complainant/tourist had booked tour packages from Bangalore to Singapore-Malaysia and back. According to the tourist, M/s. Cox & Kings (I) Pvt. Ltd. advertised the tour packages for “*Two nights /three days cruise*” Star Cruise Services for which the Respondents have been charged . But the tour operator finished their services for the tourist to cruise trip is only for “*two nights, one and a half days*” whereas it was advertised as “*two nights/three days Cruise*”. There was, therefore a shortage of one and a half days cruise service according to the tourist. The tourist filed the complaint to the District Forum at Bangalore. The view of the respondent was considered by the forum and ordered the tour operator to pay compensation of Rs.50, 000/-to the tourist. The appeal by the tour operator was filed in the State Commission of Karnataka. The same was dismissed by the Karnataka State Commission which however reduced the compensation to Rs.25, 000/- with 25% interest p.a. from the date of the order of the District Forum till the realization. A revision petition was filed by the travel company on the ground of no fault on the part of the tour operator. The State Commission by applying the provision at CP Act 1986 decided in the favour of the tourist. Held the practice followed by the Revision Petitioner falls squarely under the unfair trade practice as defined in Section 2(1) (r) of the CP Act, 1986.¹⁰The State Commission has taken a compassionate view in reducing

⁹ (From the order dated 24/11/04, in Appeal No.66/2004 of the__State Commission, Karnataka) Revision Petition no. 366 of 2005, (Order on 20 December, 2005) Hon’ble Mr. Justice K.S. Gupta Presiding member Mrs. Rajyalakshmi Rao, member.

¹⁰ Section 2(1) (r) of the CP Act, 1986 -Unfair Trade Practice means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely :-(1) The practice of making any statement, whether orally or in writing or by visible representation which(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;(2) Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a

the compensation awarded by the District Forum and to restore the order of the District Forum in full. However, in this case, the scope of the Revision Petition is limited under Section 14(1) (f)¹¹ of CP, 1986 to discontinue unfair trade practice and corrective advertisement under section 14(1) (hc)¹².

Ultimately, State Commission of Karnataka directs the tour operator to discontinue advertisement which misleads the people to believe it is for three days which in reality is only two days and one minute. And the Commission held that *“it is only a rare tourist/consumer who is vigilant and conscious of his rights secured under the Consumer Protection Act and who prepared to take the route of legal proceedings, and knocks at the consumer fora.”* In view of the State Commission, this practice by the Petitioner is not only a case of misrepresentation through misleading advertisement but also an unfair trade practice in the eyes of CP Act. The Revision Petition was dismissed by the State Commission with cost of Rs.5, 000/- to be paid to the Respondents by the Petitioner and direct the Petitioner to withdraw the misleading advertisement under Section 14(1)(f) and to give corrected advertisement under Section 14(1) (hc) of Consumer Protection Act. Commission further checked that the order is to be complied with within four weeks from the date of the receipt of the same or else it would attract 9% interest p.a.

Misleading Advertisement and inadequate services was always a course of concern at Commission in most of the tourism related cases. Another issue came before the commission in case of *Club 7 Holiday Pvt. Ltd. V. Rajesh Gupta and Pradeep Gupta*.¹³ In this case Rajesh Gupta and Pradeep Gupta went on International tour organised by Club -7 Holidays Pvt. Ltd. Gupta paid the entire amount demanded by tour operator. However, once they were on the tour in foreign country, the various problems arose such as non availability of the promised vegetarian food and hotel

period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and size of business, and the nature of the advertisement.”

¹¹ 14 (1) (f) of Consumer Protection Act, 1986 says “to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them.”

¹² 14 (1) (f) of the consumer Protection Act, 1986 says “to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them.”⁰

¹³ RP.No.1661 of 2007

JUDICIAL CONTRIBUTION TO E-TOURISM

accommodation. They were further left to pay for various things double up to the cost of the tour. Representation was made by tour operator in the voucher setting that there would not be any extra charge, although one part of the advertisement showed the costing of the tour and another part focused on many things which were not the part of the tour programme. And this cost had not been explained. The advertisement contain that “*you can afford a pleasure trip so you can ill afford anything but.....more sight – seeing and entrances included than any other tour market*”. Further, the advertisement included “*Amsterdam, French Riviera, Monaco, Pisa Florence, Rome, Venice, Innsbruck, Munich, Switzerland, Paris, Monalisa, London, Scenic, Drives*” seriously mislead the tourist.¹⁴

In the above case the tourist had to spend lots of money due to wrong presentation of advertisement. After taking the trip he was compelled to spend various amounts on foreign land, which were unplanned. It was held that the advertisement amounts to unfair trade practice, such practice is required to be discouraged because tourist fall prey thereafter, in the midst of the tour, and it is difficult for them to retract from trip. The extra money had to be spend by the tourist was refunded by the company after approaching the consumer forum.

When advertisement is with the numerous benefits included in the packages deal, it is difficult for consumer to distinguish whether he has to pay for such benefits or it is optional or whether it is included in the packages. Definitely mentioning that ‘*this could be compared with the other tour in the market*’, make the consumer to believe that the same are included in the package tour. Consequently he accepts the deal.

If the brochure contains misleading or deceptive material the consumer can knock the door of the court held in case of *Cross & Cross v. Flight Centre Consumer, Trader and Tenancy Tribunal (CTTT) Australia*.¹⁵ The Tribunal awarded \$500 compensation for breach. The fact of the case is that Mr. & Mrs. Cross discussed their requirement for two days skiing during their holiday with a representative of Flight Centre, Campbell town, a travel agent. They were given a catalogue stating that the ski season

¹⁴ Rajyalakshmi Rao “*Consumer is a king*”(2010) Universal Publishing Co. Page No.299

¹⁵ [2003] NSW CTTT 681 (Decided on 7 October 2003)

opened at Mount Hutton from "late May to October" before Flight Centre booked their holiday in New Zealand, including two days skiing; there no skiing¹⁶ was available due to off season. The respondent did not update the advertisement Boucher. Hence, the case was filed by the complainant.

The Tribunal was said that "*the respondent (Flight Centre) stated in on oath evidence that they should not be responsible or liable for statements in advertising material "that they make available to the public. With this respect, that is exactly why consumers go to the travel agent and read the promotional materials that are published there."*¹⁷

The Tribunal awarded \$500 for the loss of 2 days skiing in New Zealand as compensation for breach of that part of the booking arrangement¹⁸. The tribunal rejected Mr & Mrs Cross' claim for the full cost of the holiday, as the holiday was not a total failure as the travelling and sightseeing components were available to the tourists¹⁹.

Sometimes the tourists are also liable/ responsible for their own act while in travelling. In an issue decided in Australia, in "*Steiner v. Magic Carpet Tours & ors F/C*"²⁰. John & Lyn Steiner booked a package holiday to Bali for their honeymoon. The Package Holiday, was advertised and arranged by Magic Carpet Tours, and was booked through a travel agent, East Holidays. The Steiner's paid the price of \$1,030 to East Holidays. Magic Carpet Tours issued an itinerary which stated: "*On arrival our (local) tour operator will provide you with a transfer to your hotel Mandala Bungalows.*" The Steiner sued both East Holidays and Magic Carpet Tours under Section 52,²¹ of the

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Ibid

²⁰ (1984) ATPR 40-490; East Holidays Pty Ltd & V J Ireland (Federal Court of Australia), Appeal (1985) ATPR 40-581.

²¹ Trade Practices Act 1974, No. 51 of 1974 - Misleading or deceptive conducts under section 52. (1) A corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive.(2) Nothing in the succeeding provisions of this Division shall be taken as limiting by implication the generality of sub-section (1). (Now it is governed by Section 18 of the Australian Consumer Law (ACL), which is found in schedule 2 of the Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974) prohibits conduct by corporations in trade or commerce which is misleading or deceptive or is likely to mislead or deceive. The states and territories of Australia each have Fair Trading Legislation either containing similar provisions in

JUDICIAL CONTRIBUTION TO E-TOURISM

Trade Practices Act of Australia”²² complaining that the transfer from Denpasar Airport to the hotel as promised was not provided. When they finally arrived at Mandala Bungalows by private taxi they were told no reservation for accommodation had been made and they were forced to spend the night in staff room.”²³

As per rule the hotel did not receive unauthorized/drunken persons in the hotel.”The Federal Court found evidence in the business records that a booking had been made for the transfer and the accommodation that therefore neither East Travel nor Magic Carpet Tours were liable.” The Court also held that Mr. Steiner had over consumed most of the contents of a bottle of duty free whisky on the flight to Bali and inferred that as a consequence of the drunken state of Mr Steiner, Mandala Bungalows decided not to honour the transfer or accommodation booking.

On appeal, the full Federal Court confirmed the decision and added that Magic Carpet Tours was not responsible for the failure by Mandala Bungalows to honour the reservation, because the principal of Mandala Bungalows was not the agent of Magic Carpet Tours. The significance of a travel agent being an "agent" is limited to properly carrying out instructions of the "principal" be it consumer or suppliers for the booking, but not for the performance of the travel”²⁴.

Sometime the website holder of the e-tourism promises to give the particular services to the tourist/consumer, but if he fails to deliver there is breach of contract on the part of tourism operational. The same thing has been occurred in case of *Arab Kumar Sarkar v. M/S Sheema Travels*.²⁵ The fifteen members group booked travel packages from the M/S Seema travels to organise a Puja holiday trip to Kulu, Manali and Delhi. When Sekher. Here 15 members reach the hotel in kulu, instead of giving each of them a separate room for which they were charged, they were all hurdled together in single

relation to misleading or deceptive conduct by individuals, or simply applies the federal law to the state or territory.)

²² Available at http://www.tourismlegal.com.au/consumer_claims.htm accessed on 6/02/2017)

²³ *ibid*

²⁴ *ibid*

²⁵ III(2002) CPJ 177(NC), Revision Petition No. 2130 of 200, Decided on 21st December, 2001

room. There was no separate room provided to the separate family members of the groups. At the time of booking of travel trip, the Tour Operator was obliged to ensure the separate rooms of hotel. And in that one of the tourist destinations which were promised also not covered. The total holiday trip was ruined because of the breach of the contract resulting distress, disappointment and inconvenience suffered by the tourists. One of the members of this group of tourists called Mr. Sekher, who filed the complaint on behalf of the others 14 members/tourists to the District forum for the deficiency of services as promised by the tour operator at the time of booking of the travel packages. The forum heard the matters only of the petitioners, and all are left from the litigation and awarded the compensation to him of Rs. 5,000/- for the deficiency of the services on the part of the tour operator. The petitioner/ tourist filed an appeal to the State Commission where it was reduced by Rs.500/-.

In the similar English case of *Jarvis v. Swan's Tours Ltd.*²⁶ the court observed that “it was natural to expect a person to look forward to the enjoyment provided by a holiday when it has booked far ahead. An award of damages for breach of contract is intended to protect a person against expectation loss.” And further held that “Where a contract is entered for the specific purpose of the provision of enjoyment or entertainment, damages may be awarded for the disappointment, distress, upset and frustration caused by a breach of contract in failing to provide the enjoyment or entertainment”.²⁷ Deficiency in services as promised was again in the form of the case before the District forum including not providing separate hotel rooms, one of the destination points was missed out and respondent changed itinerary which he had agreed to follow. He again filed an appeal to the National commission by referring the decision of the English Court in *Jackson v. Horizon Holidays Ltd.*²⁸ The National Commission in *Arab Kumar Sarkar's* case set aside the order of State Commission and restored the order of the District Forum by awarding 5,000/- to the petitioner and additional Rs.1.000/-- has also been added as litigation cost.

²⁶ [1973] 1 QB 233

²⁷ <http://swarb.co.uk/jarvis-v-swans-tours-ltd-ca-16-oct-1972/> accessed on 20/09/2016

²⁸ [1975] 1 WLR 1468 = (1975) 3 All ER 92. In this case complainant was able to sue for damages representing the distress suffered by him, his wife and children. It was the complainant who had contracted for a family holiday on behalf of the whole group and was able to claim compensation on behalf of the whole group for disappointment.

JUDICIAL CONTRIBUTION TO E-TOURISM

The maximum of the complaints against the Airways is the excessive charges in the fair, flight take-up before time, misplaced luggage of the travellers/tourist & the cancellation of the flight without informing to the Consumer etc. Sometimes the flight is not cancelled and consumer receives fake e-mail from the Airlines about the cancellation of the flight, delaying of the departure time. These all issues are taken care by the courts in India as well as in other Nations.

In *Indian Airlines Ltd. V. Col.(Retd.) P.K. Choudhury*²⁹ the excessive charge of the fair by Indian Airlines was held recoverable. The fact in brief, as stated in the complaint is that the complainant purchased tickets for five persons including the complainant. The tickets at serial no.1 to 4 were purchased on 12.9.06 and the ticket No.5 was purchased on 14.9.06. All the tickets were purchased by the complainant for a family tour. The entire consideration money was paid by the complainant from his credit card and all the tickets were purchased through Internet from the office of the complainant and subsequently the tickets were delivered to the complainant by opposite party NO.1 for the journey from Kolkata to Gauhati. For the first four tickets Rs.4, 500/- was charged for each ticket for one way journey and the last ticket No.5 was charged only Rs.1, 500/- also for journey from Kolkata to Gauhati for each way.

Immediately after getting the tickets and noticing the excessive charges the complainant contacted the toll free number of the Opposite Party No.1 where the complainant was assured that excess charges would be refunded. Ultimately when the refund was not made although the advertisement by the Opposite parties over internet did not justify such varying prices, the complaint was filed seeking appropriate relief. In representation made by opposite parties it was shown that total fare for one ticket from Kolkata to Gauhati for the period between 12.9.06 and 22.9.06 was Rs.1, 500/- for the concerned class. Therefore, for journey both on 17.9.09 and 20.9.09 the total fare to be charged for one person from Kolkata to Gauhati is Rs.1, 500/-. Neither this representation has been denied by the Opposite Party nor could any contrary

²⁹S.C.CASE NO.FA/288/2009 , State Consumer Redressal Commission, West Bengal(matter decided on 29 January, 2010)

advertisement was shown. Here, the contention of the complainant that charging four tickets at the rate of Rs.4, 500/- appeared correct. In the present case the respondent was two persons (Principal and the agent.) The representation by opposite party No.2 (agent) /respondent were disclosed on records but on behalf of opposite party No.1 (Principal), nothing was shown authorizing it to charge at the rate of Rs.4, 500/- from the complainant per ticket. Hence opposite Party No.1 (Principal) acted exceeding its jurisdiction.

Therefore, by allowing appeal the impugned order was modified by the West Bengal State Consumer Redressal forum that directed Opposite Party No.1 (Principal) to pay Rs.6, 000/- to the complainant as cost of the ticket within one month from the date of receipt of this order failing the said amount would carry interest at the rate of 12% per annum from the date of filing of the complaint till its realization. Opposite Party No.1 (Principal) was further directed to pay as compensation of Rs.10, 000/- to the complainant for causing harassment, mental agony and dragging him to the Forum/Commission. He was also directed to pay litigation cost of Rs.1, 000/- to the complainant.

E-tourism business has to deal with meshwork of different agents while providing the services to the tourist. The Tourism Operational tie up their public utility services to the Airlines, Railways, Roadways, Hotel accommodation, Food and Beverages who are authorised to sell the tickets and accommodation to the tourist by compiling the services as tour package. By any default on the either sides, there will be deficiency in services. In case of *Express Travels V. M.R. Shah and Ors*³⁰ the travel agent/tour operator and the airlines both were held severally liable for the deficiency in services provided to the tourist.

The fact of the case is a couple wanted to visit Kulu-Manali. Accordingly they booked ticket by Jagson Airlines flight from Delhi to Kulu. After reaching airport they came to know about the departure of their flight before time i.e. at 12 noon while the time on the tickets was 1:15 hours. Since the hotel at Kulu-Manali was already booked they hired a taxi which took 17 hours to reach Kulu-Manali with other troubles during their

³⁰ National Consumer Disputes Redressal, (Decided on 6 May, 2002), Bench: D W Member, R Rao, B Taimni (ORDER D.P. Wadhwa, J. President).

journey.³¹ On the back journey they reported at the Kulu airport on time where are getting boarding passes and completion of other formalities they were told by airport authority about cancellation of their flight. They, therefore, requested the airlines to refund the price of the air ticket, which they denied. After coming back they filled “a complaint before the Gujarat State Commission both, against the travel agent and the airlines alleging that they were put to great hardship both physical and mental after such a traumatic experience”³².

State Commission after examining the above case held that “both the travel agent and the airlines were deficiency in service and awarded compensation against them and both of them were held to be jointly and severally liable to pay the compensation and costs to the litigation. The commission said that *it is not difficult to understand how much mental agony and tension that the complainants might have undergone. As a matter of fact, airlines should have made arrangement or at least given in this regard for the travel by road from Delhi to Kulu and not providing even such a facility is certainly deficiency in service apart from not informing the complainants about the change in time schedule.*”³³ The State Commission awarded compensation of Rs. 20,000/- with Rs. 2,000/- as litigation cost. This was confirmed by the National Commission by dismissing both the appeals filed by the Express Travel and Jagson Airlines with a further cost of Rs 5,000/-.

Another issue came before court when a fake e-mail stating that the flight is cancelled was received by the customer *in Spicejet Corporate office V. Mr. Assis Calderia*³⁴. They were also informed to contact guest sales and reservations for the refund of the money. Upon receipt of the e-mail, the complainants sought a refund of the amount paid, the company informed that the flight was departed on time and those who missed out the same will not be refunded.

³¹ *ibid*

³² *ibid*

³³ Page No. 2, Para No.6 of the Original Judgment of case Express Travels v. M.R. Shah and Ors National Consumer Disputes Redressal, (Decided on 6 May, 2002), Bench: D W Member, R Rao, B Taimni (ORDER D.P. Wadhwa, J. President)

³⁴FA No.76/2014,(Before the Goa State Consumer Disputes Redressal Commission),(Order dated on 14.10/2015)

In the above case, the tourist filed a case before Consumer District Forum against the SpiceJet Airline Company that on April 15, 2013, the four persons purchased round trip air tickets online from SpiceJet through their agent 'Clear Trip' in order to travel from Goa to Kerala for a holiday, and paid Rs 30,160 for the same. The complainants travelled from Dabolim to Kochi, however, on April 27, 2013. While the complainants were at Kochi during their holiday, they received an email from SpiceJet informing them that their flight which they were supposed to board at Kochi to depart to their home destination had been cancelled due to operational reasons and that the full amount would be refunded upon cancelling the booking. Upon receipt of the e-mail, the complainants sought a refund of the amount paid. The customer relations personnel of SpiceJet sent the mail on the same day apologising for the inconvenience caused to them due to the cancellation of the flight. They were also informed to contact '*guest sales and reservations*'³⁵ for the refund.

This whole thing compelled the complainants to purchase airline tickets available to them from Jet Airways through 'Make My Trip at a very high cost'. In this matter they approached the South Goa Consumer Forum complaining against SpiceJet. The Forum has directed SpiceJet to compensate four passengers for not intimating them about a rescheduled flight. On demanding an explanation of having been misguided and misinformed that the flight was cancelled, a SpiceJet representative apologised for the mistake and refunded the cost of the return trip which amounted Rs 13,368. Through a letter, the complainants on sending all the relevant documents demanded a refund of the extra amount paid by them to Jet Airways for their rescheduled flight, the balance amounting to Rs 39,822 after deducting the return trip amount, which was reimbursed to them from the amount of Rs. 53,190 paid by them to purchase the Jet Airways return tickets to Goa. SpiceJet informed them that they were unable to process their request and in the alternative made an offer of four vouchers of Rs 2,000, one for each passenger to be used at the time of future travel with them. However, the complainants did not accept the same and filed a complaint before the forum. Though SpiceJet was served, they did not appear in the matter, and the case went unchallenged. Therefore, the forum directed SpiceJet to refund the sum of Rs 39,822, part amount of the air

³⁵ Page No. 6, Para No.7 of the Original Judgment of case *Spicejet Corporate office V. Mr. Assis Calderia*³⁵FA No.76/2014,(Before the Goa State Consumer Disputes Redressal Commission),(Order dated on 14.10/2015)

JUDICIAL CONTRIBUTION TO E-TOURISM

ticket purchased from Jet Airways along with interest of 9 percent from April 29, 2013 up to the date of actual payment. SpiceJet was further directed to pay compensation of Rs 5,000 to each of the complainants for harassment and mental agony suffered within thirty days from the date of receipt of the copy of the order.

A different case came before forum in *Air India v. Prakash Singh and Anr*³⁶ the complainants had purchased tickets through their authorised agents M/s. Globe Trotter Pvt. Ltd. for their journey from Delhi-Hong Kong-USA-Seoul-Singapore and back to Delhi. For the return tickets they decided to prepone to June 2, 2002. Accordingly, the complainant's Nephews was contacted the office of Air India at Singapore for this preponing, but no request was made by him for the cancellation of the bookings of 3rd June, 2002. The complainants on their return journey after reaching Singapore on May 27, 2002 made constant efforts on 28th and 29th May, 2002 to contact the office of Air India but every time a taped voice was heard stating that "*all the operators were busy.*"³⁷ They tried to contact Air India office regarding their seats for 2nd June, 2002 and were told that as the seats were not reconfirmed they have been automatically cancelled by a system on 31st May, 2002 itself and further that seats for June 3, 2002 were also cancelled by their representative Mahendra Singh. Air India refused to accommodate them on the flight of June 2, 2002 and forced them to upgrade their tickets from 'V to 1 class' after charging Singapore \$ 234 which was paid as there was no alternative. It is alleged by complainants that by cancelling their seats of June 2, 2002 Air India has acted in a negligent manner and this has been done without intimation to the consumer. Accordingly, they prayed for direction to the District Forum for refund of this sum.

Air India was submitted that as "*the passengers are in habit of changing their dates of journey and in order to give transparency in bookings and cancellations/reconfirmations of the seats is a routine practice followed by them and by the airline industry.*"³⁸ The complainant did not reconfirm the seats 72 hours before

³⁶ I (2008) CPJ 334 NC, [National Consumer Disputes Redressal] , Decided on 3 December, 2007,(Bench: K G Member, P Shenoy ORDER P.D. Shenoy, Member).

³⁷ Page No.1, Para. No.1 of the Original Judgment of case *Air India v. Prakash Singh and Anr* I (2008) CPJ 334 NC, [National Consumer Disputes Redressal] , Decided on 3 December, 2007,(Bench: K G Member, P Shenoy ORDER P.D. Shenoy, Member).

³⁸Ibid, Page No.1, Para No.2 of the Original Judgment

the date of journey and as no such request was received the tickets were automatically cancelled on 31.5.2002 for 2nd June, 2002 and seats for 3rd June, 2002 were cancelled by the complainants' representative earlier. Accordingly, they had to charge additional sum for up-gradation for the journey. The learned counsel of the opposite party held that *"If you break your journey for more than 72 yours at any point, please reconfirm your intention of using your continuing or return reservation. If wants to do so, please take the earliest opportunity to inform the airline office at the point where you intend to resume your journey, but not less than 72 hours before departure of your flight. Failure to reconfirm will result in the cancellation of your reservations(s)".*³⁹ Unless the telephone systems are functioning and there are persons to answer on the other end of the telephone for reconfirmation, the clause mentioned in the ticket jacket cannot be complied with. In this age of globalisation and revolution in information and communication technology Air India cannot expect passengers to rush to their office to pass on simple information of reconfirmation or cancellation.

The District Forum held that *"there is no authority of law with the Air India to cancel a booking if not reconfirmed automatically and therefore, not providing the seats to the complainants on 2nd June, 2002 is a deficiency in service."*⁴⁰ The Air India filed an appeal to the National Commission where it was held that Air India was deficient in its services and the National Commission directed to refund the money that had been by the complainants as fair of the tickets along with an interest at the rate of 10% p.a. It was suggested that, being a service industry, it is essential for the airline companies to make available on phone or through e-mail to the passengers to avoid inconvenience.

There are no good principles of jurisdiction on online business, basically while deciding the cases related to e-tourism (Cross Border cases). Everybody wants to file a complaint in their home country. There is often confusion as to where a court of action should be brought. Whether it be decided by the country of the purchaser of the ticket or the seller or the service provider. And how to apply the ruling when party is in different country is the big question. The legal proceedings can be filed at the place from which the website is accessed enabling the browser to subscribe to commercial

³⁹ Ibid, Page No.2, Para. No.7of the Original Judgment

⁴⁰ Ibid, Page No.1Para No.3of the Original Judgment

JUDICIAL CONTRIBUTION TO E-TOURISM

services on that website held by the Delhi High Court, in *(India TV) Independent News v/s India Broadcast Live*⁴¹. Considering the provisions of the Contract Act, 1872 and the IT Act, 2000 when an air ticket is booked through internet, the ticket is sent by e-mail. The booking request would be an offer, the e-mailing would be acceptance. So, if section 13 of IT Act applies the contract of purchase of the ticket (air) has been made at the consumer's place of residence, where the acceptance of the contract is communicated. For online purchases, a consumer can file complaint at the place where he made the transaction. A complaint has to be filed either where the cause of action arises or where the trader or service provider conducts business. Where the consumer resides is irrelevant and another obligation of the airline company is that they are responsible for the luggage deposited by the consumer/ traveller in the counter after doing all the formalities for boarding to the airlines by the online consumers.

On the same line of action by referring the above case, Meghalaya State Commission decided the case of *M.D Air Deccan V. Shri Ram Gopal Agarwal*.⁴² In this case, the Complainant/Respondent booked two Air tickets from the Airlines over the internet from Shillong and made payment through credit card for himself and his wife for a journey from Delhi to Jaipur. Before boarding the Respondent booked their personal baggage with tag given from the boarding counter. But on reaching Jaipur, the baggage was missing and the Respondent immediately brought the matter to the notice of the Opposite Party who was least concerned to help the Respondent, completely ignoring the fact that the passengers were an aged couple. The FIR has been lodge on 06/04/2006 in the Sanganer Airport Police Station stating the loss of baggage/luggage and only after much persuasion and personal request the Appellant assured to look into the matter and issued a letter regarding the mishandled baggage.

Firstly, the luggage was partly traced on 23/04/2006 and the rest was found on 03/06/2006, after two months. When the complainant requested the respondent to deliver the baggage at his address, but the airline company did not do so, compelling the complainant to personally go down to Guwahati twice and spend an avoidable expenses of Rs.2, 400/ to collect the baggage/luggage from the respondent at

⁴¹ 145 (2007) DLT 521

⁴² Consumer Appeal No. 7 of 2007(Judgment on Dated 07th December,,2013)

Guwahati. Further, the complainant received the baggage in a decaying condition and the weight of the baggage was 13 Kgs less than the weight originally booked. It lost on account of which was Rs. 20,000/-. He also suffer difficulty and disturbance due to reckless and gross negligent attitude of the respondent. The complainant ultimately filed a complaint with the learned District Forum at Shillong for claiming compensation. Based on the above facts, complaint was allowed by the learned District Forum and awarded compensation in favour of the tourist complainant of Rs.71558 and further, interest@12% on the said amount was allowed the date of filing of the complaint, up to the date of payment.

Further, District Forum also over-ruled the objections rose in the case by the respondent to its territorial jurisdiction, *“that the Claimant had purchased the air tickets through the internet and made the payment through the credit card. The amount was deducted from the bank account of the Complainant at Vijaya Bank, Shillong which is within the territorial jurisdiction of this Forum.”*⁴³

The order stated that *“With the widespread access to personal computers and the internet, e-commerce has been growing at a phenomenal pace. Many service providers and retailers taking advantage of this are offering their wares to the general public through their web sites, enabling their customers to do business/shopping from the comfort of their homes and offices. With the growth of e-commerce and commercial activity over the internet, it has become possible for business to be conducted across the globe without actual physical presence in every place. Widespread usage of plastic money (Credit and Debit Cards) has facilitated these operations in a big way.”*⁴⁴ The advancement of technology has brought to light the absent associates in the law relating to jurisdiction that can be exercised by a court of law or quasi judicial tribunals in areas where internet activity plays an important role. Internet or e-commerce cases are considered to be unexpected when they involve the key question of jurisdiction.⁴⁵ This is the vital problem faced by the e-tourism consumer.

⁴³ Page No.4, Para. No. 5 of the Original Judgment of case *M.D Air Deccan V. Shri Ram Gopal Agarwal* Consumer Appeal No. 7 of 2007(Judgment on Dated 07th December,,2013)

⁴⁴ Ibid, Page No.6, Para. No.12 of the Original Judgment

⁴⁵ ibid

JUDICIAL CONTRIBUTION TO E-TOURISM

The Forum further says *“the world is globally connected worldwide. There is no limits of the boundary creates lots of problems related to jurisdiction, but now the consumer governing laws is only confined to the territorial limits of the place of business or residence of the defendant.. The territorial boundaries become absorbent.”*⁴⁶ Thus, the challenge faced by parties to an online transaction is which forum should be used to adjudicate conflicts. This is particularly an issue when a buyer seeks redressal in his local jurisdiction on the basis that the sellers’ goods or services are made available to consumers in all parts of the country through the Suppliers/Service providers’ web presence.

According to the CP Act, 1986, there are three redressal forums actively working for the speedy trial of the consumer cases by paying smaller amount amounts as litigation fees. But due the modern ICT, the matter which has been dealt by the Consumer Redressal Forum/ Commission faces more difficulties especially in the issues of the online internet services. Since the laws on the issues of online services are not there and in most of the cases courts/ forums/ commission are relying on the principles laid down i.e. on Precedent the chances of getting Justice are not very sure.

From the above discussion, it appears that the main issues faced by the tourist in e-tourism business are loss of time and money due to misleading advertisement on the part of tourism operational, defect in the product/service of e-tourism on the part of the industry. And various deficiencies in services have been identified by the Consumer Redressal Commission and accordingly court ordered for compensation to be paid to the tourist by the e-tourism company. The main difficulty faced by the Consumer Redressal Commission on e-tourism is to decide the matters of cross border jurisdiction since obsolete borders in online transaction had made it easy to book from anywhere around the world, but the court are not endowed with any direction or guidance to decide its power/ Jurisdiction.

⁴⁶ Ibid, Page No.6, Para. No.13 of the Original Judgment

CHAPTER- SIX

CONCLUSION AND SUGGESTIONS

The advent of information technology and advancement in tourism came with the notion of e-tourism. Tourism is the root of e-tourism. Hence e-tourism is advanced tourism. By deployment of the Information and Communication Technology in the traditional tourism business, the business is flourishing worldwide. Right to travel or right to move freely within the territory is a human right concept and are enshrined as a fundamental right under Article 19(1) (d) of the Indian Constitution too. Right to Business is also a fundamental right provided in the constitution of numerous states throughout the globe. In India as well right to freedom of trade or business is guaranteed fundamental right under article 19(1) (g) and a Constitutional rights under Articles than 301 to 307 of the Indian Constitution, though both covers very different aspects. In the international scene the Universal Declaration of Human Right, 1948 under Article 13 and the International Covenant on Civil and Political Right under Article 12 also provides the right to movement/travel within the country or outside the country as basic human right. This entire discussion on rights establishes two things that the rights (two rights) are available to everyone. Which includes, right to visit as a tourist within the permissible limits of laws of that nation. Second he may ask for services from anyone and that anyone can provide services by charging for rendered services and here he exercises his right to business and trade.

Now exercising of right is complete with advancement in tourism i.e. getting everything done online. Scholars are calling it e-tourism. The term e-tourism does not have universal definition. From perspective of a communication science, e-tourism can be defined as application of Information and Communication Technologies (ICTs) within both the Hospitality and Tourism industry, as well as within the tourism experience. Professor Buhalis deliberation on definition is digitalisation of tourism industries that enable organisations to maximise their efficiency and effectiveness.

Advancement is reaching to every nation. India witnesses generous development in the e-tourism business. By analysing the background of the history of e-tourism, the study found that in India, the conscious efforts for the promotion of traditional tourism business was in the year 1945. It was taken up seriously from Second Five

Year Plan in 1956. And it was from the sixth five years Plan (1980 to 1985) when tourism began to be considered a major instrument for social combination and economic development in India. In the year of 1970s the Computer Reservation Systems (CRSs) was established. In the late 1980s the Global Distribution Systems (GDSs) was established and the Internet in the late 1990s has changed working and purposeful practices severely in tourism. The rise of e-tourism has been one of the most outstanding developments of Information Technology. With the beginning of the World Wide Web network comprehensive move emerged in the 1990s.

Tourism has closely been connected to the progress of Information and Communication Technologies for around 35 years. The link between consumer and dealer has been shortened, removing intermediaries. Hence, consumers have the opportunity to directly access to the offers characterised in the tourism industry. Nowadays, the Internet and Information and Communication Technology are relevant on all operative, structural, strategic and marketing levels to facilitate global interactions among dealer, mediators and consumers around the world. At present, it plays an important role in the tourism industry. The large number of tourism websites has been created in developed and developing countries shows the importance of Information and Communication Technology in the tourism industry and it also indicates the evolution of e-tourism in the world. Indian in had introduced various plans for facilitating tourism business in India. Amongst other state in India Sikkim was not behind in the growth of tourism and converted the business into e-tourism.

Sikkim, in the year of 1975 was a small kingdom prior to its merger with India, tourism inflows was very small. Previously the maximum areas were in the protected areas/restricted areas. Around 1988 the State Government took a decision to allow tourists to visit restricted area such as Tsomgo Lake. This was followed by opening up of Nathula, which gave visitors an opportunity to go right up till the Chinese border point of this ancient mountain pass. Similar relaxation of permits in West Sikkim, Zuluk in East Sikkim and Gurudongmar Lake and Yumthang Valley and Yumesamdong in North Sikkim, witnessed a surge of tourist flows to these areas. These were major milestones in Sikkim's tourism history.

CONCLUSION AND SUGGESTIONS

Due to the flexibility of the Inner Line Permit regime the tourism industry saw a big improvement from 2002 to 2010 with tourist arrival figures equal to the state population of Sikkim. To govern the tourism industries Sikkim have a Special Act called SRTT Act, 1998. By utilising the power given under this Act, Government of Sikkim makes two Rules related to Tourism known as SRHSE Rules 2013. But this Act and Rules is only for the compulsory registration of tourism product and suppliers of the services to maintain the register in the Tourism Department.

There is no procedural legislation of state to operate the e-tourism business in Sikkim. The e-tourism business in Sikkim is of great advantages. Without this new technology, the tourism cannot adapt into e-tourism which is also a part of e-commerce. Before implementation of this new technology, huge numbers of information about the places or destinations were not in the knowledge of the tourist. E-tourism breaks the traditional system of tourism business. It gives the transparency about the places, locations and prices of the product and services by displaying through the business websites.

This all are possible due to deployment of the Information and Communication Technology in tourism business. The legal modification of these terms is also now possible, which of utmost importance to ensure justice to the tourist. In this e-tourism business the person who purchase the Product and Services by transacting online money and travel as per his booking packages are called the tourist. The product and services is the combination of public utility services for which the person is now not required to go to the booking counter for reservation. These combinations of Product and Services includes Airways, Railways and Roadways services and the product means the Hotels, Food, Beverages and Entertainments etc. The description of the product or the destinations, forms and entry formalities are also available on the websites created by the stakeholders, this includes the facilities of e-visa on arrivals of foreign tourist provided by the Indian Government.

The employment of Information Technology for operating e-tourism business had sometimes faced negative impact due to the misuse of the system on the part of e-tourism business operational. The numbers of e-consumers are growing these days due to its user-friendly nature of information technology which at the same time

increases the risk factors in e-tourism business. These issues includes privacy of tourist in hotels, Security in the online tourism product, fraud on the part of tour operator/service provider while using online websites of tourism, issues in e-Visa on arrivals for foreign tourist, Jurisdictional issues on cross-border cases related to tourist. The advanced e-tourism industries cause techno-legal issues such as cyber squatting, cyber scams, phishing and duplicate websites of reputed e-tourism business sites are very vital and needs to be prevented. Amongst all are discussed issues in relation to e-tourism business, the jurisdictional issue (remedial measure) is more vital, because e-tourism business does not have territorial boundary. These issues are never happened before, when the traditional tourism business was operational.

Tourism industry with Information Technology gaining economical advantages but can face some sort of legal risks due to violation of anti-trust laws and violation of safety, security and privacy of the tourist. The existing laws i.e. Consumer Protection Act, Indian Contract Act, Indian Penal Code or Information Technology Act are not adequate to handle e-tourism issues in India. There is neither law nor any direct provisions in any laws for governing the so many public utility services adopted in relation to e-tourism business both in National or international level. As India being a developing country, there is fast growing infrastructure of e-tourism business. Neither the tourists have any proper information of their basic rights nor there any guidance to service provider for their obligations towards the tourist. After the advancement of the communication technology, new issue evolved of which the court does not have any provision to base for deciding the cases. Guidelines and procedures needs to be created to promote the understanding of probable legal risks. This understanding will give confidence to the industry to obtain help from legal experts to design, to controls or to suppress such risks.

A tourist is a consumer as held the procedural law of Indian CP Act, 1986 had some provisions to deal the disputes related to tourist. But it is not having ample provisions to deal the matters related to online transaction of the business. The cases related to online tourist of various countries are not dealt by the national laws. The Indian Contract law govern agreement between the tourism stakeholders and the tourist

CONCLUSION AND SUGGESTIONS

either from foreign nation or the Indians who purchase online tourism product and services. Online agreement between the two parties becomes binding contracts in the eyes of law. But the territorial jurisdiction does not cover the cases which are related to the foreign nationals. The IT Act 2000 is passed for governing the online activities of the consumer. This Act gives legal validity to e- contracts and recognition of electronic signatures. This is one of the modern legislation which govern the acts like hacking, data theft, spreading of virus, identity theft, defamation (sending offensive messages) pornography, child pornography, cyber terrorism, a criminal offence. The Act is supplemented by a number of rules which includes rules for, cyber cafes, electronic service delivery, data security, blocking of websites etc. It also has rules for observance of due diligence by internet intermediaries. But still it is insufficient to cover the e-tourism related matters directly.

Day to day, the Central Government is planning to protect the consumer. The Niti Ayog has selected 'Consumer Protection' as one of the subjects to be included as priority areas for the Twelfth Plan. Planning is to formulate ample set of policies, programmes and strategies to launch a strong policy paradigm for consumer protection. One of the basic priorities is the Alternative Dispute Resolution system for better and speedy solution of the consumer disputes and Consumer Counselling.

The next hope for the better protection of consumer in the nation of India lies in the recent '*Consumer Protection Bill, 2015*' expecting better law to protect the tourist on e-tourism business which is long time pending before the central law making body. The Bill will provide a platform to enter into or compete into international point.

The nation will be able to harmonise with the international policies, United Nation World Tourism Organisation (UNWTO) which play the vital role for the development of tourism business, promotion of sustainable and universally accessible tourism throughout the world. The initiatives taken by United Nation Conference on Trade and Development (UNTCAD) which includes the introduction of Information and Communication Technology for evolution and spreading Free or Open Source Software which gives knowledge based destination of e-business. ICT undoubtedly enhanced the economic standard of country but the cross border issues are still

hindrances. It need co-operation amongst all the nations of world for making suitable international legislation for batter e-tourism.

The legislation based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law would be the crucial and far reaching step in building a legal framework which also governs the e-tourism as one of the important part of electronic commerce. Here the law includes a) consumer protection; additional legislative and regulatory aspect in the areas of banking law, and transport law and documentation, regulatory aspects of internet service providers (ISP's) and electronic-commerce providers, cybercrime, web content and liability, jurisdiction over cyber activity cyber-workplace issues and, data privacy.

The Organisation of Economic Co-Operation Development (OECD) also adopted voluntary Guidelines for Consumer Protection in the Context of Electronic Commerce in the year 1999. The emphasis was on fairness to consumers. It provides consumers with meaningful access to fair and timely dispute resolution and redress without unnecessary cost or burden. The National Governments in may follow these guideline for reviewing, formulating and implementing the consumer law enforcement policies, practices, and regulations necessary for effective consumer protection in the context of electronic commerce. As when any dispute arise the consumer knocks the door of judiciary who needs some laws for applying on emerging issues though the judiciary on number of occasion tried to give or ensure justice.

In India there are different levels of Consumer Commission such as District Consumer Redressal Commission, State Consumer Redressal Commission and National Consumer Redressal Commission. A very less number of cases have been filed by the tourist in the consumer forum of the respective jurisdiction. The reasons appear that, the tourist does not want to go to consumer court for the settlement of the small disputes arises against them by following the lengthy filing procedure. They cannot spend long time and money to stay in the place of action arises because they are the only guest for few days in the states. By referring the Procedural law of Consumer Protection Act, the Consumer Redressal Commission tried to settle the

CONCLUSION AND SUGGESTIONS

dispute between the parties, but number of times it was very inconvenient for them. In online disputes the role of some courts of other nations is also important, when it is undecided about jurisdiction or the consumer is confused where to file the matter, and who will decide the disputes. The minimum contract theory of America is also found relevant in some cases, but it fails to restrain the problem at an international level when the tourist is from a foreign country.

Till now, the Commission is strong enough to decide the disputes received from the aggrieved parties related to tourism firmly. But the situation is changing according to the changing business techniques. The Commission needs to interpret more laws and emerge with more precedent in laws and guidelines for future references.

Although Sikkim emerged with few laws but undeniably there is an absence of regulation and a standard in the tourism service sector. It has been harmful for Sikkim's tourism growth without the legal operating tools. There is a need of urgent Regulation/ Law for smooth running of the tourism business. For a state like Sikkim that is situated in a high seismic zone, the issue of unregulated, unplanned, unsafe infrastructure also becomes highly significant and crucial to be addressed. Tourism grows on its own accord with minimal planning. With no guiding vision, there has been a lack of clarity in the segment of visitors to be targeted and the tourism products to be developed to attract them. Owing to this, the tourism pathway in Sikkim has been unplanned with more low paying mass tourists with high impact multitude in the state.

Sikkim we have only one *Sikkim Registration of Tourist Trade Act, 1998*. Act for governing the Tourism business. The Act doesn't have adequate provisions to deal with the present legal issues that arose out of e-tourism business. It contains provisions for the registration of tourism products such as hotels, dealers of the business, hotel keepers and travel agents, who want to operate the tourism business in the tourist notified area within Sikkim. If the prescribed authority under this Act found any malpractices done by the Dealer, Hotel keeper and the Travel Agent while operating the tourism business he can penalise accordingly. But the Act does not contain any liability provision.

By referring the central Law the authority shall have power to refuse the registration of business as a dealers, hoteliers and the travel agent if found any conviction under the XIII, XIV XVI and XVII of the Indian Penal Code, 1860. Further, if found guilty under The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, Immoral Traffic (Prevention) Act, 1956, and Arms Act, 1959, the authority may refuse for registration according to the condition mentioned in the Act. The various punishments given under include removal of the name from the recorded register of the Government, black-listing name of the dealer, hotels, hotel keeper and travel agent etc. This act is applicable in the State of Sikkim and hence does not cover the vital issues of the present era of the electronic commerce. This Act does not deals with the complaint grievances, un-satisfaction of the services provided by the hotel keeper, travel agencies, travel guide, tour operator against the tourist who is visiting the state only for the few days hence in the absence of provisions the basic rights of tourist remains infringed.

The Government of Sikkim had passed SRTT Rules, 2008, & SRHSE Rules, 2013 by exercising the power conferred under Section 50, sub-section (1) and (3), of SRTT Act, 1998. The SRTT Rules, 2008 prescribes various forms & format for applying the registration of Dealers, Travel Agent/Tour operators or Hotels who operate their respective business in the tourist notified area. The rule also prescribes the mode and procedure of registration by the Government before issuance of the trade licence certificate to the Dealers, Travel Agent/Tour Operators or hotels. The rule doesn't have any provision for the punishment or compensation provided for the wrong doing against the tourist by the Dealer, Travel Agency/Tour Operator while operating their respective business SRHSE Rules, 2013 deals with the matters of the registration of the Home Stay tourism business. The prescribed format of forms and fees and code of conduct for the implementation of the business has been given under the rules.

To handle the complaint related to tourist through mediation the Tourism and Civil Aviation Department appointed the Public Relation officer, which gives an opportunity to hear and decided the tourist related matters. Yet there is no law for the solving the day to day matters of tourist.

CONCLUSION AND SUGGESTIONS

The tourism infrastructure is well developed for commercialisation in Sikkim. But the legal infrastructure is still in infant age it needs a mature development. Tourists attract the natural beauty and beautiful artificial Product /destinations in Sikkim. Tourist needs immediate action on the matter file by them, because they are only two to three days guest of the state. Due to this reason they face unpleasant experiences while visiting in the state, which creates a bad picture and leads to negative publicity harmful for not only state but also for country. For better tourism and protection of tourist right in Sikkim, there is need of the special tourism grievances cell in four Districts of State of Sikkim. The researcher concludes that the tourist does not want to file First Information Report (FIR) to the Police Station; they want to settle their unsatisfaction and grievances within short time. Hence they need some for amicable solution of their petty issues. But day to day development in e-tourism demands an enduring solution an appropriate resolution of major challenges of new era in tourism business. Also these new types of unexpected technological grievances/disputes needs techno-legal man power that has specific idea for the settlement of the disputes in the office.

Sikkim is in need of full fledging tourism police recruited by the Sikkim Tourism and Civil Aviation Department like several states of India who already deployed or are planning to deploy tourism police, like Karnataka, Maharashtra, Himachal Pradesh, Jammu & Kashmir, Uttar Pradesh, Kerala, Goa, Rajasthan, Delhi, Punjab, Orissa, Andhra Pradesh, and Madhya Pradesh. Amongst all, Cochin in Kerala is the first State to have international tourist Police Station. Kerala police are determined to protect and mobilise tourists from foreign countries, thereby proving that they can help the state be more tourists friendly. Tourist police can investigate the cases related to the tourist immediately and take immediate action. It will be better for the safety and security of the tourist within the state.

Hence, the tourist visits all the destination of state without any fear and problem. These police booth will give immediate response against the host stakeholders or the tourist for settlement of the grievances within time if the tourist is set up in the four districts. The Department needs to extend the separate tourist grievances cell to the districts levels having one tourist police booth attached with it. From where the tourist can easily file the complaint for any shortcomings and other deficiency in services for

which they need speedy responses from the inquiry done by the grievances cell and the tourism police and therefore tourists can leave the state without any carrying any negative impression of State/ Country or worse experiences of the tour.

Hence recommendation is that there is an urgent need of regulatory framework. Sikkim had declared tourism as an industry during the 10th Five Year plan (2002-07). The Department of Tourism mentioned in the Tourism Policy 2016 that, the regulatory framework is to be framed by the government after discussing with the opinion of the tourism regulators such as Hoteliers, Travel Agent, Tour Operators, taxi drivers by sharing their experiences in running the newly developed e-tourism business. There are five basic goals mentioned in the tourism policy framed by the Tourism Department, Government of Sikkim in the year of 2016 which are to develop tourism as a key sector in Sikkim's economy; to Promote low impact tourism for the state etc. Above all, without governing regulatory framework of the modern tourism business, the achievements of these goals are not easy for the Sikkim. In Sikkim there is high level of tourism infrastructures the only thing is that the Sikkim is in need of furnishing the legal and regulatory framework. Without legislation the modern tourism infrastructure shall not be commercialised for the better sources of economy for the state in near future.

Further there are different measures required for the protection of the tourists in e-tourism business such as appropriate information of the websites, information about the e-retailer/stakeholder either Government agencies or the Private agencies of e-tourism, adequate information about the terms of the contract of e-tourism, information about the use of consumers' personal data, accuracy and validity of the information, confirmation of the transaction, fair contract, adequate regulations of unconscionable contract, adequate regulation of package quality and suitability, adequate regulation of liability issues, adequate regulation of returns, exchange and refund issues, adequate privacy protection, fair dispute resolution system and a practical opportunity for legal action and an appropriate Alternative Dispute Resolution system within country and cross border cases for e-tourism consumer is to be made along with enactment of one appropriate national legislation for better

CONCLUSION AND SUGGESTIONS

protection of the rights of the tourists. For solving these issues firstly, the international legal framework is to be needed. Secondly, by referring the International legal initiatives towards e-tourism, all the nations in the world should make legal framework for their respective nations which are necessary for the operation of e-tourism business. The researcher concludes-

Firstly, the existing legislations are not adequate to provide the protection of consumer right and fixing the liabilities of service providers' for the protection and respecting the rights.

Secondly there is no special provision framed in most of the Consumer laws regarding its applicability or non-applicability of electronic transactions. Difference in the nature and place of business or medium of business leads to some practical problems like place of business, jurisdictional issues, non-availability of common dispute resolution system in cross border transaction in electronic system (e-booking). The consumer of one nation knows and prefers the laws of their nations and hence accordingly he demand. In the absence of any legal provision for cross border issues loads un-satisfaction in the tourist and leads dispute unresolved. This certainly requires special measures that are not provided in the existing consumer legislation.

Thirdly, the researcher found that, the remedial measures are also not prescribed in any international guidelines for the protection of e-tourism/ consumer.

Fourthly, the State, National and International Government Regulations sometimes get in their own ways. Here tourist can be of any standard like some of them are highly qualified and knows laws hence can knock the doors for their rights and remedies but Some are unknown and unaware to their rights and remedies hence never turn up and . So the consumer/tourist needs to know the laws of the nations they are visiting.

6.1. SUGGESTIONS:

1. The entire nation in this world look like one when connected via World Wide Web. The introduction of uniform e-tourism law all over the nations is needed to regulate the proper liberalization of e-visa facilities introduced for smooth operation

of the e-tourism business internationally. So, the courts of every nation can have defined jurisdiction to settle the internet contacts.

2. Judiciary is helpless in the absence of any legal framework for the operation of e-tourism business and can't settle the e-tourism related matters. The system is too liberal and needs to be carefully reviewed and improved by making specific law for handling e-tourism issues. The govt. should take care of implementing and enforcement issue of the enacted laws.

3. As there is no direct law to govern the newly developed e-tourism business anywhere in the world. Hence it is suggested to form committee who will assess the issues of tourism and e-tourism in India will recommend the law accordingly. The committee should consists Judges at the rank of High Court, law enforcement officials (tourism police), legislators, lawyers, and other government officials, as well as persons from the tourism operational sectors as representatives Tourism Stakeholders who is well versed about issues in e-tourism business.

4. As a preventive measure, to cope up the slow responses of police department in investigative matters in the states, specifically Tourism Police needs to be recruited compulsorily in all the states in India. The tourism police will be trained in their respective area to rescue in the dangerous circumstances arises against. The scholar would refer the Malaysian initiative where they recruited tourism police since 1985. Some of the Indian states had already recruited the tourism police for successful e-tourism business.

5. As preventative step the tourist who visits the tourism websites are required to ensure that the online travel portal is accredited or affiliated with the reputed Organization like Indian Association of Tour Operator (IATO) or the Association of British Travel Agents, commonly abbreviated to ABTA.

6. Here liability of tour operator/ website holders should be enhanced for giving misleading advertisement on website. The tourism stakeholders or website holder need to update their advertisement time to time if the tourism product showed on the website is only seasonal and report to be submitted to the Tourism authority.

7. Since there is no International treaties which can help to remove the cross border uncertainty. In e-tourism business the physical borders can no longer function

CONCLUSION AND SUGGESTIONS

as symbol to individuals since technology doesn't know the existence of any boundaries in cyberspace. International cooperation is needed to solve this problem arose in this technical world.

8. In the International scenario, new international law must be developed to govern the complicated problem of global lawsuits arising due to e-tourism business via Internet. At this point of time, the American minimum contacts doctrine becomes inappropriate in the cross-border issues of jurisdiction, hence there is need of an international committee to resolve the issues. The body can take care and respect the laws of both the parties.

9. As remedial measures, particularly in the state of Sikkim, the researcher suggest that the Tourism and Civil Aviation Department, Government of Sikkim, for the better tourism in the state needs to establish separate Tourism Grievances Cell having maximum number of security personnel in all the four Districts with one tourist police booth in each Districts in the tourist destination area for better security. This should be maintained and supervised by the Head office of the Tourism and Civil Aviation Department, Gangtok.

10. In last since our e-tourism business model lack guarantees (Assurance) infrastructures for the running of e-tourism mechanisms for satisfying the online consumer in India. While dealing with e-tourism a more flexible approach is required along with safety standards. Liability rules needs to be articulated more carefully, or the country needs to create conditions for basic, affordable assurance policy to cover travel and tourism product-related risks. Hence it is emphasized that this assurance policy should be introduced by the Government.

REFERENCES

BOOKS

1. Ashley Packard, (2013), "*Digital Media Law*" A John Wiley & Son Publication Ltd.
2. Buhalis, Dimitrios and Jun Soo Hyun, (2011), "*Contemporary Tourism Reviews on E-Tourism*", Goodfellow Publishers Ltd.
3. Cordato J. Anthony, (2007) "*Australian Travel & Tourism Law*" Butterworth, 3rd Ed.
4. Duff, Andrew (2015), "*Sikkim Requiem for a Himalayan kingdom*" Random House Publishers Pvt.Ltd. Cyber City Guargoan.
5. Kharel, Sunita and Jigme Wangchuk Bhutia, (2013), "*Gazetteer of Sikkim*" Published by Home Department of Sikkim, Gangtok.
6. Kumar, Rakesh & Ajay Bhupen Jaiswal, (2011), "*Cyber Laws*", APH Publishing Corporation-New Delhi
7. Patil, Ashok R. (2014), "*25 Years of Consumer Protection Act: Challenges and the way Forward*" Karnataka Sri Vidya Printer Bangalore.
8. Rao, Rajyalaxhmi (2010) Second Edition "*Consumer is a King!! Know your rights and remedies along with the Consumer protection Act 1986, Rules 1987 and Regulations 2005*", Universal Law Publishing Co. Pvt. Ltd, New Delhi-India.
9. Seth, Pran Nath (2011) "*Successful Tourism Management: Tourism Practices*" Vol. II New Delhi-2088
10. Singh, Alwyn Didar (2008), "*E-Commerce in India: Assessments and strategies for the developing world*" LexisNexis Butterworth, India.
11. Singh, Yatindra (2010) Fourth Edition "*Cyber Laws*", Universal Law Publishing Co.Pvt. Ltd.

ONLINE ARTICLES

1. Mandal, Shashi Nath "*Protection of E-Consumers Rights in Electronic Transaction*". Available at: <http://ssrn.com/abstract=1880958> (Accessed on 28/02/2016)
2. UNWTO, "*Global Codes of Ethics for Tourism*" (GCET) also available at: <http://ethics.unwto.org/en/content/global-code-ethics-tourism> (Accessed on 02/09/2016)

3. Lalnunmawia, H. “*Development and Impact of Tourism Industry in India*”. Available at: [https://www.scribd.com/document/63752881/Tourism-in-India-and-Its Impact](https://www.scribd.com/document/63752881/Tourism-in-India-and-Its-Impact) (Accessed on 16/02/2016)
4. Mangion, Ramon “*Sociology of Tourism Assignment*”. Available at: <http://students.um.edu.mt/rman0002/Tourism%20&%20IT.pdf>. (Accessed on 02/12/2015)
5. Nedelea, Alexandru and Stefan Alina Balan(2010),“*E–Tourism and Tourism Services Consumer protection*”. Also available at: <https://core.ac.uk/download/pdf/6492900.pdf> (Accessed on 10/02/2016)
6. Shanker, Deepthi “*ICTs and Tourism: Challenges and Opportunities*”, Humanities and Social Sciences, Indian Institute of Technology, Guwahati-781039, Assam. Also available at: <http://citeseerx.ist.psu.edu/> (Assessed on 12/02/2016).
7. Singh, Alwyn Didar (September, 2002), “*Electronic Commerce: Issues of Policy and Strategy for India*” Indian Council for Research on International Economic Relations Core-6A, 4th Floor, India Habitat Centre, Lodi Road, New Delhi-110 003. Also available at: <http://icrier.org/pdf/WP-86.pdf>.(Accessed on 03/04/2016)
8. UNTARD’s “*E-Tourism Initiatives.*” Available at: http://unctad.org/en/Docs/tdxipbd6_en.pdf (Accessed on 20/02/2016)

JOURNAL

1. Bethapudi, Anand “*The Role Of ICT In Tourism Industry*”, Journal of Applied Economics and Business, National Institute of Tourism & Hospitality Management, Telecom Nagar, Gachibowli, Hyderabad, A.P India., Vol.1, Issue 4 – December, 2013.

REPORTS

1. Report of the Working Group on Consumer Protection Twelfth Five Year Plan (2012-17) Volume –II Report, Government of India Department of Consumer Affairs Ministry of Consumer Affairs, Food and Public Distribution Reports.
2. Corporate Catalyst India Pvt. Ltd. “*A Brief Report on Tourism in India (2015)*”. Also available at: <http://www.cci.in/pdfs/surveys-reports/Tourism-in-India.pdf>. (Accessed on 11/01/2016)
3. OECD Conference Background Report, Washington D.C., 8-10 December 2009 on “*Empowering E-consumers: Strengthening Consumer Protection in the Internet*”

Economy.” <http://www.oecd.org/ict/econsumerconference/44047583.pdf>.(Accessed on 18/02/2016)

SIKKIM TOURISM POLICY

1. Sikkim Tourism Policy 2015
2. Sikkim Tourism Policy 2016

ACTS, RULES AND BILL

1. Consumer Protection Act 1986
2. Indian Contract Act 1872
3. Information Technology Act 2000
4. Sikkim Registration of Tourist Trade Rules Act 1998
5. Consumer Protection Rules 1987
6. Sikkim Registration of Tourist Trade Rules 2008
7. Consumer Protection (Amendment) Bill 2015