



# **WEIGHING THE GATS ON A DEVELOPMENT SCALE**

**The Case of Tourism in  
Goa, India**



**EQUATIONS**

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## **ABSTRACT**

This study aims to provide insight on how recent developments in the tourism industry in Goa have affected small communities in Goa in light of both current developments and potential developments as per India's commitments within the GATS framework. More specifically, the study considers two areas of Goa: the Chapora-Sinquerim and Miramar-Caranzalem shorelines and adjacent communities, and two hotel chains in both areas; the Taj Fort Aguada Resort and the Marriott Goa respectively. An analysis of the relevant policy and regulation at the national and state level is provided, as well as a consideration of the implications of the GATS on the tourism sector in Goa. With this, we provide insight on how these three levels of policy mechanisms relate to each other and what discrepancies exist. Moreover, by relating the policy environment with current case studies, a more pragmatic approach is facilitated in determining how closely firms operating within the industry adhere to the policy environment, and what effects the industry has on local communities.

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## EXECUTIVE SUMMARY

The rise of tourism in Goa and the scale of its growth have been unprecedented in India. Combined with the liberalization in tourism related services that follows as a corollary due to the GATS, a number of issues urgently require analysis. This paper considers what the current situation is in Goa within the context of tourism led growth in the Northern area of the state, and projects what may occur given the current state of domestic regulation on tourism as well as the implications that the GATS presents regarding new entrants into the market.

The northern coast of Goa has seen significant increases in the number of both domestic and foreign arrivals over the last 20 years. This rise has resulted in a veritable explosion of construction and investment within the area. The consequences of this increased interest in the area are not limited to quantitative metrics; the rise in tourism has had profound societal impacts as well. With the rise in tourism, Goa has seen a parallel rise in cases of the marginalization of women and children, a loss of traditional livelihoods, and environmental degradation.

The GATS provides distinct incentives for further investment in Goa. However, the GATS does not provide adequate safeguards to protect the communities that tourism envelops from the negative consequences of this investment. The onus of providing commitments to other member states within the context of the tourism industry is on India; yet the current state of domestic regulation regarding the industry is skeletal at best. Without a comprehensive policy detailing precisely how India, and more specifically, Goa, plans to regulate tourism related investment and its consequences, any commitments or negotiations made within the GATS is, by construction, handicapped. This handicap cannot be taken lightly; it has the potential to wreak havoc on what is already a relatively tourism saturated area without proper infrastructure to support the industry.

Our study presents six recommendations to those involved in trade negotiation, particularly Indian. What is required is a **better understanding of tourism**. More specifically, we are of the opinion that any negotiator must have a holistic view of tourism that allows for more than simply viewing the industry as a vehicle for investment and growth. Tourism must be considered for all its effects, including those on the environment, local job markets, local communities, and local economies. Negotiators must also **address the lack of domestic policy** that exists in India today regarding tourism, and formulate policy that provides explicit boundaries rather than objectives. Attempts must be made to **rectify the lack of data needed to make these policies**. The decentralized democratic process that is detailed in the Indian Constitution must be adhered to. That is, **local governments need to play a greater role** in accepting or rejecting tourism related investments. Before this however, the general lack of clarity within the GATS requires illumination. Attempts must be made to **clarify the terminology of the GATS** to allow policy makers to better understand what the implications of any binding commitments are. Finally, the Ministry of Commerce alone cannot address tourism. By construction, tourism has effects on a wide spectrum of sectors, including the environment, labour, and human rights. What is required is **coordination among the relevant central ministries and state governments in India** to deal with the effects of tourism on society before any further commitments are made. The International Covenant for Economic, Social and Cultural Rights and other human rights treaties and conventions to which India is a signatory can be used as normative frameworks.

This study presents arguments based on case studies stating that if these recommendations are not adhered to, and tourism is to continue along its current unregulated trajectory, the state of Goa will see a distinct loss in the quality of life of its inhabitants.

# 1. INTRODUCTION

## 1.1. SCOPE OF THE GATS

The General Agreement on Trade in Services (GATS) came into being in Marrakesh, Morocco on April 15, 1994 and was put into force on January 1, 1995. It is one of the many sub-agreements that are administered by the World Trade Organization (WTO); its aim is to establish a set of global trading rules for service industries. The GATS has been referred to by the WTO as “perhaps the most important single development in the multilateral trading system since the GATT itself came into effect in 1948 (WTO 1999a).” Pushed in the 1980s by developed countries and their corporate lobbies, it is an agreement in which developing countries have played a marginal and defensive role. Like other agreements of the WTO, all members (as of May 2002, 144 countries were full fledged members) are signatories to this agreement. The GATS is legally enforceable and is aimed at deregulating international markets in services, including public services like education, health, water distribution, energy, communications and sanitation; its aim is to help ensure that trading ensues and that more economies grow by giving service companies and providers more rights to entry. The World Tourism Organization (WTO-OMT) states the rationale behind the GATS as follows:

In order to do business as effectively as possible, companies need level playing fields so that they can have equal access to natural resources, expertise, technologies and investment, both within countries and across borders (WTO-OMT 1995, 1).

The agreement aims at a progressive phasing out of government barriers to international competition in the services sector. The Scope and Definition of GATS is given in Article 1 of the Agreement:

This Agreement applies to measures by Members (i.e. national government signatories to the Agreement) affecting trade in services [...] for the purposes of this Agreement, measures by members means measures taken by central, regional or local government authorities.

The basic mechanism of the GATS is based on commitments that member states have made regarding each service sector. That is, each country states what it is willing to reform and to what extent, sector by sector; these, by definition, are the commitments. There are 160 separate sector classifications in 12 broad groupings that nations are to give commitments on; by construction, the agreement is very comprehensive (GATT 1991). The commitments themselves detail the “trading rules” of each sector. Das (1998, 107-8) provides a succinct description of the commitment process:

A member will negotiate with other Members about the sectors in which it wants to give commitments. The commitments agreed upon will be included in the schedule of the Member. A Member is bound to give treatment to services and service suppliers in accordance with the commitments it has undertaken which are inscribed in its schedule of specific commitments [...] A member can prescribe terms, limitations and conditions [...] in respect of the services mentioned in its schedule [...] If a Member has not mentioned a particular sector in its schedule of specific commitments, it will be presumed that it has undertaken no obligation in respect of that sector; and thus it will be free to take any measure regarding market access and national treatment in those sectors, subject, of course, to the general obligations. However, if a Member has mentioned a sector in its schedule and has not inscribed limitations, qualifications, etc., it will be presumed to have accepted full market access commitment and national treatment commitment in that sector.

By signing up to GATS, governments are committed to engaging in new negotiation processes with the aim of achieving “a progressively higher level of liberalisation” in their service sectors<sup>1</sup>. In February 2000, new negotiations began in Geneva, and the process has recently been accelerated after the WTO Doha ministerial meeting in November 2001. Member states began submitting

requests to other Members on June 30, 2002; March 31, 2003 is the initial date to respond to these requests with offers. The commitments made in each sector are made in four “modes of supply”. These modes of supply delineate how the sector is to be reformed concerning those commitments within member states.

#### THE MODES OF SUPPLY

- **Mode 1: Cross border supply** – where the service is provided remotely from one country to another (i.e. international telephone calls, telemedicine, internet bookings).
- **Mode 2: Consumption abroad** – where individuals use a service in another country (i.e. tourists travelling abroad, patients taking advantage of cheap health care in foreign countries).
- **Mode 3: Commercial presence** – where a foreign company sets up a subsidiary or branch within another country in order to deliver the service locally (i.e. Foreign Direct Investment in banks, hotels and hospitals).
- **Mode 4: Presence of natural persons** – where individuals travel to another country to supply a service there on a temporary basis (i.e. software programmers, nurses, doctors). This is different from immigration because GATS explicitly deals only with temporary movement.

Although GATS does not force any country to commit a sector, each country that does commit can request sectors from other countries in exchange for offering their own. The overall agreement by all countries to continuous liberalisation through negotiation will mean that pressure is exerted to commit sectors and reduce limitations. Our study is primarily concerned with mode 2 and 3; mode 2 deals with issues relating to tourists coming to India from abroad, while mode 3 deals with foreign owned and managed hotels, tour operators, and other suppliers. Along with the concept of service sectors and the four modes of supply, there are three other key concepts outlined in the text of the agreement itself that determine what rights the companies of member states have relating to their movement among other member states.

#### GATS KEY CONCEPTS

- **Most Favoured Nation (MFN) Treatment (Article II)** - Each member shall accord services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country. That is, a government must not discriminate between services or services suppliers of other members
- **Market Access (Article XVI)** - GATS requires members not to put restrictions on the ability of foreign investors to enter the market if they have made bound commitments in the respective sector.
- **National Treatment (Article XVII)** - Under the National Treatment obligation WTO members commit themselves to treat foreign investors ‘no less favourably’ than domestic investors. This obligation applies to any measure

which may have the intended or unintended effect of discriminating against a foreign investor.

## **1.2. THE TOURISM SECTOR UNDER GATS**

Tourism is considered the world's largest industry, accounting for over one third of the trade of services globally (WTO 1998). The GATS in the context of tourism is incredibly complex, as by construction tourism has spill over effects in so many other sectors of an economy. For example, if one attempts to limit an analysis of the effects of tourism on the hotel sector, a multitude of other sectors will not be addressed that, due to the linkages between hotel services and other services, are arguably equally as relevant to consider. Any analysis of the hotel sector would also require an analysis of food providers, cleaning service providers, and so on. It is precisely these linkages that make negotiations in the GATS so complicated, particularly for a country such as India due to the relatively undeveloped national and state policy that regulates the tourism sector.

Indeed, many arguments have been made that an environment of underdeveloped policy combined with the need to make commitments in the sectors that the policy is to regulate will result in commitments being made without realizing precisely how the commitments made will play out in the future. These arguments are not baseless; developed countries, particularly the US, the EU and Australia, have voiced their desire for a "clustering" approach to the liberalization of sectors; the approach dictates that rather than opening up specific sectors, groups of related sectors would be considered as one and treated as such. Such an approach may be appropriate and possible for countries with well developed regulatory frameworks related to specific sectors within a cluster, but for a country such as India it would be unfeasible and potentially dangerous given the low level of regulation that exists. Besides the fact that regulation in India is low, the data required to determine the extent to which specific sectors can be liberalized may not be available. Considering that the GATS effects a multitude of services in a country and that tourism is but merely one, it becomes apparent the magnitude of the reforms and commitments that are being currently negotiated.

Though it has been argued in many circles that tourism provides a boon to developing countries seeking to acquire more foreign currency reserves, thereby increasing their capacity to import foreign goods and facilitate growth, reality dictates that a substantial portion of any profits earned in this sector are either repatriated outside of the country or are diluted due to leakages in the revenues accrued. Moreover, while it is true that tourism does offer employment opportunities and may act as a catalyst to further develop infrastructure, precisely what types of employment generated requires consideration. Also, while new employment may be generated, it requires a counter analysis of employment opportunities and livelihoods being lost due to the expansion of construction within small communities.

## **1.3. TOURISM IN GOA**

The history of tourism in the state of Goa in any significant manner began in the early seventies with the influx of younger travellers (i.e. "hippies") who were drawn to Goa's beaches. Over time, the cross section of these travellers has diversified significantly, both in terms of domestic and international visitors. The absolute numbers reflecting the amount of tourists arriving in Goa has increased significantly. In 1973 there were 127,758 domestic and international tourists; correspondingly, projections for 2001 place these numbers at an estimate of 1.27 million, based on trends (Zebregs 1991, 2; see Table 1.1)<sup>2</sup>. Clearly, tourist arrivals in Goa are rising. With this rise in arrivals follows concerns of how this increase in tourism related activity will affect local communities in Goa, on a number of different platforms. Before the rise of tourism, the main industries in Goa

were based on natural resource extraction, in particular timber, minerals and fishing (Reijnen and Lasschuit 1989, 4). However, with the dwindling stocks of these natural resources (particularly fishing) those seeking employment have turned to the service sector to seek out an income, in particular tourism related services.

This change in the macroeconomic profile of labour and investment has had profound impacts on the socio-economic profile of the state. In this study, we will consider how this new investment has affected the state relative to four distinct themes: environmental consequences, labour markets, effects on local communities, and transitory effects on local economies. The effects are evaluated against the International Covenant of Economic, Social and Cultural Rights. However, rather than limiting our focus on a chronological history of these four divisions, the purpose of this study is to consider how the liberalization of trade in tourism related services and the corresponding rise in both investment and ultimately tourist arrivals is related to the GATS<sup>3</sup>.

The purpose of this study is to focus on the GATS as a catalyst for further evolution of the socio-economic profile of Goa, with an explicit focus on the tourism industry as a vehicle for that change and, more specifically, how the commitments that India has made within the GATS will create this mechanism. The study is based on actual case studies; the field research component of this study occurred over a ten-week period within July and October 2002. Section two begins with a description of the geographical areas under consideration; section three then provides a profile of the hotels in the respective areas. Section four continues with an analysis of four sets of impacts - environmental, employment, local community and local economic - in light of the International Covenant on Economic, Social and Cultural Rights (ICESCR), as well as within a more general approach. Section five then considers relevant domestic policy; section six follows with a more detailed analysis of the GATS with regards to specific commitments and clauses of the agreement. Section seven provides recommendations for policy makers; finally, section eight concludes.

## 2. STUDY AREAS



### 2.1. OVERVIEW OF GOA

Goa received the Best Domestic Destination award, which came as Goa launched an ambitious marketing campaign to entice domestic tourists. The tourism department has sanctioned promotional expenditure sanctions to the tune of INR (Indian Rupees) 65 million, with a view to increasing Goa's allure as an all-season destination. The Travel and Tourism Association of Goa (TTAG) had sponsored a series of ads on primetime TV during the broadcast of a popular Hindi movie that had been shot in Goa. While the total state tourism budget expenditure has increased four times over two years to INR 220 million, that sum amounts to less than 1% of the budgetary allocation of INR 3.02 billion. The large share of the advertising budget, close to 30% in the total tourism spending by the government, is seen as exorbitant relative to spending on other needs. Executives in the tourism industry list the shortage of uninterrupted power, poor transport connections, and badly maintained roads as high on their wish list. That kind of public good provision, easing constraints for state residents as well as for tourism service providers and is surely a more productive investment. Regardless of these shortcomings, tourist arrivals in Goa have been steadily on the rise.

**Table 1.1: Foreign and Domestic Arrivals in Goa (in millions)**

Year	Foreign Visitors	Domestic Visitors
1991	0.078	0.76
1992	0.120	0.77
1993	0.170	0.80
1994	0.210	0.86
1995	0.230	0.88
1996	0.240	0.89
1997	0.260	0.93
1998	0.280	0.95
1999*	0.280	0.99
2000*	0.224	1.04
2001*	0.242	1.07
2002*	0.262	1.10
2003*	0.282	1.13
2020*	1.041	1.88

SOURCE: Tourism Master Plan, 2001-2011, Government of Goa

NOTE: The asterisk indicates a projection based on current trends of 3% for domestic arrivals and 8% for foreign arrivals.

The WorldWatch Institute's State of the World 2002 warns that tourism is one of the world's least regulated industries, which has serious implications for ecosystems, communities and cultures around the world (Mastny 2002). With this rise in tourist arrivals come concerns of how this influx of holidaymakers will affect the socio-economic profile of Goa, and how prepared India really is for this rise, in terms of both physical infrastructure and policy architecture. Within Goa, it is the northern part of the state that has seen the vast majority of this rise in tourist arrivals. Thus, rather than focusing on Goa as a whole, this study considers two specific areas along the northern coast of Goa; Chapora-Sinquerim and Miramar-Caranzalem.

## **2.2. CHAPORA-SINQUERIM**

The Chapora-Sinquerim stretch of coastline is of relevance to our study for two reasons; first due to the presence of the Taj Fort Aguada Beach Resort, which we consider within this study, and secondly due to the particularly high concentration of beach resorts and related construction along the North Goan coast, particularly between Calangute and Baga. Indeed, it is North Goa that has seen the majority of development following the rush to provide tourist related services in the mid seventies. More recently, the charter tourist boom of the late eighties and early nineties has led to explosive growth in this area, with dire consequences for both the environment and local communities along the stretch.

## **2.3. MIRAMAR-CARANZALEM**

This stretch of coastline is unique within Goa's geography, as it constitutes the only sand dune belt within the estuaries of Goa; that is, while much of Goa's sand dunes lie along the coastline of the Arabian Sea, much of this coastline is situated along the Mandovi River. The importance of sand dunes cannot be understated; while seemingly innocuous, dunes offer a natural barrier between land

and water. More specifically, these dunes act as a natural barrier towards erosion<sup>4</sup>. Because of their importance, they are classified under a regulated zone (i.e. CRZ I).

This classification implies that sand dunes are to be protected and cannot be removed or destroyed in order to construct any structure, be it for commercial (i.e. a hotel) usage or otherwise. Yet, much of the coast along the Mirimar-Carnazalem stretch has been destroyed, with the effects of their removal slowly making themselves clear over time. For example, removal of or construction on sand dunes results in the loosening of sand due to the destruction of the vegetation that binds the dunes together, thus leading to the wind blown transport of sand. Considering the extremely sensitive nature of the coastal areas, especially the sand dunes, destruction of these would result in enormous ecological damage. Coastal areas are, as transition zones of terrestrial and marine environments, crucial in maintaining the balance of physical and chemical factors, which in turn play a major role in sustaining the biological diversity of the coastal areas, including both the biodiversity of terrestrial and aquatic habitats. Any activity that disrupts the ecological balance on the land also affects the equilibrium in the aquatic habitat. The effect also spills over into adjacent areas. In Miramar, this has resulted in sand being blown onto roadways, creating a hazard for motorists. With regards to this study, we consider this area as the Goa Marriott is located along this coastline, and the effects of their building in close proximity of the shoreline are of particular concern. We discuss these issues in more detail in section four.

### 3. PROFILE OF HOTELS

Trade liberalization in the tourism sector is expected to provide developing countries with several benefits. Increased foreign exchange, employment opportunities for the domestic populace, better tourism infrastructure, and access to better technologies for domestic firms are some of the stated benefits. Developing countries are thus encouraged to undertake far-reaching commitments to attract Foreign Direct Investment in the tourism sector to avail these. Even though India has a fairly open autonomous regime for FDI in tourism coupled with liberal commitments under GATS, there has been hardly any FDI in the hotel sector in tourism locales. Nevertheless, with the Government of India policy of allowing full foreign ownership i.e., 100% foreign direct investment in hotels, some of the new entrants might well be foreign operators and their Indian subsidiaries. The hotel sector in India has been in a consolidation phase – with large domestically owned hotel companies like the Indian Hotels group that owns Taj chain being restructured<sup>5</sup>, and the govt. owned properties being sold at a pittance to private investors. Thomas Cook India Ltd (TCIL) a subsidiary of Thomas Cook AG, Germany is reported<sup>6</sup> to be intent on acquiring hotel properties in Goa, which would be vertically integrated with its travel services and foreign exchange business. The entry of new players via acquisitions reinforces the impression that given current demand, hotel rooms are in plenty.

**Table3.1 Top Hotel Operators in Goa in terms of rooms available (brand in brackets)**

Rank	Company Name	Rooms	Properties
1	IRCL, and IHCL (Taj group)	480	4
2	Salgaocar Palm Hotels (Marriott)		1
3	Asian Hotels (Hyatt)	250	1
4	Leela Ventures (Leela Beach Resort)	250	1
5	Fomento Corp (Cidade de Goa)	210	1
6	Tulip (Bogmalo Beach Resort)	180	1
7	Averina International Resorts (Holiday Inn)	150	1
8	Majorda Beach Resort	150	1
9	Salgaocars (La – Paz)	120	1
10	Advani Resorts (Renaissance, a Marriott brand)	120	1
11	Mandovi Hotel	120	1

Source: Hotel brochures

Goa was chosen for this study as it is one of India's most developed tourist destinations and despite indiscriminate development along the fragile coastal strip, there are no signs of abatement of its appeal. The Tourism ministry in Goa continues to explore avenues to attract investment though it mentions that it is attempting to diversify the tourism portfolio to 'ecotourism' in areas away from the coast. In the case of Goan tourism, the services trade mainly falls in the Mode 2 category of the GATS, viz. Consumption Abroad (which has been left unbound in India's 1994 schedule i.e no commitments have been made). Till date Mode 3, Commercial Presence via FDI in hotels has not been utilised, since the presence of foreign players is limited to franchises (like the Ramada, Renaissance, Kempinski and Holiday Inn), and a management contract in the case of the Goa Marriott and a former Four Seasons managed property. The lack of a clearly identified foreign player in the market tends to make conclusions tentative and hence assertions on the behavioural implications of the Goan case for GATS rules and commitments is bound to be problematic. Examining the efficacy of present regulatory frameworks to deal with the multitude of tourism impacts and documenting corporate behaviour in terms of regulatory adherence and asking of the GATS, whether it can accommodate a sustainable and equitable tourism trade in Goa is hence the best scope for the study.

Two domestically owned hotels located in North Goa were chosen. While the Taj is owned by Indian Hotels Company Limited (IHCL), The Marriott Goa is owned by Palm Resort Hotels, which is controlled entirely by the local Salgaoncar family who have established enterprises in mining and mineral exports.

### **3.1. THE GOA MARRIOTT RESORT**

The Goa Marriott resort opened for business in December 2000, in Miramar, an up-market residential suburb of Panaji, the capital of Goa. Marriott International, the US based hotel brand, has a management contract with the hotel owners, which is valid for 10 years, with the option to renew for a further decade. The renewal is subject to a performance clause. The property is rated as a five star deluxe hotel. The contract with Palm Resorts involves the hotel using the Marriott brand and goodwill, access to the Computer Reservations System (CRS) of Marriott International and Marriott managing the hotel, with a share in gross revenue (3%) and operating profits on rooms booked on the CRS (7%). It follows the industry practice of a dual tariff structure for domestic residents in Indian rupees, and foreign exchange rates for international visitors.

Marriott is an international management company and does not hold equity in hotels except for a few original hotels that were in its initial portfolio. It invests in equity only in strategic cases - a case in point, to retain a management contract in a premier hotel when the contract expiry coincides with the sale of a property, like in the case of a Sydney hotel. To date Marriott manages three hotels in India: the J.W. Marriott in Mumbai, the Marriott Welcome hotel in New Delhi, and the Goa Marriott Resort. Apart from these, franchise properties of other Marriott owned brands operate in Goa like the Renaissance and the Ramada hotels, which only use the brand on license contract and have access the Marriott CRS.

During the field research component of this study, the hotel achieved about 70-80% occupancy, with a peak of 100% over the period close to the August Independence Day holiday. Conferences and corporate retreats for domestic companies comprised the bulk of demand. Situated in the urban centre of Goa, the hotel caters both to business and to leisure visitors, although it is called a resort hotel. This location is in line with the Marriott known as a luxury business brand.

The senior managers, having local knowledge, and the owner's representative on the properties handle compliance requirements with local administrative and regulatory structures, as well as lobbying efforts with the trade groups. Based on his experience, the Marriott general manager

characterized Indian owners as more “involved” in the running of the hotel, as compared to other Marriott branded properties overseas. The management team defers to the owners in the matter of the property except in those related to management practice. In keeping with Marriott practice, all staff is supposed to be on a first name basis with each other, and an open door policy for complaints and suggestions is encouraged. The motto of “take care of your employees, they take care of the guests” is claimed as founder J.W. Marriott’s legacy to Marriott staff.

### 3.2. THE TAJ FORT AGUADA BEACH RESORT

Indian Hotels Company Limited (IHCL) owns the Taj Aguada Resort. It was the first mover in the market for large luxury hotels and was established when the regulatory framework was nascent or altogether absent in 1974. The laws that govern the tourism trade in Goa were made in 1982, and supplemented in 1985 and 2001. The walls of the Aguada Fort, constructed sometime in the 16th century, surround the Taj Fort Aguada. The resort is located on the hillside overlooking the Fort Aguada and a 7 km crescent of 3 beaches in the north of Goa – Candolim, Calangute and Baga. The late eighties and early nineties saw an influx of charter tourists, along with the more established low budget tourists and “backpackers”. However, the Taj was marketed and targeted to a more affluent clientele, due to its location, shrewd marketing strategy and a comprehensive reservation network. The success of the product saw the Taj investing in two more hotels on the adjoining land as well as one in South Goa around the new millennium (Reshi 1999).

In 1997, the government of Goa decided to lease the Aguada plateau, which is adjacent to the three hotel properties managed by the Taj group including the Aguada Beach Resort. A 50-year lease was signed with the IHCL, stipulating that the IHCL would pay rent at the rate of five per cent on annual turnover, thus adding up to INR 10 million annually to government revenues (Prabhudesai 1997). The Taj proposes an amusement park on the leased area of 314,000 square metres, which envisages amusement rides, water slides, electronic games, a mini-zoo, a lagoon, theatres, model village arcade, exhibition venues, dance venues, gardens and plantations besides sports amenities such as a mini-golf course, tennis court, putting green and a croquet green among the larger facilities<sup>7</sup>. The Goa Coastal Zone Management Authority (GCZMA) granted its permission for the project plan, subject to the condition that all provisions in the CRZ notification are followed. The project had to be given the green light by the Town and Country Planning Office and the Candolim Village *Panchayat*, among other stipulations. The latter, however, has voted to not issue the license that technically is required before the commencement of construction.

The Candolim Village *Panchayat* had unanimously rejected the application of the IHCL to set up a recreational park on the Sinquerim hill (See Appendix 4). According to the representatives of a local organization, the government had requisitioned the land of about 300,000 square metres of land from the area under the local *comunidade* and had not filed a proper application, neglecting to obtain several of the required clearances that were necessary before getting the permission of the local *Panchayat*<sup>8</sup>.

In arguing that the conditional clearance from the GCZMA be revoked, a local lobby group, the Candolim Residents and Consumer Forum (CRCF), has made the case that the plateau was zoned as CRZ I, thus making any development illegal. This categorization is according to the notification on the CRZ dated September 1996, which places areas in CRZ I as being ecologically sensitive, and as having outstanding natural beauty and heritage value<sup>9</sup>. The prospect of being denied permission to build the recreation park had evidently caused the management to fear potential competitors attempting a similar project. This is a surmise based on a hotel representative, seeking a compromise with local residents that they should agree not to allow any other company to develop on the hilltop; the rationale here is that if the Taj can’t do it, then no one else should be able to either. The restructuring of the parent companies and the opening up of the hotel sector could see the five-star

hotel market open up to some competition and foster complications under trade clauses of non-discrimination. With our two hotels defined, we now turn to the impacts that these hotels have had on local communities we have considered within the study.

## **4. IMPACTS**

This section considers how firms working within the tourism industry have affected society in Goa along four themes: environmental, employment, local communities and local economies. We primarily consider what effects the two hotels in our study have had on the region, but our analysis also covers a broader spectrum of suppliers. That is, we consider the effects that tourism had on these four themes over time, particularly with respect to the environment as, perhaps more than the other theme, it has seen the most tractable effects. Throughout the analysis, we consider the International Covenant on Economic, Social and Cultural Rights (ICESCR) as our normative framework by which any development is to be measured against. The rationale for this is due to the divergent paths that trade law and human rights law have taken since the implementation of the WTO in 1995. We are of the opinion that these two mechanisms must work in tandem rather than autonomously<sup>10</sup>. By discussing the issues within the context of the ICESCR we hope to provide a relative framework with which to consider how recent developments within the industry can be understood from a rights based approach to development.

### **4.1. ENVIRONMENTAL**

This section addresses four issues; the precise environmental effects that increased tourism has had on the Goan environment, the regulatory failures that have exacerbated these effects, the regulation that is in place to protect the environment, and how well the two hotels we consider in this study have adhered to the regulations in place.

#### **4.1.1. Direct Effects**

Sand dune ecosystems have been a particular focus of research on the impact of humans on the Goan coast. Sand dunes are mounds of drift sand covered with foliage; they evolve from sand transported by natural factors like wind. These then grow when further transport of sand and nutrients are added, on which vegetation sprouts. These are also highly conducive to the growth of mangrove forests that are of primary importance in establishing the quality of coastal ecology. Dune vegetation acts as a barrier to erosion, but has come under pressure in a number of places on the coast. The threat to dunes is from people, cattle, waste dumping, sand mining, and a rash of construction on the dunes. Broadly speaking, between 1966 and 1999 an increase of 647% in area classified as scrub and a 30% reduction in forest has occurred.

Sand dunes were to be protected by the MoEF's amendment to the Coastal Regulatory Zone Act after a recommendation made by the National Institute of Oceanography in September 1996. This amendment barred construction up to 500 metres from the high tide line. Damage to the ecologically sensitive coastal ecosystem has had dire consequences; excessive pumping of fresh ground water in the dune belt of Candolim has led to salt water ingress in the coastal aquifers and erosion along the Miramar-Campal stretch. Because of this, this area has ceased to function as a dune ecosystem, having had its vegetal cover replaced by buildings (Chachadi and Kalavampara 1999).

Plastic, mainly in the form of bags and bottles, has compounded the problem of waste management given the absence of proper waste management facilities. The state enacted the Non-Biodegradable Garbage (Control) Act in 1996 to have effect from January 1, 1998, but the problem has not abated as there was little official action, limited for the most part to single efforts at cleanup by civil society groups. Several coastal villages in the tourist belt, including the Candolim-Calangute belt, had previously transported their waste to the larger inland town of Saligao, making it the municipal

responsibility for disposal. Compounding this problem is the fact that the municipality of Madgaon has recently declined to provide for refuse dumping from the southern villages.

Beyond the more explicit physical elements of environmental degradation, noise pollution from rave parties that go on until early morning had been a concern for residents along the coastal belt. However, in 2000 circulars which may offer some respite have been issued notifying that playing of high decibel music that causes public nuisance would be banned after midnight in the season months of October to March and after ten at night during the off season.

#### **4.1.2. Regulatory Failure**

A study by Mascarenhas (1999) notes that the excessive strain on the coast of Goa coincided with the advent of the tourism as a commercial activity from the seventies. He cites the fact that during between 1971 and 1991, almost 80% of urban growth was concentrated in the coastal *talukas* or counties. That is, he argues that a causal relationship exists between the rise in the urban population and the strain on the environment within coastal areas (D'Souza 1998). Among the five coastal stretches that he has identified as key are Chapora-Sinquerim and Miramar-Caranzalem, both of which are interspersed by rivers that affect fresh water resources up to 40 kilometres inland. These tides raise or lower water levels by two to three metres daily.

The statutory authorities that regulate issues that impinge on environmental quality are the Goa State Pollution Control Board (GSPCB), the Industrial Development Corporation (IDC), the Economic Development Corporation (EDC), the Planning and Development Authorities (PDA), the Town and Country Planning Department, the Forest Department, municipalities and the *Panchayats*. These bodies regulate as per the legislation contained in the Environmental Protection Act (1986), The Town and Country Planning Act (1974), the Air Pollution Control and Water Pollution Control acts of 1981 and 1974 respectively.

While these constitute the official mechanism that is to deal with environmental regulation, a study by Alvares (1999) contends that much of the state machinery was wilfully ignorant of the statutes and did not make much use for them<sup>11</sup>. The Town and Country Planning Act of 1974 (TCP), which is largely a replica of the legislation for the state of Maharashtra, makes it the imperative of the Chief Town Planner to prepare a Regional Plan which after consultation with the public would determine the pattern of land use in the state.

Alvares contends that the Plan was effectively jettisoned by special interests of the real estate and hotel lobby. Allowing amendments to the Plan gave the bureaucrats and elected officials power to dispense favours with much manipulation, and little by way of due process. Another institution that established only to be dismantled was the Planning and Development Authorities (PDA), which was set up under the Act. While its function was to make detailed planning in notified areas possible, it was soon derailed by builder's lobbies and was dismantled with changes in the political profile of the government.

The formation of the Eco-Development Council, assisted by a committee on eco-control, the State Committee on Environment as well as the State Committee on Coastal Environment, brought similar results. In each of these cases, it was on the coastal zoning that much of the interests were vested and the appointees were prone to be swayed. The area along the coast from the Chapora River in the district of North Goa to Cavellosim in the South district was originally zoned as orchard land. When land was purchased for hotel development, however, the Plan was altered to suit the new purpose. Since the regulators abdicated their oversight, discharge of untreated sewage into porous coastal soil has led to ground water contamination, since all but small portions of the towns do not have anything resembling a sewage system.

A brief look at the Ministry of Environment and Forests Environment Impact Assessment (EIA) Notification of 1994 shows that it is mandatory for tourism projects to conduct an EIA prior to being accorded permission to commence development. However the notification only applies to “[a]ll tourism projects between 200 to 500 metres of the high tide line and at locations with an elevation of more than 1000 metres above sea level with investment of more than INR 50 million.” This places a great many tourism projects outside the purview of the EIA notification, thus exempting them from any accountability that the notification might enforce. The bulk of the offshoot enterprises that develop are either not situated over 1000 metres above sea level, or are not big enough to have an outlay of INR 50 million.

Just four months following lobbying from the industry, an amendment to the EIA Notification cancelled the necessity of a comprehensive Environmental Impact Assessment report and instead stipulated that the project in question could simply be cleared based on a Rapid Environmental Impact Assessment report (REIA). Another loophole woven into the notification itself comes in the form of the last line of Section II. This line reads: “In respect to items for which data are not required or is not available as per the declaration of project proponent, the project would be considered on that basis.” This could well be the basis on which the project proponent could declare non-availability of certain information that would otherwise be detrimental to the smooth passage of the EIA through the reviewing committee, the Impact Assessment Agency.

The Goan government’s strategy to diversify its tourism portfolio by promoting ecotourism in its Wildlife Sanctuaries is also likely to be problematic. Section 28 of the Wildlife (Protection) Act 1972 permits tourism in national parks and wildlife sanctuaries along with study and research with the discretion of the Chief Wildlife Warden. Apart from a mention of the word “tourism”, this does not specify or elaborate anything further about what kind of tourism and what related activities could follow and could be allowed. On the other hand the infrastructure that is provided to the visitors as a consequence of the permit to tourism is in direct contradiction, and in violation, of section 2 of the Forest (Conservation) Act, 1980 that prohibits any non-forest activity in forestlands.

### **4.1.3. Classification of Coastal Areas and Regulations**

With about 6,000 kilometres of coastline, India is one of the leading coastal nations in the world. India is also rich in mineral reserves, and has tremendous potential to exploit tidal energy for the benefit of its development. However, developmental activity in these coastal areas has no doubt created several problems (Leelakrishnan 1999). The mushrooming of seaside apartments resorts, hotels, industries and conversion of coastal land for non-coastal uses hits at the backbone of the self-sustaining traditional economy of the village. The Coastal Regulation Zone Notification 1991 (CRZ) defines and classifies zones and lays down procedure for their protection.

The Coastal Regulation Zone consists of coastal stretches of seas, bays, rivers, creeks, estuaries, and backwaters, all of which are influenced by tidal action. They extend up to 500 metres from the high tide line (HTL), defined as the level up to which the highest water flow reaches the land during the spring tide. The land between the low tide line and the HTL is declared as a “no development zone” (NDZ). All permissible activity is regulated by a clearance mechanism. Any activity requiring waterfront or foreshore facilities needs clearance. Environmental clearance from the Ministry of Environment and Forests, is essential for: (i) operational construction of ports, harbours and lighthouses, (ii) construction activity relating to defence, (iii) thermal Power plants, and (iv) other activities with investment exceeding five crores (INR 50,000,000) but not regulated by States and Union territories under the notification. Reclamation of CRZ designated areas for commercial

purposes such as shopping centres, housing complexes, hotels, and entertainment activities is prohibited<sup>12</sup>.

The CRZ notification imposes on the coastal states and union territories the responsibility of preparing the Coastal Zone Management Plans. A period of one year was given to prepare the plan<sup>13</sup>. The responsibility of monitoring and enforcing CRZ norms in their respective jurisdiction is on the MoEF. The landward side of coastal stretches within 500 metres of the HTL are classified for regulation of development as CRZ I through 4:

<b>THE COASTAL REGULATION ZONE CLASSIFICATION</b>
<p><b>CRZ I</b> These are areas that are ecologically sensitive and important. These include national parks, marine parks, sanctuaries, reserve forests, wildlife habitats, mangroves, corals/coral reefs, areas close to the breeding and spawning ground of fish and other marine life, areas of outstanding natural beauty/history/heritage areas, areas rich in genetic diversity, those areas likely to be inundated due to a rise in sea level consequent to global warming, and other such as may be declared by the Central Government or the concerned authorities at the state/union territory level. No new construction will be permissible within 500 metres of the HTL, and none at all is allowed between the low tide line and the HTL.</p>
<p><b>CRZ II</b> This designates areas that are already developed up to or close to the shoreline, taken to mean that area within a legally designated urban area which is already built up and provided with drainage and approach roads, as well as water supply and sewerage mains. Construction of building will not be permissible on the seaward side of existing structures or road, or roads proposed, while being allowed on the landward side of the existing and proposed road, subject to TCP regulations, and in a manner that is consistent with the surrounding landscape and architectural style. This also permits reconstruction of already existing structures for existing use.</p>
<p><b>CRZ III</b> The areas not included in CRZ I or CRZ II, which are relatively undisturbed. This would include coastal zone in the rural areas and also areas within legally designated urban areas that are not substantially built up. The norms for regulation stipulate that the area up to 200 metres from the HTL be earmarked as 'no development', with no new construction and only repair of existing authorized structures not exceeding the original specifications. Agriculture, horticulture, garden pastures, parks, play fields, forestry and salt manufacture from seawater are however permitted in the zone. Vacant plots between 200 metres and 500 metres of the HTL, can, with prior approval of the MoEF, be permitted for conditional construction and temporary occupation.</p> <p>Construction and reconstruction of dwelling between 20 and 500 metres shall be permitted within the ambit of traditional rights and customary uses. This is also subject to the condition that the total number of dwelling units cannot exceed twice the number of those extant, and that they adhere to a nine-metre height limit, with only two stories, and that floor space not be more than one-third of the plot size. An annexure stipulates that for areas designated as CRZ III, that ground water shall not be tapped within 200 metres of the HTL, and for the 200 to 500-metre belt, it can be tapped only with the concurrence of the ground water board of the centre or state<sup>14</sup>. Further, it forbids the levelling or digging of sandy stretches except for the structural foundation of swimming pools within the 500 metres from the HTL.</p>
<p><b>CRZ IV</b> This category applies to coastal stretches in the Andaman and Nicobar Islands, as well as Lakshadweep and other small islands except when they are not otherwise included in CRZ I, 2 or 3.</p>

With reference to our study, the relevant portions of this act are as follows. There are separate guidelines for construction of resorts and hotels in the designated areas of CRZ III for temporary occupation of tourists. The main notification provides for the NDZ for 200 metres from the HTL

and within the area between the HTL and the low tide line. Construction in the NDZ is permissible only with the prior approval of the MoEF, and it must be landscaped with vegetal cover. The overall height of construction up to the highest ridge of the roof shall not exceed nine metres and be only in two floors (ground plus one upper floor). Within 200 to 500 metres of the zone, ground water can be tapped only with the concurrence of the Central/State Ground Water Board. Mining of sand, levelling or digging, except for the foundation of building a swimming pool is not permitted within 500 metres of the HTL.

Hotels are to ensure that treated effluents, solid waste emissions and noise levels conform to legal standards and that the sewerage goes only to the sea and not on to the beach. In ecological areas, construction is not permitted at all. The design and the construction of structures in CRZ II and CRZ IV, and of the beach resorts and hotels in CRZ III, must be consistent with the surrounding landscape and local architectural style. With the CRZ well defined, we now turn to some examples of how the adherence to these regulations has fared on the part of the two hotels we have considered here.

#### **4.1.4. The Goa Marriott Resort**

The Marriott being a management concern prefers to avoid liaison with the local authorities. In an interview with a field team member the General Manager of the hotel asserted that 'I tend not to get involved because I'm not here for the long term so I prefer to have people do the liaison, and establish some sort of relationship which would be long-term. In fact, that's where we do use the owners since the owners are local people, and there is an owner's representative on the property as well'. After just two years of establishing itself, the Marriott has earned itself an excellent service record among its clientele. However, a serious litigation did evolve pertaining to the location of the Marriott as being within the CRZ I; this litigation was brought up by the Goa Foundation (a local environmental group) after the Marriott was already complete in its construction and only the interior decoration was left to be completed. The Honourable High Court of Bombay at Panaji gave a judgement dismissing the case because the petitioners did not raise any objection and neither did any authorities at the time of granting the No Objection Certificates. The fact that the local regulatory authorities did not raise this issue when the hotel started construction activities points to the benefits the Marriott enjoys given that their owners are a locally influential group. Permanent and hard construction in areas with large tidal action has resulted in increasingly turbulent waves and excessive erosion on the shore surrounding the Marriott. This often occurs regardless of the stone and concrete embankments erected by the hotel to suppress the damaging effect of tides. As a result, the beach along this stretch of coast has now disappeared. However, regardless of evidence of the damage caused by the construction of the Marriott so close to the riverbanks, the petition regarding the property being in violation of the CRZ was dismissed in court, on the grounds that "[...]the hotel project cannot be said as lying along the coastline or shoreline of this State or a beach bordering the sea but instead along the bank of the river Mandovi on the basis of interpretation given by the Goa Government to the Coastal Regulation Zone Notification and according to which the HTL is represented about 1.5 kilometres away from the site"<sup>15</sup>.

While the general interpretation of the CRZ applies to coastline (i.e. beaches), even for a river the setback acceptable as per the CRZ happens to be either 100 metres or the width of the river. Ironically the map provided by the hotel depicts its location as directly on the coast of a body of water labelled as the Arabian Sea, and the contention that the high tide line lies 1.5 kilometres away (ostensibly out to sea) seems to be ridiculed by the tidal waves that wash into the hotel pool and leading to salt water inflow and its being closed for use due to contamination. Field visits to the hotel have indicated explicitly that the breakwaters erected by the Marriott to dilute the effects of the tide and lessen the impact on the immediate shore have fallen into the river, thus indicating the force of the tide in the area and the extent to which this construction has increased tidal force along the

area. Recall that while there once was a beach on the property, the beach was destroyed to construct the hotel.

The Marriott Goa depends entirely on water bought from tanker supplies since the hotel currently has no direct piped line for consumption, as claimed by the management. The water supplies are drawn from both public sources (i.e. those owned by the Public Works Department) and private sources. Individuals who choose to offer their water to the hotel, for a premium, own the private sources. On average 10 tankers having a capacity of 12,000 litres each is supplied to the hotel daily; the public water is priced at INR 400, while the private is INR 500. Marriott is part of the Green Hoteliers Association, which advocates (without explicit standards) environmentally friendly practices. In line with Marriott practices, the Goa Marriott operates a wastewater treatment plant, and uses treated sewage to irrigate lawns and plants.

#### **4.1.5. The Taj Fort Aguada Beach Resort**

The Taj Fort Aguada Beach Resort is located in Sinqerim on a 120,000 square metre plot owned by the *Comunidade* of Calangute. The Village of Sinqerim by itself does not have a *Panchayat* and neither does it have a *Comunidade*; the land thus falls under the jurisdiction of the Calangute Village *Panchayat*. The lease deed was signed in 1972 between the Indian Hotels Company Limited and the *Comunidade* of Calangute, wherein the Taj Group of Hotels agreed to pay the *Comunidade* a lease of INR 18,000 per year<sup>16</sup>. The Taj comes partly within CRZ I, but the Taj Fort Aguada Management claims that it comes within CRZ III<sup>17</sup>.

The Taj has violated the Coastal Regulation Zone Plan by constructing illegal extensions in the No Development Zone (NDZ)<sup>18</sup>. The Taj Village has manoeuvred around this legality by constructing a wall in the NDZ, termed by the hotel as “bio fencing”. This neatly bypasses technicalities. During the course of the fieldwork, researchers had gone to the site where the supposed “bio fencing” was located, only to find a semi permanent structure bounded with strong wire mesh (painted green) and laterite stones.

The Aguada Plateau, which is commonly known as the “Helipad”, was acquired by the Government of Goa from the *Comunidade* of Calangute at a rate of INR 10 per square metre<sup>19</sup>. The said land has now been given on a 49-year lease to the Indian Hotels Company Limited with a further extension of 50 years at a later stage. According to a local activist, a lease has been signed between the Goa Tourism Development Corporation (GTDC) and the Taj Group for the setting up of an Amusement Park. This proposal has however been met with resistance from the *Gram Sabha* (village council). According to the local MLA and *Sarpanch* (head) of Calangute village *Panchayat*, Agnelo Fernandes, “the amusement park is likely to destroy the catchment areas within the fort, thus reducing the ability to recharge the ground water in the area”. The *Sarpanch* had instead suggested the setting up of a Botanical Garden instead of an amusement park, but the Taj argued against this because of its potential adverse effects on the biodiversity of the area due to the introduction of foreign and alien plant species.

Regarding participatory consultations with local communities, the management had to apply to the *Panchayat* for a No Objection Certificate for securing an electricity line and a water connection. However, there is another option to bypass this requirement; the Electricity Department gives an electricity connection immediately to the party concerned upon the payment of two years rent in advance<sup>20</sup>. This is precisely the methodology adopted by the Taj Group for obtaining an 11 kv transformer through the electricity department.

According to the local residents and the local activists of the area, the waste treatment plant at Taj Fort Aguada as well as Taj Village does not work. The vermiculture project initiated by the Taj in

1999 in order to dispose of the biodegradable waste functioned for approximately six months before it ceased to function. It is unclear where the waste created by the hotel is processed. The Taj Village has illegally encroached upon land owned by the Archaeological Survey of India (ASI)<sup>21</sup>. The Taj has also constructed an illegal bridge spanning across 20 metres connecting the Taj Village to Taj Fort Aguada without obtaining the necessary No Objection Certificate from the ASI<sup>22</sup>. Apart from this, the Taj had also constructed a concrete staircase adjacent to the fort to gain access to the beach, though the ASI has recently dismantled this.

## **4.2. EMPLOYMENT**

This section will consider two main issues; that of labour issues within the two hotels profiled, and how the workers' rights in these hotels fare as compared to the rights of workers as detailed in the International Covenant for Social, Economic and Cultural Rights (ICESCR).

### **4.2.1. The Goa Marriott Resort**

The Marriott employs between 265 and 300 individuals, depending on seasonal occupancy, including 240 full employees and around 25 trainees accepted from hotel schools across the country. During the high season, some seasonal employees are recruited on a temporary basis. Vacancies in the hotel are filled primarily via two methods: first, by using "word of mouth" advertising among employees, thereby ensuring that friends and relatives might be first given preference, and second, via manpower consultants who place ads in the media. Another category of temporary worker comprises those under the Goa State Apprenticeship Act. The hotel accepts applications for apprenticeship positions from state residents, separate from the hotel school trainees, who are paid a stipend for undertaking work at various hotel departments as part of their requirements. These are not payroll employees or associates, but are rather applicants who have previously been apprentices. Depending on potential and vacancies in the hotel, trainees, seasonal employees, and apprentices may be retained as regular employees.

Indian nationals currently hold all positions except the General Manager's position, which is held by an Australian. Initially when the hotel started operations, the head of finance and marketing were expatriates. Later an Indian finance head was recruited and the head of marketing was shifted to Mumbai to coordinate for all the Marriott managed properties in India. Using the "employee of the month" chart as a random sample, we determined that 60% of those were of local (Goan) origin, while the General Manager claimed that the share of locals in the workforce was closer to two-thirds. Handing over management positions to domestic nationals was cited as a Marriott practice by the general manager, who indicated that his position would in the course of things, be transferred to an Indian. Senior personnel are both domestically and internationally mobile across Marriott hotels, while a few of the lower ranked staff had been relocated to fill vacancies in another Marriott hotels including a new one in Ireland.

Marriott has a policy that is called the "Guarantee of Fair Treatment" which attempts to ensure no discrimination in hiring or employment practice. All new employees are given a booklet on company policy toward workers and the benefits that they are entitled to, and a presentation is made on the subject by the human resources division. Only employees below the senior associate level and above the lowest level are eligible for overtime beyond the eight hour workday, and while they earlier had the choice of either being paid in cash or taking compensatory time off, their present choice is limited to the latter. Note that the lower boundary of these levels excludes trainees and apprentices. Overtime is dictated by business demand and is not voluntary, but family concerns are given some weight in making this flexible. Before this decision, the overtime payment option had more takers. Employees are evaluated once a year, and over six months if their promotions are being appraised.

Promoted employees are on a six-month probation at new posts, which, at the end of the probation period, are either confirmed or not.

Marriott employees adhere to a standard nine-hour workday including eight hours of work time; two breaks for tea of fifteen minutes each and a lunch break of 30 minutes. No worker is reported as having been laid off, from the start of operations. All permanent employees are told that they have a defined career path, and when employees are appraised, this is one of the issues that the appraisers deal with. This is in line with what the ICESCR considers a “just and favourable conditions for work” as described in Article 7.

There are fewer women employed than men. Sarita Rodrigues, Human Resource executive for the Marriott, was of the opinion that the hotels policies for women were very cooperative and flexible in accommodating both work and family. Maternity benefits are stipulated as three months of fully paid leave, six weeks during confinement, and six weeks after childbirth for women employees. Most of these employees prefer to take most of the three months that they are entitled to after childbirth. Over the current year there were ten pregnancies among women employees for which hospital charges up to INR 25,000 is covered for associates, and coverage on costs is up to INR 50,000 for managers. A crèche is newly run on the hotel premises, the expenses towards which are partly met by the company. Recruitment is on for a nurse to run it. Hotel policy is being drafted regarding feeding time for women employees who have babies in the crèche. Though women are a minority in the employee makeup of the hotel, their treatment is in accordance with Article 10.2 of the ICESCR, which states that “[s]pecial protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”

No moves have been made towards forming an employee union, and Ms. Rodrigues attributed the fact that there is little incentive for employees to unionize since channels of communication for redress of issues and grievances are very open. There is an “open door” policy in place such that any employee can approach any level of management to “vent their feelings, concerns, issues [or] comments” so there hasn’t been the necessity of a union<sup>23</sup>. Employee satisfaction is gauged by opinion surveys with the anonymity of those surveyed maintained, since they are only mentioned by department and position and not named. The questionnaires are sent to Marriott International, with feedback forthcoming to the hotel on its employee satisfaction levels. Among the survey questions, employees are queried on the “opportunity to advance and develop”, satisfaction with remuneration as under “your pay as compared to locally competitive pay”, “flexibility”, “contributions recognised”, “feedback on reports” over 38 questions. A formula determines the bonuses that are earned on a performance basis. All regular employees (excluding apprentices, trainees and seasonal workers) are eligible for performance bonuses.

There is no union of the “associates”, as the junior staff is known. The general manager recalled only one previous experience with unionization in a Marriott branded hotel, the Renaissance in Sydney, which subsequently de-unionized. The incentives to unionize did not exist in his opinion, since working conditions and remuneration were among the most competitive in the local industry. Marriott maintains links with outside unions to foster employee practices that avoid unions forming in their workforce; of the 230,000 people Marriott International employs worldwide, only an estimated 8,000 are unionized. Indeed, some organized labour groups have characterized Marriott as one of the most anti-union companies in America. The AFL-CIO has gone as far as to state that Marriott is “...not only violently anti-union but ideologically so. The company spends an enormous amount of funds and energy on frustrating unionization.” A Marriott management manual proclaims that “Marriott is opposed to the creation of a union by its employees on the basis that a union would not be in the best interests of either employees or the company and is not needed”, and goes on to

present unions as "troublemakers, filching money from workers while preventing individual advancement and even compromising corporate stability and workers' job security (OHC 1999)."

A case of a Marriott hotel in Warsaw, Poland, provides some evidence of the hotel's reluctance to allow organized labour:

On February 14 [2002], Andrzej Jakubiak, chair of the Enterprise Commission of ICFTU affiliate NSZZ "Solidarnosc" at the Marriott hotel in Warsaw, Poland, was brutally attacked and beaten by hotel security personnel. On instruction from the hotel human resources manager, Maryla Koralewska, security guards were to escort Jakubjak to his office. On the way, he was manhandled into an elevator and attacked so viciously that a later surgical examination revealed that he had sustained a severely broken nose (ICFTU 2002).

In light of this, the absence of organized labour at the Goa Marriott Resort can be considered along a different rationale than merely due to employee satisfaction. However, it is crucial to note that while the Marriott was relatively open to discussion, the Taj was extremely reluctant to provide any information beyond what we have included here. This is arguably due to the pressure and attention they have been receiving regarding their expansion plans. Based on our case studies, the other relevant portions of the covenant (i.e. articles 6 through 10) with regards to the Marriott *seem* well adhered to, unlike the Taj where there appear to be gross violations.

#### **4.2.2. The Taj Fort Aguada Beach Resort**

Laxman Malvankar, president of the Fort Aguada Beach Resort Employees' Union since 1990, was repeatedly denied time free to attend meetings with the management of the company or to perform union work. He was then instructed that he would be transferred in another hotel of the group at a critical time for the union and, in August 1994, the management issued a suit for permanent injunction against him. When a strike broke out as a result of these anti-union sentiments, the management issued a suit for injunction against 133 of the 150 staff who went on strike, prohibiting them for entering the hotel premises for the duration of the strike and ordering them to remain at least 300 meters away from the hotel. Malvankar received notice of dismissal on January 16, 1995.

The management of the Taj had notified the General Secretary of the union that another new association, called the Fort Aguada Beach Resort Workers' Association, had been established in the hotel. The management chose not to recognize the Fort Aguada Beach Resort Employees' Union nor enter into any further correspondence. On May 29, 1996, The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) filed a complaint with the International Labour Organization (ILO) regarding this, on the basis that "[...] the Government of India has failed to protect fully and adequately the rights of union activists to fulfill their tasks in a safe environment as recognized in [...] ILO conventions 87, 98 and 135" (IUF 2002). It is argued that the management is actively working to break the recognized trade union.

After arriving at a mutual consensus, the employers agreed to settle the demands of the employees and, in exchange, the employees called off the strike. After calling off the strike, the employers retaliated by suspending seven employees and transferring eight others. At the time of this writing the cases against Laxman Malvankar and others are pending before the Labour Commissioner. The fact that the original union representing employees of the Taj was declared invalid and replaced by another violates article 8.1 (a) of the ICESCR, which states that "[...] no restrictions may be placed on the exercise of [the right of everyone to form trade unions and join the trade union of his choice] other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others."

While there does not appear to be discrimination amongst the male and the female workers, the management does not allow the employees to participate in decision making processes; further, overtime is often considered to be something done as charity by the workers for the Taj Fort Aguada Beach Resort. Though it is stipulated that employees are to be given lunch and dinner, meals are often not taken since the management appointed fewer staff, resulting in a surplus of work and a dearth of time to do it. Workers from outside Goa are given more pay for the same work done; the rationale for this offered by the Taj is that the pay scales are different from state to state. This has resulted in resentment both between workers and management, but also among the workers themselves. The opportunity for promotion within individual departments is slim; employees have had the same pay scale and remained in the same position for up to twenty years. These are all explicit violations of Article 7 of the ICESCR, which states:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
  - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

In particular, we can note violations of Article 7 (c) and (d) due to employees of the Taj stating that promotions are virtually non-existent and the lack of adequate free time provided by the hotel.

### 4.3 LOCAL COMMUNITIES

In recent years, the growth of tourism in Goa has had an adverse effect on the child population living along coastal areas (CEDPA 1997). There has been a rise in prostitution and trafficking in women and children for the purposes of sex tourism and labour. With the spread of prostitution, there are also fears of an increase in the incidence of HIV/AIDS (National Commission of Women 1997). A study by Black (2002) states that “some 13 to 19 million children under the age of 18 now work in tourism, roughly 2 million of whom have been lured into the booming “sex tourism” industries [...] where they risk exposure to AIDS and other sexually transmitted diseases.”

Much of the trafficking in women and children takes place along the traditional trading routes. From Nepal, for example, between five and seven thousand girls, between 8 and 18 years of age are brought to India and other countries to work in brothels. According to the United Nations, there are 250,000 prostitutes from Nepal in India's cities (UNICEF 1996). Certain religious practices such as the *Devdasi* system in Karnataka or the *Basavi* system in Andhra Pradesh abet prostitution in girl children as they are dedicated to the local goddesses and thereafter, provide sexual services to priests as well as other male community members. A large proportion of these girls are procured to the beaches of Goa such as the Baina beach by pimps and put into brothels.

While sexual exploitation of women and children and the related health consequences are more visible impacts of tourism in Goa, there are other negative effects on these groups that are harder to discern. This section will discuss issues relating to the welfare of women and children in the context

of tourism, as well as providing details on how the Taj in particular has violated the human rights of the inhabitants of the surrounding areas of the hotel.

#### **4.3.1. Women**

The many movements against tourism in Goa cite the negative impacts on women in particular as a case in point to highlight the changes that tourism brings into communities. The women in Goa have had to bear the brunt of adverse tourism promotional activities such as the loss of traditional occupations, the shrinking of stable employment opportunities, and the resource crunch due to the growth of tourism in the state.

After natural beauty and cultural heritage, women in Goa have been the most widely used subjects in tourism promotional material. Goa is often called the state of 'wine, women and song', thereby creating a licentious picture of not only the place, but also its female population. Scantly dressed women dancing to western tunes are used as displays in the carnival parade to attract attention and project an image of availability. These activities make women vulnerable to sexual exploitation at the hands of tourists who arrive with a pre-conceived notion of the women as being easy-going and open to their advances. The extreme manifestation of this sexual exploitation is the tremendous growth in sex tourism to Goa and the consequent trafficking of women from rural areas in neighbouring states for sex work. An example of this is the Baina beach, which is a thriving red light area. Women are procured from the states of Karnataka, Maharashtra and Andhra Pradesh, with a large proportion of clients being visitors from within the country as well as outside.

In terms of employment opportunities, women are employed in the tourism industry, but at lower levels, with low pay when compared to non-tourism jobs. In a study done by EQUATIONS (1999) on employment opportunities for women in Goa, it was found that women were employed in positions where there was regular contact with tourists and were encouraged to "dress prettily" and "relate appropriately" to tourists, revealing the sexist bias in the tourism industry. Women were also giving up their traditional, sustainable occupations to work in the industry where employment was seasonal.

The huge water requirements of hotels and resorts meant that the availability of water for communities reduced and this impacted women, as they are the caretakers of the household. They have to walk longer to procure resources increasing their work burden. The prices of commodities have also increased due to the presence of hotels. Women now have to bargain longer in market places for reasonable prices and also cut down on products for household consumption. Ironically, fish curry and rice, previously a staple diet of Goan people, is no longer affordable so as the price of fish has become exorbitant.

#### **4.3.2. Children**

According to estimates from ECPAT and UNICEF published in the middle of the nineties, between 400,000 and 500,000 children were forced into prostitution in India. In Goa, children who are forced into prostitution are from neighbouring states like Andhra Pradesh, Karnataka and Maharashtra.

An ILO report warned that tourists seeking child prostitutes are flocking to Goa, where business is brisk enough to rival Bangkok, currently the world's child prostitution capital. According to Roland Martins of the Jagrut Goenkaranchi Fouz, or the "Vigilant Goan Army" (JGF), a group that keeps a vigil on the state's tourism industry, Goa fulfils several prerequisites of "Child Sex Destination" - a large floating population of migrant children, an indifferent police force and government officials who want to promote tourism at any cost. But according to Martins, "unlike Sri Lanka and Thailand, in Goa, the abuse is more dangerous because it is covert."

Most of the victims are children of migrant labourers from the drought-prone regions of Bijapur, Honawar and Gokarna in neighbouring Karnataka. The families migrate to Goa in search of work on construction sites. While the men and women engage in construction work, the children become “beach walkers”, selling trinkets, eatables and gift articles to tourists in order to eke out a living. Many children are also bought from poor families in these states and put to work on beaches for agents who use them as cheap labour. Without any adult supervision and far away from their homes, these children are exposed to a wide range of visitors both domestic and foreign, as they have to approach strangers and engage in open, friendly conversations to sell their wares. This renders them vulnerable to maltreatment and abuse of various kinds at the hands of tourists. “Many come to sell flowers fruit or *mungfali* (groundnuts) and end up selling themselves”, says Fiona dias Saxena of Sangath, a local child-rights group. According Ms. Saxena, the Coastal Belt from Siquerim to Baga is the tourist hotspot where most of the children are sexually abused. She also adds that abuse is not restricted to children of migrant labourers, but that even children belonging to locals living in the coastal areas are vulnerable. Paedophilia is the most prominent form of abuse that street children face in Goa. Access to children is extremely easy for abusers and paedophiles as they are always available on the beach, many times without any intermediary.

### THREE CASE STUDIES OF SEXUALLY ABUSED CHILDREN

One case study undertaken for this report was with “Meena”, an eleven year old girl who, along with a prostitute woman in her early twenties, had been taken by a tourist to a hotel in a tourist resort some distance from the red light area in which she lived. The girls stated that he took them to Calangute in “a big hotel”. This child works in bars as a dancer but, having not reached puberty, she has not yet been prostituted. The tourist claimed that he wanted the child to accompany him and the older prostitute as their masseuse and he kept the two of them with him for eight days<sup>24</sup>. The girl said she had been provided with separate room and that “nothing had happened”. The tourist had “only kissed and cuddled” her.

Another case study involved seven-year-old “Salim” who began as a kitchen hand at a beachside restaurant for INR 10 a day. Six months later, he was earning five times the amount peddling pineapples to tourists. Now nine years old, he is a self-styled entertainer. “I sing, dance and run errands for the *firangs* (foreigners). Sometimes they even ask for massage in their rooms.” However, prod further and the boy's eyes go blank and he says he finds it embarrassing to talk about abusive situations he may have faced. When asked in which hotel he was taken to, he pointed towards the Taj. The enterprise brings him about INR 150 a day, more than Salim used to make in an entire fortnight<sup>25</sup>.

Money, though, is not always the bottom line. “I like white tourists”, declares eight-year-old Ravi; “they are more kind than Indians.” This is exactly what alarms the local activists. “Migrant kids are especially vulnerable to sexual abuse because they are lonely and they crave affection”, says Auda Vegas, a social worker from Madgaon. Often the children are not even aware of the implications. They simply conclude that this is how all adults behave. Pick-up spots include the frequent parties on the beach or the weekly flea market at Anjuna beach. “And since most of the victims are boys, perhaps the locals don't realise what is happening”, says Carodine Culaco of the feminist group, Bailancho Manch. While a middle-aged white tourist with a pubescent Indian girl might raise some eyebrows, those who “adopt” local boys are considered innocuous. If restaurant and hotel owners do suspect the worst, they prefer to keep their eyes on the cash register.

Instances of the exploitation of children violate article 10.3 of the ICESCR, which states “children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law.” However, there are limited legal mechanisms to address these sexual offenders. In the absence of a comprehensive set of laws pertaining to children's rights,

the only recourse that the legal system offers is the Juvenile Justice Act and certain sections of the Indian Penal Code (IPC) such as Section 377: “Unnatural Sexual Offences”. Apart from being inadequate, they fail to take into account the vast nature of child exploitation and the diverse levels at which abuses occur. The state Government has started a State Programme of Action (SPAC) in 1994 with the aim of ending child labour in Goa by 2000. This has not been successful. Measures included modification and enforcement of the Goa, Daman and Diu Shops and establishment Act, 1973 to eliminate child labour in the hotel and construction industry, domestic service and the unorganized sector. So far, the government has only been able to amend the Child Labour (Prohibition and Regulation) Act 1986, raising the minimum employable age of a child from 12 to 14 years.

However, because of these attempts at eliminating child labour, children were literally thrown out into the streets, making them more at risk of exploitation. In addition, the Labour Department cannot regulate self-employment of children, as there are no legal provisions concerning this aspect<sup>26</sup>. In the context of tourism-related paedophilia, activists have recommended publicizing of offenders by Interpol and scanning of tourists on their arrival as part of the immigration process to deter paedophiles. Policy makers however have shown little interest fearing a backlash on the image of Goa as a tourist destination. Nevertheless, extending the mandate of tourist police from protecting tourists to monitoring tourist behaviour is a recent area of success for activists. Currently, Goa does not have a Children’s Act in place but the government has begun a consultative process involving members of the public, NGO’s and officials to formulate a Child Policy and a Child Rights Act is expected to be in place by the end of the winter session.

#### **4.3.3. The Residents of Sinquerim and The Taj Fort Aguada Beach Resort**

A discussion on the issues that the Sinquerim residents have with the Taj management seems to be a case study in monopoly behaviour on the part of the Taj. The Taj has three properties adjoining the Sinquerim hill, and is with the largest tourism provider in terms of the number of five-star rooms. Having originally come up on land requisitioned from the *comunidade* and the government, it has been arguably been seeking to consolidate its position further with the proposed amusement park. Having signed a lease for the property, it had deposited a sum of INR 5 million with the government. Records of the land transaction for its previous property extensions have been allegedly destroyed. The Taj has sunk 13 bore wells in the three properties, supplying much of its water, in addition to having a direct water connection from the water works at Assolna, a nearby community. Besides these sources, the Taj also claims to acquire water from commercial sources, though it would not reveal these sources when approached for this report. The Taj has a garbage dump on the premises, and was supposed to have a vermicompost facility that is allegedly non-functional since it has no earthworms. Violating the protected monument rules, it constructed a bridge across the moat surrounding the Fort Aguada, and has used connivance and cooption in dealing with the local people who live around the property.

The impact of a hotel on a local community is perhaps no better indicated than in the experiences had by residents of Sinquerim<sup>27</sup>. The Taj set up the Fort Aguada Resort in 1974. In constructing the hotel, the residents of Sinquerim have faced tactics from the staff of the Taj that are in total violation of their human rights. The rationale behind these violations has been the desire on the part of the Taj to acquire their land for their own purposes, usually to make transport in and out of the complex easier (i.e. the creation of roads through their properties). A 1998 documentary filmed by Magic Lantern Films titled “Hosts and Hostages” detailed how the Taj went about attempting to acquire the land. First, residents of the land in question were offered money, or some other financial incentive. If that were to fail, the second approach would be to try to evict them by force. Finally, if that did not work, the final step is to request the government to acquire the land, after which the land would be leased to the hotelier.

This is precisely what happened to Maria Lobo, a resident of Siquerim, who faced these tactics on behalf of the Taj. When the first two techniques failed, she was merely given a notification by the government to vacate her land and her home, as it no longer belonged to her. Such behaviour on the part of the Taj is in direct violation of article 11.1 of the ICESCR; member states who are party to "...the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." Clearly, the act of taking away one's home is in violation of this article.

Interviews held for this study with Roland Martins, a member of the JGF, also provided evidence of other such violations. Martins alleges that not only were formal approaches taken to acquire the land (as per the approach outlined earlier) but physical force was used as well. He alleges that the Taj would hire "security guards" to maintain long term "postings" across the road from those estates that the Taj wished to acquire. If such tactics did not work, they would ultimately resort to violence. We had met with one man whose brother was injured in an altercation with the Taj hired "security". The Siquerim Club contends that Siquerim has not seen any benefits flow to its residents from having a high profile hotel property as a neighbour. The harassment, and resultant strained relations with the residents in the area have caused manifold problems<sup>28</sup>.

In general, none of the residents of Siquerim we spoke to wanted the Taj there. They all claimed that the hotel diverted public water for their own purposes, refusing even to give a portion of their supply to the adjacent village for an hour a day, which, if true, further violates article 11.1 of the ICESCR by limiting an adequate supply of water (Tourism Concern 2002). They all opposed the proposed amusement park on the hill, and felt that the creation of this park would cause drastic changes to the surrounding areas in terms of the amount of people who would be visiting. Besides this, locals use the area to picnic, walk, and generally enjoy for its scenery. Privatization of this area would effectively exclude those who were not willing or able to pay, thereby taking a resource that was historically, and in some cases legally theirs away from them.

#### **4.4. LOCAL ECONOMIES**

Involvement in tourism by the host population varies with the kind of tourism the area is involved in. A greater share of the population in Calangute is involved in tourism than in other villages like Cavellosim, in the south of Goa. While Calangute initially had an influx of budget backpack tourists from the seventies, present trends show that the area has changed to cater more to middle-budget tourists. The rise in the demand for land for tourism related purposes has led to an increase in the cost of land in the area, resulting in a more competitive market for land. The advent of tourism in these places served to reduce dependence on farming and fishing due to the alternatives that arose from tourism related activities, such as providing taxis, phone booths, recreation facilities, travel and tour booking, and shops that catered to tourists both via consumer goods but also via the renting of accommodation and transport. Sawkar et al. (1997) have argued that this rise in tourism has "[...] been a trigger for land conversion from agriculture to non-agriculture [and that] traditional fishing operations have been constrained by lack of shore space. In some areas fishing ports and phases of fishermen have been displaced by resort development". Assuming that other industries cannot easily employ fishermen based on their previous skills, such displacement further constitutes a violation of article 11.1 of the ICESCR, since the covenant states "States Parties [...] recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." While new jobs may be created in certain sectors (i.e. taxi drivers), other jobs, and in some cases whole livelihoods (i.e. fishermen), are lost.

Tourism has led to the commodification of coastal resources that previously had provided primary income to the inhabitants of the area. Moreover, the seasonal nature of tourism has altered the supply of these goods; whereas previously certain goods may have been available or harvested continuously, the supply mechanism is now more susceptible to the new sources of demand, namely tourists. While a short-term benefit may exist for those selling locally made handicrafts, the quality of these handicrafts have degenerated due to their being mass-produced. Similarly, cultural festivals that once were celebrated on a small scale have been transformed into large, corporate sponsored “carnivals”. Services that were produced for the household, and those that provided local aesthetic pleasure, also found a market or where a market existed, a higher price as they became traded to visitors. This loss of culture due to the commodification of cultural heritage is tantamount to a violation of article 15.2 of the ICESCR, which states that the measures taken “...by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.”

With state legal intervention making property rights clear and specified, and with the security of tenure granted to tenant farmers established in the post colonial period, the *comunidade*, which was already in decline, lost its source of income from the rent and auctioning of tenancy. This system of community land management had traditionally assigned rights to farm as well as obligations to maintain the fertility, water levels and salinity of the wetlands through dykes. However, these changing property rights regimes also changed consumption patterns and migration from and into the state, and together with a growing tourism sector produced changes in land usage as well as in the relations between people and ecosystems (Noronh 2002). Changes in land property management, variations in coastal land use and their relative maintenance, and decline along the coast can certainly be explained in part due to these reforms in property rights.

A report in *Goa Today* written in 1983 provides some further insight on the types of effects hotels have had on the ability of local communities to continue with their former source of income; the article focuses on activities undertaken by the Taj in hosting the 1983 Commonwealth Heads of Government Meeting. Specifically, it states that “[...] extensive bulldozing operations by the [IHCL had] brought down tonnes of silt into the villagers paddy fields. The company then refused to move the silt. Farmers were consequently left with damage to their fields, which destroyed any significant productive capacity to sell (Lobo 1991)”. This constitutes a violation of article 11.2 (a) of the ICESCR, which states that “[...]parties are to take measures to improve methods of production, conservation and distribution of food [...].”

## 5. DOMESTIC POLICY

Tourism and travel related services have seen the greatest priority internationally in commitments made under the GATS. The implication of this is that most WTO members consider openness in the delivery of tourism exports as good policy. India's tourism industry earns USD 3.3 billion with 2.4 million foreign tourists; yet, this only amounts to 0.4% of international travelers. Thus, India ranks 43<sup>rd</sup> with respect to global inbound traffic (WTTC 2001). The tourism sector is estimated to add 47.5 jobs for every million rupees invested in the sector. Based on this, it appears that tourism is more labour intensive as compared to manufacturing and even agriculture, only 12.6 and 44.7 jobs are added for INR 1 million invested respectively.

The recent central and various state tourism policy documents wax eloquent about how governments would now act as catalysts and facilitators for the growth of the tourism industry. This is clearly in line with the needs of the industry lobbies like the WTTC which have been quite blunt about the role it sees for Governments – “the WTTC would like to categorically assert that there must be a fundamental change in the governments attitude towards the development of the accommodation sector. Government must stand forth as a facilitator, not a regulator or a roadblock (WTTC 2001).” This evolution of a state-industry compact begs the question on the role of governments in developmental processes.

Added to that, many governmental ministries (both at the central and regional level) who have intersecting responsibilities relating to trade and tourism (i.e. the Commerce Ministry) can become a problem since such bodies have contradicting agendas: balancing development of tourism (i.e. the Ministry of Tourism and Culture), respect of labour rights and human rights (i.e. the Ministry of Labour and the National Human Rights Commission), and the conservation of the environment (i.e. the Ministry of Environment and Forests). However, there is no mechanism to link all these bodies to work successfully together in order to create the balance necessary for arriving at informed positions on trade issues.

### 5.1. NATIONAL POLICY

India's National Tourism Policy (2002) views tourism as having the potential to be a tremendous catalyst of economic growth. Prime Minister Atal Bihari Vajpayee has stated that

Tourism has great capacity to create large scale employment of diverse kind - from the most sophisticated to the unskilled - and all of us know that generation of massive productive employment opportunities is what India needs the most (Government of India 2002).

The rationale for the policy as spelled out in the policy itself is as follows: the number of tourist arrivals has grown by 600% in the last 35 years, and is expected in twenty years to double from the 2001 amount of 700 million. According to the government, based on the future projection the industry could potentially net over USD 2 trillion in revenues. While other reasons are presented as to why India should commit itself to the promotion of tourism, the financial incentives are clearly touted as the most convincing. The policy goes on to state that any framework developed at exploiting this potential must be “government led, private sector driven, and community welfare oriented<sup>29</sup>”.

Particular geographical areas that have been cited as being rich in tourist potential have been the National Parks, the Himalayas, and river systems in the form of river cruises and ecotourism. Beyond this, the policy also makes arguments for the construction of “world class international convention centres” in major urban areas. Besides marketing India as a “shopper's paradise”, the

policy often refers to offering “traditions that focus on the holistic healing of individuals and on elevating the individuals to a higher plane of consciousness and awareness<sup>30</sup>.” The policy itself does claim to put the interests of local communities as part of any planning procedure, but in light of the relevance placed on the financial incentives of tourism led growth and past indications (particularly in Goa), one has to be critical of such concerns.

## 5.2. TOURISM POLICY IN THE STATE OF GOA

State policy regarding tourism in Goa is not particularly comprehensive; indeed the tourism policy itself does not provide anything by way of quantitative guidelines or standards, but rather provides a set of objectives and goals that the state government would like to reach in the future (Government of Goa 2001). Other documents that are of relevance are the Goa Registration of Tourist Trade Act (1982) and Rules (1985), and The Goa Tourist Places (Protection and Maintenance) Act (2001); however, both of these policy documents do not outline rules of conduct for new investment or even current property. Rather, the documents are more concerned with the registration of guests in hotels and the removal of any “nuisance” that may hamper the aesthetic marketability of tourist areas in Goa respectively. Thus, current legislation does not really offer much by way of hard regulation regarding what can or cannot happen regarding new investment. This is a concern within the GATS framework as member states without robust regulation relating to the tourism industry may make binding commitments in the present that could be difficult to change in the future. That is, if one assumes that investment is drawn to areas with low regulation, places such as Goa may receive more investment but may be exploited as a result.

Regarding decentralized processes, the Goa *Panchayat Raj* Act (1994) is of particular interest due to the possibility of its sovereignty being jeopardized by the GATS. That is, if the GATS confers the regulatory power to the central authorities of member states, then the sovereign right of states, and more specifically, communities, runs the very real risk of being compromised or ignored altogether. *Panchayats* in India exist to offer local communities a democratic process to determine what may or may not happen in their communities; it is not clear what effects the GATS will have on such forms of governance.

By design, *Panchayati Raj* is a system of local self-government where communities take the responsibility upon themselves to develop. It is also an institutional arrangement for achieving rural development through people's initiative and participation. *Panchayati Raj* is the instrument of community development, the apparatus of rural local self-government; it is a means of reorganizing district administration that is not adequately people-oriented in its traditional form.

### THE PANCHAYATI RAJ SYSTEM

The *Panchayati* system was given constitutional protection by the then Prime Minister, Rajiv Gandhi, in 1986 by passing the 64<sup>th</sup> Amendment Act. In 1992 the 73<sup>rd</sup> Constitutional Amendment Act came into effect, which envisaged that the states must establish a three-tier system of strong, viable and responsive *Panchayats* at the village, intermediate and district level. Though each state enforces this Act with minor variations in structure and mode of election, the system exists in almost all states in India.

Goa has belatedly adopted a three tier *Panchayat* System by amending the Goa *Panchayat Raj* Act (1994); at the lower level are the *Gram Panchayats*, the middle level the *Panchayat Samities* or *Taluka Panchayats*, and at the district level the *Zilla Parishads*. The success or failure of the *Panchayat* System depends upon their structure, powers, functions, leadership, finances and state control. In a state such as Goa, changes in different aspects of these bodies have been taking place in line with changing circumstances. Although the activities of *Panchayati Raj* institutions are broad based, their resource base is very weak. Given the lack of public funds in India, *Panchayati*

*Raj* Institutions have a very limited scope to impose taxes in their jurisdiction.

There have been major problems and shortcomings in the working *Panchayati Raj* institutions. A lack of adequate transfer of powers and resources to *Panchayati* institutions, lack of *Panchayati Raj* bodies to generate their own resources, such as tax on sale land, and non-representation of women and weaker sections in the elected bodies are some issues. The *Panchayats* in Goa, though having considerable powers and being autonomous, do not have mandatory powers; they cannot exert punitive measures other than minor fines. Even these fines can be overruled by the orders of a higher authority.

Within the context of our study and community participation regarding new hotel construction, *Panchayats* have the power to accept an illegal construction that comes up as a new construction, an addition, or an alteration. Any party undertaking such construction has to apply to the *Panchayat* with the prescribed fees. If the *Panchayat* does not reply within sixty days, the lack of a response is construed as permission given for the construction. If any dispute arises, the appeal lies with the Director of *Panchayats* and subsequently with the Block Development Officer. If the *Panchayat* refuses to give permission, the party wishing to get permission to build can contact the Block Development Officer. However, as the case study of the Taj has pointed out, the relevance of the *Panchayat* is significantly diluted given the fact that laws can easily be worked around, or at the extreme, completely ignored. What is interesting in our study is whether the role of *Panchayati Raj* will be further adversely affected due to the GATS.

## 6. THE GATS AND TOURISM

Using the current developments in the tourism sector in Goa as the framework, this section provides insights into the potential ramifications of binding commitments under a WTO framework in the tourism sector.

The GATS, like other agreements in the WTO is negotiated by central governments (through their trade delegations in Geneva) and challenges to practices can only be pursued by national governments against other national governments even if the 'offending party' is a local authority or local government. If, for example, the WTO Dispute Settlement Mechanism decides that an Indian municipalities decision is deemed incompatible under the Central government's GATS commitments, serious legal/constitutional issues would arise. If, for instance, the decision of the municipal authority was a planning decision in accordance with local regulatory laws (i.e. *Panchayats*), would the government be forced to change locally evolved laws as a result of them being WTO incompatible?

In general terms, the ability of central and local government to regulate economic activity in pursuit of social or environmental goals is constrained. When countries agree to add service sectors to the agreement, a wide range of restrictions imposed on service companies are vulnerable to challenge by another country under the WTO Dispute Settlement Mechanism (The WTO Court), unless the government reserved the right to impose such a restriction at the time of the agreement. Restrictions cannot be added later.

The initial requests filed by developed countries in pursuance with current GATS negotiations concentrated mostly around commercial presence in respect of financial, energy, environmental, transport and professional services<sup>31</sup>. Countries are however allowed to relax their obligations including the most favoured nation (MFN). Other extenuating circumstances that are allowed as exceptions to the commitments arise in the case of measures to secure public morals, and to protect human, plant, and animal life. Balance of payments difficulties may also justify temporary restrictions on an MFN basis, which may contravene commitments<sup>32</sup>. Whether the GATS detracts from governments fulfilling obligations to human rights as well as those categorized as economic, social and cultural rights will depend on how these exemption conditions are interpreted by the WTO panels and tribunals. Given GATT jurisprudence the exceptions will be interpreted narrowly, so it is highly unlikely panels would ever interpret them to include more than what they specifically state.

The World Tourism Organization (WTO-OMT) in its explanatory publication on GATS states that the agreement recognizes "[...] that different countries are at different stages in their development and services regulations. It provides special treatment for developing countries, particularly the least developed ones, with a view to increasing their participation in world trade" (WTO-OMT 1995). Precisely how this differential treatment is to be implemented within the architecture of the GATS is not clear. Developing countries themselves have not been very coherent in proposals, submitted to the CTS, on using these articles to their advantage and several trade lawyers have highlighted that the provisions of Article IV, Article XIX and the right to regulate mentioned in the preamble are likely to be casualties if they come in conflict with the treaty's more substantial provisions.

### 6.1. PROFILE OF THE GATS IN INDIA

The GATS has two levels of obligation to member governments: general obligations (rules of the Most Favoured Nation Clause and Transparency which apply to all services) and specific commitments (rules which only apply to the services that governments commit of their own accord).

The latter contains a strict set of rules on service liberalisation translated into rules governing national treatment and market access. When committing a service sector to the GATS, a country is allowed a list of limitations on specific commitments. It is difficult, and in some cases impossible, to predict areas in which limitations may be required in future. These limitations - or the lack of limitations - apply across the board throughout the concerned member country. Although GATS does not force any country to commit a sector, each country that does commit can request sectors from other countries in exchange for offering their own. The overall agreement by all countries to continuous liberalisation through negotiation will mean that pressure is exerted to commit sectors and reduce limitations.

The ongoing request-offer phase in the negotiations can be traced back to timelines set by the Doha ministerial meeting in November 2001. By the end of June 2002, the GATS 2000 negotiations (so called since the built in agenda of the Uruguay round of negotiations mandated continuing negotiations in services starting in 2000) have moved into a higher gear with several countries filing their initial requests to their trading partners<sup>33</sup>. These requests have followed the bilateral approach, which has led to several smaller countries being overwhelmed by the prospect of both making and responding to the requests. This approach, which lacks an open and participatory process, involves the relevant documents being submitted to the respective trade delegations in Geneva. Even the WTO secretariat does not see these, unless a member country wishes (smaller countries have approached the secretariat for clarity on the requests). Offers to these requests are of course, by design, multilateral and are likely to be made public when countries respond with their initial offers.

Given this opaque state of play we have been constrained from making any significant analysis of the implications of the requests to India in the Tourism sector. This is further complicated by the flexible nature of the GATS classification list, referred to as the W/120. The W/120 is only a guiding instrument and a facilitator since it is a truncated version of the United Nations Provisional Central Products Classification (CPC); moreover, the services sector is continuously evolving via technological innovations, rendering these classifications dated as time progresses. Countries are thus free to use their own classification lists; both the United States and the European Union are likely to use their lists as a framework for making requests. Nearly all developing countries, including bigger economies like Brazil, Malaysia and India, are likely to find the prospect of responding with informed offers problematic given the tight schedule of negotiations and data constraints<sup>34</sup>. India, like many other developing countries, even failed to submit its requests in time for the Doha timelines (June 30 2002), according to well-informed sources in Geneva. To postulate possible implications comprehensively in a complex and interrelated sector like tourism in this scenario is virtually impossible.

Nevertheless, there exist indicative documents on the possible tourism requests to India. A December 2000 United States tourism services proposal to the GATS council listed several obstacles that it urged trading partners to withdraw to help liberalise the sub sector of hotels (WTO 2000). Obstacles identified include limitations on the participation of foreign capital, limitations on the purchase or rental of real estate, an economic needs test on suppliers of hotel and lodging services, measures requiring the use of local partner to establish in the market, and the denial of freedom for service providers to select sources of supply of services and minimum requirements for local hiring that are disproportionately high causing inefficient operations. On April 16, 2002, Corporate Europe Observatory (CEO), an NGO in Europe, leaked copies of draft requests by the European Commission to 29 countries<sup>35</sup>. Under tourism the EC's requests to India were to eliminate all limitations and schedule bound commitments. Requests in some sub sectors were made using the provisional CPC as a reference document rather than the W/120.

In the context of Tourism related negotiations it is also important to dwell on the cluster approach of commitments. There have been two kinds of cluster proposals in the GATS so far. The first

proposed by the north, mainly the EU, (as mentioned earlier the US and Australia are also in favour of this approach) is plainly a method to force through deeper liberalisation as opposed to the positive list- request offer approach, which gives considerable flexibility to developing countries. This proposal aims to identify economic-interlinkages between sectors and sub sectors and liberalise these as part of a single cluster. India has been one of the more vocal opponents of such an approach.

On the other hand the proposal for an annex for tourism called the T-5 or the Andean proposal (proposed by the Dominican Republic, El Salvador, Honduras, Nicaragua and Panama) takes a different approach to clustering. This proposal uses the UN Central Products Classification and the World Tourism Organizations Standard International Classification of Tourism Activities (SICTA) to arrive at a comprehensive list of services closely linked to tourism. The proposal aims to prevent the anti-competitive practices of tourism providers from the north, which often spill over into sectors outside the present tourism classification (e.g transportation and travel information networks)<sup>36</sup>. It views tourism as a development issue and aims to introduce the concept of sustainability into the tourism trade. It takes note of the disturbing fact that there has been no monitoring of the impacts of progressive liberalisation on developing countries and mode four relating to the supply of services, which deals with the presence of natural persons, has been virtually ignored.

The annex also mentions that in spite of the presence of safeguards in the agreement the anti competitive behaviour of foreign tourism providers continues. The proposed transfer of technology is yet to materialise and the proposal rightly highlights the increased incidence of vertical and horizontal integration of tourism providers in developed countries, which is likely to see a huge drop in the market independence of local players. The importance of the access to and use of information systems like the GDS and CRS according to transparent, reasonable and objective criteria is taken note of. The World Tourism Organisation (WTO-OMT), which has been disappointed at the restricted GATS understanding of the world largest industry, has also been a active supporter of the annex proposal. While at face value the annex proposal may seem like a positive development the danger of it being hijacked both by the WTO-OMT and the developed countries is real. In fact, some developed countries have welcomed the tourism annex proposal while developing countries, especially India, have been sceptical about the need for an annex on tourism. This could be because, other than the annex on natural persons, most annexes have led to deeper liberalisation without addressing concerns of developing countries.

Both cluster approaches have been in limbo maybe due to the fact that the guidelines and procedures for the negotiations on trade in services adopted by the special session of the Council for Trade in Services (CTS) on March 28, 2001 mentions that the main method of negotiations shall the request offer approach. However, this open-ended statement leaves the option for countries to choose the cluster approach to make offers.

## **6.2. INDIA'S COMMITMENTS**

India's commitments in the GATS relating to the tourism industry relate primarily to four sub sectors in the W/120; Hotels and Restaurants, Travel Agencies and Tour Operators, Tourist Guide Services, and Other. Of these four, the Indian government has made documented commitments on two, the first and second. However, while not documented in the schedule of commitments in the WTO site, it has been concluded by sources closer to the actual negotiations that the other two sub sectors have had commitments made as well. Yet, these are presumably not final, and as a result are not publicly available.

**Table 6.1: India's Horizontal Commitments**

Sector	Limitations on Market Access	Limitations on National Treatment
<b>ALL SECTORS INCLUDED IN THIS SCHEDULE</b>		3) In case of collaboration with public sector enterprises or government undertakings as joint venture partners, preference in access will be given to foreign service suppliers/entities which offer the best terms for transfer of technology.
	4) Unbound except for measures affecting the entry and temporary stay of natural persons who fall in any of the following categories:  <i>(a) Business visitors</i> Persons who visit India for the purposes specified in (i) and (ii) below and who will not receive remuneration from within India: (i) for business negotiations, or (ii) for preparatory work for establishing a commercial presence in India. Entry for persons in this category shall be for a period of not more than 90 days.  <i>(b) Intra-corporate transferees</i> At the level of Managers, Executives and Specialists who have been in the employment of a juridical person of another Member for a period not less than one year prior to the date of application for entry into India and are being transferred to a branch or a representative office or a juridical person owned or controlled by the <i>Managers are:</i> Persons who direct a branch office or one or more departments as their head, or supervise or control the work of other supervisory, professional or managerial personnel and have the authority to appoint or remove the personnel and powers to exercise <i>Executives are:</i> Persons who are in senior positions within a juridical person including a branch who primarily direct the management, have wide decision-making powers and are either members of the board of directors or receive directions from the board or the	4) Unbound except for measures referred to under Market Access.

	<p>directions from the board or the general body of shareholders.</p> <p><i>Specialists are:</i> Persons who possess high qualifications and knowledge at an advanced level relevant to the organization's activities or of the organization's research, equipment, techniques or management and may include persons who are members of accredited professional bodies. Entry for persons in the above categories shall be for a maximum period of five years.</p> <p><i>(c) Professionals</i> Natural persons to be engaged by a juridical person in India as part of a services contract for rendering professional services for which he/she possess the necessary academic credentials and professional qualifications with three years experience in the field of physical sciences, engineering or other natural sciences. Entry and stay in this category shall be for a maximum period of one year extendable with permission for a maximum of three months.</p>	
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NOTE: The modes of supply corresponding to the commitments are: 3) Commercial Presence and 4) Presence of Natural Persons.

SOURCE: <http://gats-info.eu.int/gats-info/nwtosvc.pl?COUNTRY=India> and <http://www.wto.org>

**Table 6.2: India's Vertical Commitments in the Tourism Sector**

Sector	Limitations on Market Access	Limitations on National Treatment
<b>Hotels and Other Lodging Services (CPC Ex.641)</b>	1) Unbound*	1) Unbound*
	2) Unbound	2) Unbound
	3) Only through incorporation with a foreign equity ceiling of 51 per cent	3) None

	4) Unbound except as indicated in the horizontal section	4) Unbound except as indicated in the horizontal section
<b>Travel Agency and Tour Operator Services (CPC 747)</b>	1) Unbound	1) Unbound
	2) Unbound	2) Unbound
	3) Only through incorporation with a foreign equity ceiling of 51 per cent	3) None
	4) Unbound except as indicated in the horizontal section	4) Unbound except as indicated in the horizontal section

NOTE: The modes of supply corresponding to the commitments are: 1) Cross-border, 2) Consumption Abroad, 3) Commercial Presence, and 4) Presence of Natural Persons.

SOURCE: <http://gats-info.eu.int/gats-info/nwtosvc.pl?COUNTRY=India> and <http://www.wto.org>.

There are three levels of commitments: none, with limitations, or unbound. The first level implies that the country has placed no limits on other member states. The second states what the limitations are. Finally, unbound implies that no commitment is made or is possible, for a variety of reasons (i.e. insufficient data or irrelevance). While commitments are generally applied to specific sectors, a nation can also make commitments that apply to all sectors. These limitations are known as horizontal commitments.

Perhaps the largest obstacle facing India in stating its commitments is the lack of data available with which to create coherent policy. As Chanda (2001) has emphasised, “services trade data are subject to qualifications and shortcomings due to statistical, conceptual and methodological difficulties in measuring services.” Though travel is represented in the balance of payment statistics, a huge segment of the tourism trade in the informal sector, namely that facilitated by Small to Medium Enterprises (SMEs), is virtually unmapped. Scholars have raised doubts about the veracity of the official tourism data available with the government of India<sup>37</sup>. This is the case in India for other sectors and as well as other developing countries. Even after seven years of the GATS, countries still have not arrived at a consensus on the collection of statistics according the GATS definitions of trade in services. A WTO-OMT document on tourism services also mentions that it is difficult to make accurate assessments of tourism’s volume and impact on the economy since reliable and comparable data about tourism employment on the international level is very scarce (WTO-OMT 1998, 87). Given this lack of information, developing country representatives have maintained that it is necessary that the WTO carry out its mandated assessment of trade in services found in Article XIX.3.<sup>38</sup>

Any assessment of the existing tourism commitments by India will have to be considered within the context of the existing policy environment in the country. Prominent trade policy analysts have concluded that a close analysis of India’s commitments in a traditionally liberal and *less sensitive* sector such as tourism shows that India has adopted a highly cautious approach to liberalisation during commitments made during the Uruguay round<sup>39</sup>. If this was the intention of trade negotiators, our examination of Indian commitments in tourism shows that either this conclusion is wrong or there have clearly been erroneous entries under the hotels and restaurants sub sector. While six possible limitations are possible, India’s entry under Mode 3 (commercial presence) shows that it has chosen to invoke only item 6, a limitation on the participation of foreign capital. This could imply that henceforth any regional or local government policy that could limit the number of service suppliers, total value of transaction or assets; the total number of service operations or quantity of service output; the total number of natural persons and require a certain type of legal entity or joint venture can possibly be challenged as violating India’s market access commitments. Governments may

successfully defend their policies as legitimate but it leaves them open to challenges under the WTO dispute settlement system, which may not be the appropriate body to deal with the pros and cons of democratically evolved domestic policies. It is also important to mention that in the present negotiations the only way forward for India is to either maintain the status quo or remove item 6. Addition of any further limitation implies the long and arduous process of modification of its schedules, which incidentally has no precedence in the GATS.

The scenario gets worse as we examine limitations on national treatment. There are none scheduled, both for hotels and restaurants as well as travel agencies and tour operators under Mode 3. While non-discrimination may seem like a rational objective in a scenario where powerful domestic firms enjoy several undue benefits thereby resulting in low-quality, high cost and outdated services, such a simplistic template cannot be applied to the tourism sector. As evidence of tourism's adverse impacts on the environment and local communities have mounted the language of informed consent, local participation and benefit sharing are increasingly finding acceptance within governments. One of the main messages from the recent South Asian Regional Conference on Ecotourism held in January 2002 in Gangtok, Sikkim was on the involvement of local communities in tourism development<sup>40</sup>.

By scheduling no limitations, India seems to think that linking of foreign investment with local economies is not important in the tourism context. Given that there is considerable ambiguity on like providers (see section 6.2.5 for note on likeness) it is also unclear if governments will be able to pursue policies that will favour local and smaller hotels that have lesser impacts on the environment and contribute by way of backward linkages to local economies.

It must also be mentioned here that India present tourism policy is far more liberal than its GATS commitments. In May 2001 the Union Cabinet took a major policy decision allowing 100% FDI in the Hotels and Tourism sector under the automatic route<sup>41</sup>. The term hotels include: restaurants, beach resorts, and other tourist complexes, providing accommodation and/or catering and food facilities to tourists. Tourism related industry include travel agencies, tour operating agencies and tourist transport operating agencies, units providing facilities for cultural, adventure and wildlife experience to tourists, surface, air and water transport facilities to tourists, leisure, entertainment, amusement, sports, and health units for tourists and Convention/Seminar units and organisations. The policy also enumerated several concessions offered to tourism providers in terms of concessional rate of customs duty on items required for initial setting up or expansion of hotels, expenditure tax waived in case of hotels located in hilly areas, rural areas, places of pilgrimage and tourist importance, while a 50% tax deduction from profits is allowed for a period of ten years in the same areas.

Despite these policy directives that show a clear intention to attract foreign investment, interestingly tourism does not feature in the top five sectors (namely telecommunications, electrical equipment (including computer software, transportation industry, the financial and non-financial service sector, and cement and gypsum products)<sup>42</sup>. The alarming disinterest among international tourism players to invest in India in spite of the numerous concessions has been a primary reason of concern for the tourism ministry. Concern among policy makers is not only in the low number of companies, which apply for approval, but the difference between the approval and the actual inflow, and in the number of projects, which in spite of receiving an approval do not materialize. In the tourism industry itself, 13 projects involving investments worth around INR 2.9 trillion have been either stalled or deferred during the first seven months of the current financial year. Chateau International Inn Private Limited's ambitious INR 14.4 billion Floating Hotel (Folatel) Project in Mumbai has been cancelled following opposition from local fishermen and death of the main promoter<sup>43</sup>.

Concern compounds for the tourism department as, in 2001, the balance of India's Tourism Account showed a deficit for the first time. There are broad indications of this from the foreign travel income data generated by the Reserve Bank of India (RBI). The Expenditure on Travel Abroad in US dollar terms is growing much more rapidly than the value of Tourism Receipts. According to the figures, during the last decade the Foreign Exchange Income Earned by the Travel Industry is down by 36 percent to USD 897 million (INR 41 billion) in 2000 from USD 1.4 billion (INR 65 billion) in 1991 (Meena 2001). India's current ranking in travel & tourism demand is number 124 of 160 countries (WTTC 2001). This dismal picture is accentuated by the fact that India receives a meagre 0.66% of the total global receipts.

The World Travel and Tourism Council (WTTC), a prominent industry lobby, has identified, in its wish lists glossary, several regulations that it wants removed for investors to move in. Its status paper on Tourism in India mentions that apart from land usage, permission is required for environmental clearance, water connection, and electricity and waste disposal<sup>44</sup>. Given this state of affairs it is unlikely that the Tourism ministry will see Tourism's presence in the GATS as a threat. On the contrary, it is likely to enthusiastically push the GATS as a vehicle to attract the elusive investment and tourism numbers into the country. In light of the weak regulation currently related to tourism, this is a cause for concern.

In attempting to appraise the GATS from the point of view of a tourist enclave like Goa, the concerns are several. The implications of binding commitments, which are effectively irreversible, on the federal structure of the Indian political system are pertinent in the case of the tourism sector. In the following sections, some of the articles of the agreement are examined in detail, assessing the extent to which they might prohibit public interest regulations.

### **6.2.1. Article I - Scope**

In Part 1, which encompasses the scope and definition of the GATS, Article 1(3), mentions that in "...fulfilling its obligations and commitments, each member shall take such reasonable measures as maybe available to it to ensure their observance by regional and local governments and authorities and non governmental bodies within its territory<sup>45</sup>." This pre-eminence to national, regional and local laws come directly in conflict with the need for local domestic regulations (that may vary between and within states) to regulate tourism or for that matter any developmental activity.

Under the GATS, local governments may have to subject all measures affecting services to a necessity test, which would oblige them to take the least trade restrictive measure possible if they wanted to fulfill an objective. That objective itself would have to be deemed legitimate by WTO officials. This could effectively prevent local governments' initiatives to plan new measures aimed at regulation since violation of the GATS could leave them open to WTO challenges. Tourism as a subject is presently not in any of the lists (Central, State and Concurrent) in the seventh schedule under the Indian constitution and hence state governments have had considerable policy flexibility vis-à-vis their tourism policies.

Recently the central government has expressed interest in including Tourism as a subject of the Concurrent list. The constitution recognises the right of both Parliament and the State Legislatures to legislate concurrently with regard to subjects enumerated in the concurrent list. Though its presence in the concurrent list implies that state governments continue to have certain policy flexibility, several states have opposed this fearing the use of Article 254. This article enunciates that in case of conflict between a Union and a State law, the former shall prevail. Goa has interestingly been one of the supporters of the proposal, possibly for the reason that the ruling Bharitiya Janata Party enjoys power at the central level as well.

The ability of state governments to have power to adopt general legislation to meet the particular circumstances of a province cannot be underestimated as experiences of tourism development vary in different parts of India. While in some areas the main need is the creation of an institutional framework that helps in developing the right kind of tourism (i.e. in areas that have hitherto not seen much tourism development, such as the north eastern states of India and the new tribal states of Uttaranchal, Chattishgarh and Jharkand), in other areas the imperative is to regulate and monitor this industry to ensure that the impacts on the environment is minimized by curtailing market access into overdeveloped areas (even when there is an economic incentive). Goa's coastal areas are a case in point. To arrive at an all-encompassing framework for international trade in tourism is, for this reason, problematic in the Indian context.

There has also been no consultation with state tourism departments on GATS implications. Commitments made without such consultations are likely to stimulate protests later as was evident with the Agreement on Agriculture. The impacts of the Agreement on Agriculture on Indian farmers has already led to widespread agitations and a regional government suing the central government for not consulting it while agricultural tariffs and quotas were withdrawn under WTO obligations. The West Bengal government recently filed a case against the central government in the Supreme Court on this issue. Several state governments have set up WTO cells to monitor and influence the central governments position on agriculture. This is yet to happen in the services context.

In significant ways it also negates the decentralisation processes sanctioned by the seventy-third and seventy-fourth amendments of the Indian Constitution in 1992<sup>46</sup>. At the World Summit on Social Development in March 1995 India declared to the world:

What India aims through this [devolution of powers through the constitutional amendments] is not merely representative self-governance but more importantly participative self-governance because while *Panchayats* are elected bodies representing a certain population of a territorial area, the Constitution provides for a parliament of people at the village level called the *gram sabha* which is a body consisting of all persons eligible to vote at the village level (MEA 1995).

It is interesting to note that this statement comes less than three months after the WTO was formally established. Under the two amendments respective state legislatures were asked to confer on the *Panchayat* and Municipal bodies such powers and authority so as to enable them to prepare plans and implement schemes for economic development and social justice. The decision-making powers of local bodies are extensive and contain 29 items, most of which are in the GATS classification list. Nearly all the requirements of the Tourism industry fall within the rights and powers granted to the *Panchayats*. Effective devolution of powers would thus mean that the industry would have to seek the permission of the concerned local body for sanction to operate in its jurisdiction.

### **6.2.2. Article IV, XIV and XIX - Safeguards**

The GATS has been touted as a development friendly agreement by citing the positive list approach (countries choose the sectors into which they will inscribe commitments under market access and national treatment – the most restrictive clauses) and the presence of so-called built in safeguards, which can be found in Articles IV and XIX. In Article IV one finds mention of the need to increase the participation of developing countries in trade in services. The agreement in fact recognizes the basic asymmetry in the level of development of the services sector in developed and developing countries and encourages measures (i.e. commitments negotiated with developed countries) aiming at:

- a) the strengthening of developing countries domestic services capacity and its efficiency and competitiveness, through access to technology on a commercial basis;

- b) the improvement of their access to distribution channels and information networks; and
- c) the liberalization of market access in sectors and modes of supply of export interest to them.

These provisions can be linked to Article XIX, which while recognising the process of progressive liberalisation mentions that this should be done with due respect for national policy objectives and the levels of development of members. Furthermore, it is mentioned that “there shall be appropriate flexibility for individual developing country members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.”

Apart from economic factors, investment in the tourism industry also has the potential to do irreparable damage to the environment due to rapid expansion of construction without any proper attempts to deal with the waste that such construction and corresponding usage of the service result in. The imminent danger in the GATS is that it only vaguely addresses environmental concerns in Article XIV dealing with “general exceptions”. Trade policy researchers have argued that although this article is drawn from Article XX in the GATT the provisions in the GATS are far more limited in scope (Fuchs and Tuerk 2001). The burden of proof in case this article is invoked lies with the defending WTO member. By construction, if one cannot impose quantitative restrictions on the number of service providers in a member state, any issues relating to environmental sustainability are negated. The GATS is primarily concerned with investment flows; the consequences of such flows are, at best, merely an afterthought. Added to this, the negotiations on Emergency Safeguard Mechanisms (ESM) relating to Article X also seem to be going nowhere as developed countries have been obstructing and delaying any positive conclusion to these negotiations. Developing countries have also not been clear about their expectations from an ESM

Seven years is a reasonable period for countries to do sector wise assessments of present levels of liberalisation and the potential impacts of these clauses. A tourism assessment should be easier than others because developing countries like India have reached autonomous liberalisation levels that are far higher than what is included in their GATS schedules. Such an assessment could also throw light on whether domestic players, especially the small and medium enterprises have been able to strengthen their access to distribution channels and information networks like the CRS due to the entry of foreign tourism providers. Regrettably progress in these areas has been far from meaningful in the GATS council since these are more “good endeavour clauses” rather than those that are legally binding. Given that the assessment issue continues to take a back seat both in the WTO discussions and in the domestic context, it is unlikely that an analysis of past impacts will inform future commitments.

Mode 4 or temporary movement of natural persons is clearly an area where developing countries could meaningfully participate in liberalisation of services trade. But here again an examination of present schedules show that the commitments undertaken by the developed countries have very little to offer to the developing countries in terms of opening their markets or facilitating the administrative arrangements or providing national treatment in the area of movement of natural persons. Mode 4 concessions have hitherto implied that movement of labour in skilled and unskilled services is tied to movement of capital; that is, present commitments are largely restricted to business visitors and intra-corporate transferees. There are limited commitments for qualified specialist personnel and even here, they cannot move as individuals but should be an employee of the concerned service provider. If we assume the Goan economy is relatively tourism labour abundant in unskilled sectors this could augur well for the state’s comparative advantage in labour-intensive exports. There are, however, no hard statistics on the tourism sector to infer this.

Regardless, it is important for India to continue to emphasise the fundamental importance of Mode 4 if the ongoing negotiations are to have any meaning at all for developing countries. If this is not done the inherent imbalance in GATS and the basic asymmetries in trade in services will get further accentuated with increased level of commitments from developing countries in sectors of interest to developed countries. But if the previous rounds of multilateral negotiations are taken as indicative it is likely that the Doha round as well will be again an exercise in fostering greater capital movement with most of the commitments being made in sectors of interest to developed countries; namely, the first three modes of supply.

### **6.2.3. Article VI - Domestic Regulation**

GATS proponents often describe the provisions on domestic regulation, found in Article VI, as simply trying to discipline domestic regulations to facilitate trade and nothing more. But far from that, this article, which straddles both horizontal and vertical commitments, is likely to pose one of the agreements most dangerous threats to democratic decision-making. It is also interesting to note that the commitments phase continues with no actual consensus on Article VI. Along with negotiations on emergency safeguard mechanisms, government procurement and subsidies disciplines on domestic regulation remain uncompleted. The GATS working party on domestic regulation based on Article VI.4 is currently mandated with developing disciplines to ensure that certain regulations do not constitute an unnecessary barrier to trade. While in some cases regulatory reform may result in shedding excess and unnecessary restrictions, the challenge clearly for the local bodies and the state government, in dealing with the varied impacts of tourism in Goa, is to devise more effective regulations to implement desired public interest objectives.

It is unclear as to when these disciplines will be developed (they are expected to conclude before the current phase of negotiations) and how they will apply. Several developed countries have cautioned against the application of these disciplines sector by sector as they would impose another burdensome hierarchy of specific commitments to the GATS providing further hindrance to free trade in services. Article VI.4 states that rules must be formulated with a view to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. In the tourism context this is very broad policy coverage and could potentially call to question several legitimate policy tools (which would differ from geographical regions) aimed at regulating this industry. For example, it is unclear as to how technical requirements for construction along the beaches in Goa would fare under such disciplines. Government standards, which could include important environmental and social criteria, could be argued to be incompatible with the rules of Article VI.4. In circumventing this, any move to arrive at a mutually acceptable international standards for the tourism sector would be foolhardy, given the fact that standards are often, and rightly so, reflective of environmental and developmental specificities.

A recent document from the Working Party on Domestic regulation tabled in the GATS council on October 18 2002 gives examples of measures that will be addressed by disciplines under Article VI.4 (WTO 2002b). Examples submitted by member countries include under:

- 1) Licensing Requirements – instances when federal and sub-federal licensing and qualification requirements and procedures are different, making a license or qualification recognition obtained in one state not valid in other states;
- 2) Licensing Procedures – when it is necessary to obtain/renew the same license in every regional government;
- 3) Qualification Requirements – when there are different sub-federal regulations for recognition of qualifications;

- 4) Licensing Requirements – when there are restrictive licensing practices (tourism is specifically cited as an example) and permits are required for every single project. Also mentioned are qualification requirements other than education, practical training, experience and language skills; and
- 5) Technical Standards – when national standards diverge from international standards.

A more pertinent question would be on the ability of future governments to pass such regulations if the need arises based on an assessment. While local governments may successfully defend such regulations, it is likely that they would be obliged to subject existing regulations to arbitration and prove they are legitimate if a trading partner challenges it. Arbitration of course shifts to the WTO panel in Geneva widening the democratic deficit. Given that such negotiations are likely to intrude into internal policy making spaces it is unfortunate that both the WTO and member countries, including the Government of India, continue to shut out the possibilities of any meaningful debate.

#### **6.2.4. Article XVI - Market Access**

Market access disciplines fall under vertical obligations and apply only in sectors in which commitments are made. Limitations and conditions can be indicated in their schedules. Bound or unlimited commitments are made when a country inscribes 'none' in its schedule implying that it agrees not to limit:

- the number of service suppliers
- the total value of transaction or assets
- the total number of service operations or quantity of service output
- the total number of natural persons
- the requirement of a certain type of legal entity or joint venture
- the participation of foreign capital

The ability of policy makers to arrive at possible limitations, given that prudential regulation on limiting tourism activity varies in response to the ecological fragility of areas, requires enormous capacity and the ability to foresee future development. The inability of trade negotiators who are inept at environmental policies (and who have not consulted with their respective Ministries of Environment as in the case of India during the 1994 commitments) to do this is evident. Consider that only Egypt deemed it necessary to specify that inland water passenger and/or local tours are subject to the physical capacity of the Nile River<sup>47</sup>.

Reliance on the limitation mechanism is deeply problematic because of the recent trend in India of creating tourism zones inside protected areas, such as national parks, wildlife sanctuaries, and Tiger reserves. The Periyar Tiger Reserve, located in the Western Ghats in the state of Kerala, among the 18-biodiversity hot spots in the world, is only one example. There are three state run hotels operated by the Kerala Tourism Development Corporation (KTDC) functioning inside the Reserve in contravention to the law. It has been over six years since the lease agreement with the Kerala Forest Department expired but the hotels continue to operate. Added to this, the families of forest officials and the employees of the hotel reside inside the reserve. Private operators have not managed to get a foothold inside the Reserve but with the ongoing disinvestment process, both within the central and the regional level, the government run tourism departments are likely to be acquired by the private sector. The unravelling of the market access clause commitment without any limitation on operation in protected areas is surely an issue of serious concern. This is further complicated by the fact that there are many such protected areas where tourism is not practiced at all, despite tremendous economic potential. For example, Goa's Tourism policy states the need to diversify its tourism portfolio from the present beach destination to new areas such as eco-tourism, clearly implying that

the protected areas in the interiors are likely to be targeted. While the setting up of a Tourism promotion board is envisaged, there is no mention of setting up a tourism regulatory authority. It is difficult for us to predict both the full implications of India's GATS commitments as well as what prudential regulations can be put in place that could escape GATS challenges.

Any analysis of the implications of market access commitments would necessarily have to be informed about the ongoing work in the working party on domestic regulation. But it is important to state that the relying on the limitation mechanism is inadequate as it is a one-off right and any changes would imply the application of Article XXI. This Article allows for modification or withdrawal of a commitment states, given that a notice of three months is given after the commitment has been in place for three years. It requires negotiations with all the affected members and is subject to compensation by the affected parties. Affected countries are also allowed to retaliate, across other agreements within the WTO framework, within the rules of the dispute settlement body. Given the imbalance of power among member countries and GATS endeavour to progressive liberalisation, limitations are likely targets for removal as was evident in the leaked EC draft requests to India.

### **6.2.5. Article XVII - National Treatment**

The national treatment obligation ensures that members do not operate discriminatory measures in favour of domestic tourism suppliers. The article could make it difficult for local governments to pursue policies that would help local communities or protect the environment. In Goa the present practice of issuing restaurant licenses in some villages only to locals will clearly be a violation of India's national treatment obligations. Similarly, only tourist taxis whose owners are from within the village are permitted to park their taxis in front of the hotel in the village.

An influx of new competitors into a market dominated by locally owned small to medium enterprises (SMEs) would force these firms to either become much more efficient or to fall by the wayside. It is difficult for an SME to compete with a large multinational firm offering similar services, particularly if these services can be purchased in various parts of the world via computer reservation systems (CRS). Moreover, the fact that these SMEs are locally based implies a significant number of backward linkages into the communities they are based in; their disintegration would contribute to further losses in employment, as well as diminishing demand of locally made products to sustain hospitality services.

A recent document points out the dangers of the lack of guidance and clarity from the WTO secretariat on the issue of 'likeness' to determine the applicability of the National Treatment clause (Fuchs and Tuerk 2001). The scheduling guidelines state that members must accord the same 'equal' conditions of competition to foreign services and service suppliers of other Members, as it accords to its own "like" services and services suppliers<sup>48</sup>. The document notes that the jury is still out on the issue of likeness given that there has been only one brief examination of the issue in the EC-Bananas case, which arrived at a rather tautological conclusion. The appellate body confirmed the Panel's statement that entities providing 'like' services should be considered as 'like' service suppliers.

Adopting such broad definitions for national treatment commitments could also make it difficult to pursue many policies that have important developmental objectives. In the context of tourism, governments may wish to reserve the first right of refusal with local communities or indigenous people. Added to this as problems with centralized and bureaucratic planning of tourism are becoming increasingly evident communities and local bodies are asserting themselves in gaining a hold of Tourism development in their areas. In a historic declaration on biodiversity conservation and ecotourism, the *Gram Sabha* Lata of Chamoli, Uttaranchal, resolved on October 14, 2001 to follow a community-based method of tourism management<sup>49</sup>. The declaration has twelve salient

points. Point 4 mentions that in any tourism related enterprise in the area preference would be given to unemployed youth and underprivileged families. Point 5 ensures the involvement and consent of the women of the region at all levels of decision making while developing and implementing conservation and tourism plans. The Declaration acknowledges the spirit of Agenda 21 of the 1992 Earth Summit in Rio. In the neighbouring tribal state of Jharkand, *Johar*, a group representing indigenous peoples of the area, has formulated a conservation oriented, people centred tourism policy even before the government could get its act together. The policy has been sent to the Jharkand government forcing it to respond to the aspirations of the people who were part of the struggle for statehood<sup>50</sup>. India's lack of limitations in its schedule on national treatment will clearly leave it unable to respond to the felt needs of local people.

## **7. RECOMMENDATIONS**

Tourism is an activity that cuts across all regions and its impact is felt on all forms of life, whether within ecologically sensitive areas or within communities. Tourism development has especially done some of the worst damage in coastal areas, as it tends to be concentrated along narrow coastal stretches creating pressures on both the environment and existing populations. The small coastal state of Goa is only one case in point. In the light of this case study, we believe bridging these deficits in present policy can serve as indicative road maps for tourism policy makers and in turn for trade negotiators.

### **7.1 ACQUIRE A BROADER UNDERSTANDING OF TOURISM.**

While tourism is indeed a powerful economic force, and can be an effective driver for development, policy makers have paid scant regard to its diverse and complex impacts. Using the narrow trade window provided by the GATS tends to prioritise commerce over other factors. This study has shown that the effects of the present model of tourism in Goa include both environmental costs such as the degradation of the coast, as well as social costs, such as child sexual abuse. While tourism can lead to jobs for some, many others lose their livelihood options. Forceful displacement sanctioned by a disturbing state-industry nexus as in the case of the Taj is serious cause for concern. It is evident that tourism policy makers are not factoring in such non-trade issues while arriving at developmental plans. A broader window in the context of tourism is also relevant on two levels; one being how GATS led liberalisation will affect other sectors, such as health, water, energy, and transportation, the other on how the GATS is linked to other WTO instruments (i.e. TRIPS, TRIMS, AoA, etc).

### **7.2 ADDRESS REGULATORY FAILURE IN TOURISM.**

The current state of tourism regulation in Goa is poor. There is an urgent need to create new, and where possible amending, tourism regulatory and policy frameworks to support key environmental and social goals. While tourism development should be capped along certain stretches along the Goan coast that have been decimated due to the saturation of tourist led development, the governments should develop regulations and policies that support smaller-scale tourism initiatives that are initiated and managed by local entrepreneurs in areas where tourism development is feasible. The multi-stakeholder approach should be a prerequisite to any such planning initiative and the present state- industry compact on tourism should be eliminated.

### **7.3 ALLEVIATE DATA DEFICITS AND PROVIDE AN ASSESSMENT.**

The importance of making commitments in tourism only after a complete understanding of the sector and the complex interlinkages between sectors cannot be overemphasized. To properly evaluate the value of specific commitments, considerable work on classification and statistics must be undertaken. This information must also be made available mode-wise. For this the government should also initiate an assessment of present levels of liberalisation in the sector, along with the welfare and social development impacts of tourism. Issues of particular concern are those relating to women, children, labour rights, and the environment; these are possible indicators that could inform policy makers. Unless there is a relevant body of research to assess impacts, we urge the government to exercise caution during these negotiations.

#### **7.4. CLARIFY IMPLICATIONS ON SUBSIDIARITY AND ROLE OF LOCAL GOVERNMENTS.**

As tourism is often very regionally specific, it is optimal that the representative governments of the area (i.e. the *Panchayats*) effectively enforce planning, regulating and monitoring of tourism projects. The 73<sup>rd</sup> amendment to the Indian constitution recognises the need for decentralised planning. Future negotiations in services will inevitably intrude further into these internal spaces. Despite this, local governments are unaware of the commitments that the national government has made under GATS. This democratic deficit must be addressed. For the Government of India to make a commitment in the GATS implies that all states are affected by the commitment. Given the complicated nature of tourism and the vast array of potential effects it has, as well as the diversity that exists in India in terms of tourist destinations and corresponding policy requirements, it is not possible to apply a uniform policy towards all states. In light of this, what is required is a level of flexibility within these commitments to accommodate the inherent differences that exist within India. As the scope of the GATS mentions that all its provisions apply to local governments, it is important that the implications on subsidiarity be debated in the country before commitments are made.

#### **7.5 PROVIDE MORE CLARITY ON THE GATS.**

In the tourism context much leaves to be desired on what the GATS text actually means for sustainable and participatory tourism initiatives. While the major chunk of tourism providers in developing countries fall under the rubric of small and medium scale enterprises (SMEs), it is unclear as to how the GATS takes their interests into account; nowhere in the text of the agreement are SMEs mentioned. The meaning of a number of key GATS terms needs to be clarified before developing countries can take informed decisions while bringing their tourism sectors under the ambit of GATS clauses. For example, the text does not provide clarity on several key terms that could be the subject of arbitration. The disciplines on domestic regulation aim to ensure that regulations are “not [more] burdensome than necessary”. What is “more burdensome than necessary” is vague; similarly, the issue of national treatment to “like providers” does not specify what a “like provider” is. There are several such areas where these clauses could be interpreted broadly by dispute settlement panels. Furthermore, as disciplines are currently being formulated on domestic regulation, it is unclear as to whether they will apply horizontally or to specific sectors. In this ambiguous scenario it is advisable for negotiators to exercise utmost caution while making commitments. Ambiguity also extends to the clauses that deem the GATS a development friendly agreement. Article IV remains vague and the compressed timetable for commitments pays scant regard to the development priorities of developing countries. Article XIV is limited in nature when compared to the GATT and it leaves the onus of proving the legitimacy of the using the article on the defending country.

#### **7.6 INCREASE THE LEVEL OF COORDINATION BETWEEN MINISTRIES.**

It is evident that the negotiators in the tourism sector are not well versed in GATS rules while trade negotiators from the Ministry of Commerce are not familiar with tourism. Examination of policy documents also shows that tourism policy makers themselves are not knowledgeable about the environmental and social impacts of tourism. The environment and human resources ministries should also be involved in consultations, as should all the respective state government ministries. Lack of such coordination will lead to conflicts with the mandate of other ministries, as well as the commitments in other international fora such as the Convention on Biological Diversity and within human rights mechanisms such as the International Covenant on Economic, Social and Cultural Rights. Currently, India’s record of accomplishment concerning this harmonization leaves much to be desired.

## 8. CONCLUSION

Even GATS proponents will agree that a coherent regulatory framework, one that balances both economic and social agendas, is essential for any country to participate meaningfully in international trade and ensure that it benefits populations in most need for income and employment. In Goa, and in many parts of India, the problem clearly is the lack of such a framework to deal with the multitude of tourism impacts. Regional governments have turned to tourism as a vehicle to acquire more investment, income, employment and foreign exchange. It has meant that policy makers turn a blind eye despite the fact that the industry is often located in ecologically sensitive areas, that are often unsuited to deal with such impacts, and that economic, social and cultural human rights are being breached.

In Goa and India, the tourism industry is both an example of lack of adequate regulatory frameworks and violations of the few that are in place. The numerous violations of the CRZ by the tourism industry in Goa have shown how implementing zoning regulations is fraught with difficulties because of the ambiguities of ruling what areas fall under different zoning rules. There has been a call for further relaxation of this diluted regulation from both the local industry and the WTTC<sup>51</sup>. Data on the tourism sector - information that is crucial in assessing the GATS commitments possible in the sub-sectors and modes of supply - is lacking in India. The importance of making commitments in tourism only after a complete understanding of the sector and the complex interlinkages between sectors cannot be overemphasized. To properly evaluate the value of specific commitments, considerable work on classification and statistics must be undertaken<sup>52</sup>. This information must also be made available mode-wise.

The field study findings also show the dangers in treating tourism solely as a trade issue. On the one hand, it can be said that tourism has played a positive role in the socio-economic development of the local community who have benefited by way of employment and emergence of ancillary sectors that cater to the needs of the tourists. On the other hand, it has had adverse impacts, both environmental and social. Beach and coastal erosion due to unsuitable infrastructure development and beach degradation are examples of the former; the increasing incidence of child labour and reported cases of pedophilia represent the latter. There have also been cases of ground water depletion and subsequent water scarcity for locals due to increasing demands of tourism infrastructure. These negative impacts, becoming more increasingly apparent, are calling to question whether further tourism development in the fragile coastal strip of Goa is a viable development pathway for policy makers to follow.

The tourism sector is only indicative of the numerous problems that could arise when such an incipient regulatory environment, in a sector that is not understood by policy makers, is locked-in under a complex and effectively irreversible legal framework. The deficits - data, developmental, environmental and democratic - are entrenched in the GATS negotiations. A standstill in the negotiations and devoting time for bridging these deficits, we believe, is the rational choice for India.

## APPENDICES

### APPENDIX 1 – CRZ I AND NO OBJECTION CERTIFICATE VIOLATION BY THE TAJ



This picture depicts the illegal bridge built by the Taj Fort Aguada Beach Resort from the village of Sinquerim. The bridge was built without the required No Objection Certificate of the Archaeological Society of India, and is also in violation of the CRZ as it is built within the boundaries of a historical monument.

### APPENDIX 2 – THE TAJ FORT AGUADA BEACH RESORT



Taken from the café of the Taj, this picture shows the proximity of the pool to the coastline. The beaches of Candolim, Baga and Calangute can be seen on the upper right. The swimming pool uses water from the *Panchayat*, though surrounding villages have chronic water shortages.

### APPENDIX 3 – THE GOA MARRIOTT RESORT



The pool of the Goa Marriott is located directly on the coast of the Mandovi River. This construction was brought to court as a CRZ violation. During the monsoons, the high tide line is parallel to the pool, resulting in it being closed to the public.

### APPENDIX 4 – PROPOSED SITE FOR TAJ AMUSEMENT PARK



The Helipad on top of Sinquerim Hill is leased by the Taj from the Government of India. The Taj proposes to build the amusement park on this site, as well as the surrounding hills, regardless of the fact that the *Panchayat* has opposed this construction.

**APPENDIX 5 – PLASTIC WASTE DUMP AT ANJUNA BEACH**

Anjuna Beach is remarkably busy during the Christmas season, yet does not have the infrastructure required to support the waste that visitors bring. The pile of plastic bottles depicted here is a common sight, whether near the coastline or behind the beach.

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## ENDNOTES

- <sup>1</sup> See Article XIX.1.
- <sup>2</sup> Note that actual figures could not be found from Government statistics after 1999; thus, projections were used for 2000 onwards.
- <sup>3</sup> At this stage, we will not provide a detailed explanation of the GATS itself; refer to section 6 for a discussion of the agreement and its relevant articles.
- <sup>4</sup> The brevity of or discussion regarding the relevance of sand dunes does not reflect their importance to environmental sustainability. Alvares' (2002) study provides a more detailed analysis of the relevance of sand dunes, particularly on pages 128-172. Also see Mascarenhas (2001).
- <sup>5</sup> The Economic Times, August 22, 2002
- <sup>6</sup> The Economic Times, August 22, 2002
- <sup>7</sup> This information was gleaned from the Environmental Impact Assessment and plans submitted for the sanction of the Candolim Panchayat, dated November 5, 1997.
- <sup>8</sup> *Comunidade*, or *Gaunkari*, is an indigenous common property system first developed during Portuguese colonization; in essence they are local self governing bodies that look after community property holdings.
- <sup>9</sup> See "Resistance Building Up Against Recreation Park", Herald, August 9, 2002.
- <sup>10</sup> See UN (2001) for a more detailed statement regarding the interlinkages between trade law and human rights law.
- <sup>11</sup> Alvares revisits the alarming concerns that he raised in a 1978 article published in Inside Outside titled "Goa, Finished in Ten Years". His present conclusion is now that the state is well on its way to irreversible environmental decline. The 1978 article recounted the conflicts over industries like chemicals, mining, and sugar refining that were opposed as highly polluting, and stressed how the Town and Country Planning department might have a positive role to play in ensuring that real estate development be developed as per planned guidelines.
- <sup>12</sup> This was added to the CRZ by an Amendment in 1997.
- <sup>13</sup> See Indian Council for Envirolegal Action v. Union of India, 1996 (5) SCC 281.
- <sup>14</sup> See CRZ annexure 2, (v).
- <sup>15</sup> See Goa Law Times, 1995 (1) Goa L.T. 181.
- <sup>16</sup> According to a local activist.
- <sup>17</sup> According to the Goa State Coastal Zone Management Plan, the nearest beach to the hotel, Candolim, is classified as CRZ III. Sand dunes & forts are classified as CRZ I.
- <sup>18</sup> Based on survey plans of the Sinquerim Fort Aguada with the Comunidade of Calangute.
- <sup>19</sup> See "Tourism Takes a Wrong Turn", Deccan Herald, October 12, 2002.
- <sup>20</sup> As stated by the *Sarpanch* of the Calangute village Panchayat, Mr. Agnelo Fernandes.
- <sup>21</sup> Based on a comparison of old and new survey plans with the NGPDA.
- <sup>22</sup> See Appendix 1 for photographic evidence.
- <sup>23</sup> Based on a conversation with Sarita Rodrigues, Human Resource Manager at the Marriott.
- <sup>24</sup> Based on interview with "Meena" on August 8, 2002.
- <sup>25</sup> Based on an interview with "Salim" on August 13, 2002.
- <sup>26</sup> From Deccan Herald article dated June 7<sup>th</sup>, 1996.
- <sup>27</sup> We consider the Taj and not the Marriott here due the explicit nature of the human rights violations incurred by the residents of Sinquerim.
- <sup>28</sup> Based on personal communication with representatives of the Sinquerim Heritage and Nature Club.
- <sup>29</sup> *ibid.*, 2.
- <sup>30</sup> *ibid.*, 2.
- <sup>31</sup> See "India opposes EU move to Redefine 'market access' Norms", Business Standard, August 21, 2002.
- <sup>32</sup> See "What Does The GATS Mean...For India", Economic Times, September 1, 2002.
- <sup>33</sup> Article XIX (1) states that "In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization."
- <sup>34</sup> The GATS negotiations, in which countries have to respond on more than 160 sub sectors are scheduled to end by January 2005, are only one part of a huge work program mandated at Doha. Before the next ministerial in Cancun Mexico- September 2003, the ministerial declaration calls for substantive discussions in 8 working groups and General Councils. Also between Jan 2002 and Jan 2005 there will be discussions on 9 issues, among which include Implementation, Agriculture, Services, Industrial Tariffs, TRIPS, Anti-Dumping, Relationship between Regional Trade Agreements and the WTO, Dispute Settlement Understanding and Trade and Environment. This is clearly a huge, if not impossible, workload for developing country delegations in Geneva, many of which have only one or two WTO specialists. It is also important to keep in mind that most of these countries are still grappling with the implications of the Uruguay Round.
- <sup>35</sup> This document can be found at <http://www.gatswatch.org/leakannounce.html>.
- <sup>36</sup> For a detailed overview of services related to tourism, see Granzin-Jorg and Jesupatham (1999, 30).
- <sup>37</sup> For example, see Sreekumar and Govindan (2002).
- <sup>38</sup> On December 6, 2001, a communication from Cuba, Senegal, Tanzania, Uganda, Zimbabwe And Zambia to the members of the Council for trade in services reinforced the call to commence assessment of trade in services and asked that a first initial assessment be carried out by March 2002. The communication mentions that further negotiations may only commence after conclusions from this first assessment have been drawn, and negotiations should be adjusted in accordance with these conclusions. This document can be found at [www.wto.org/english/tratop\\_e/serv\\_e/s\\_propnewnegs\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/s_propnewnegs_e.htm).
- <sup>39</sup> Emphasis added. See for example Chanda (2002), 157-164.
- <sup>40</sup> Organized by the Ecotourism and Conservation Society of Sikkim (ECOSS) in partnership with The International Ecotourism Society (TIES) and the Mountain Institute the conference was one of the key events being held around the world as part of the 2002 United Nations International Year of Ecotourism.
- <sup>41</sup> See "100 P.C. FDI for Airport Projects, Defence Sector Opened Up for Private Participation, FDI", The Herald, May 10, 2001.
- <sup>42</sup> See the Reserve Bank of India statistics at [www.indiaonestop.com/economy-fdi.htm](http://www.indiaonestop.com/economy-fdi.htm).
- <sup>43</sup> See "Projects Worth Rs 28,921-cr Postponed", Business Line, Bangalore, November 22, 2001.
- <sup>44</sup> *ibid.*

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<sup>45</sup> The complete text of the GATS legal document can be accessed at [http://www.wto.org/english/tratop\\_e/serv\\_e/1-scdef\\_e.htm](http://www.wto.org/english/tratop_e/serv_e/1-scdef_e.htm).

<sup>46</sup> In September 1991, the Congress Government introduced the 72<sup>nd</sup> (Panchayats) and 73<sup>rd</sup> (Municipalities) constitutional bills. The Lok Sabha passed the bills on 22 December 1992 after which the Rajya Sabha passed the two bills, their sequence changed to 73<sup>rd</sup> and 74<sup>th</sup> respectively. Following the ratification by both the houses the President gave his assent on 20 April 1993. This culminated in the passing of the Constitution 73<sup>rd</sup> and 74<sup>th</sup> Amendment Acts in 1992, which inserted Part IX and IXA in the Constitution. While Part IX relates to "Panchayats", Part IXA relates to "Municipalities". The provisions in Part IX and IX A are more or less parallel and analogous in nature. See also EQUATIONS 2001b.

<sup>47</sup> See Egypt, Schedule of Specific Commitments, GATS/SC/30, 15 April 1994.

<sup>48</sup> See WTO document on guidelines for the scheduling of specific commitments.

<sup>49</sup> The Nanda Devi Biodiversity Conservation and Eco Tourism Declaration, October 14, 2001 is available with the EQUATIONS Campaign Information Support Programme at [info@equitabletourism.org](mailto:info@equitabletourism.org).

<sup>50</sup> The tourism policy formulated by *Johar* is available with the EQUATIONS Campaign Information Support Programme at [info@equitabletourism.org](mailto:info@equitabletourism.org).

<sup>51</sup> The WTTC states that "the coastal regulation zone act, which instead of protecting the environment has become one of the biggest stumbling blocks to the development of seaside resorts. Horror stories abound of project delays running into many years because of litigation over the Coastal regulation zone and its interpretation (WTTC 2001)."

<sup>52</sup> A December 2001 communication by developing countries further mentions "...the current negotiations are likely to be highly stacked against developing countries. Developing countries will be faced with many requests but, apart from some traditional sectors, will not be equally offensive in their approach. It is instead primarily the export interests of the developed countries that are aggressively driving current GATS talks. Yet, at the same time, developing countries, through GATS, as well as the conditionalities imposed upon them by other financial institutions, will be under tremendous pressures to open up. The final balance of negotiations between rich and poor countries, should they proceed in this manner, would therefore be in question". (WTO 2001c).