

National Environment Policy

Ascendance of Economic Factors

The NEP approach to conservation strategy emphasises giving primacy to economic instruments and facilitating economic valuation of environmental resources and services. However, it falls short of the ideal in several key areas, including its lack of attention to the preservation of biodiversity. The NEP needs to be amended to proclaim unambiguously the national commitment to conserve invaluable biodiversity and to enshrine stakeholder-based biodiversity conservation as the principal concern of environmental policy.

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India is one of the 12 'mega' biodiversity countries and holds 8.1 per cent of the world's total biodiversity. It is also one of the world's eight centres of origin of cultivated plants. Being a predominantly agriculture-based country, India also has a mix of wild and cultivated habitats, giving rise to a specialised biodiversity, which is specific to the confluence of two or more habitats.

As the human knowledge base improved, and as the world recognised biological diversity conservation as an overarching concern, it came to occupy the centre-stage of international and national policy discourse, culminating in the Rio Earth Summit (1992) and the Convention on Biological Diversity. The movement from the Stockholm Summit (1972) to Rio de Janeiro (1992) and Johannesburg (2002) marks a definite shift away from clean environment-centred policies preoccupied with technological fixes for pollution abatement, and the elevation of biodiversity conservation and sustainable development as the guiding principle of environment policy.

The draft of the national environment policy is now available on the Internet (<http://envfor.nic.in/nep/nep.pdf>). It is proposed as a 'comprehensive' framework addressing environmental management challenges within and across a large number of sectors, obviating separate sector/cross-sector policies. It seeks to provide a unified approach integrating

multiple mechanisms. However, the NEP needs to be amended suitably to proclaim in unambiguous terms the national commitment to conserve invaluable biodiversity and to enshrine biodiversity conservation as the principal concern of environmental policy.

Principles, Strategies and Actions

The proposed NEP lays down seven principal objectives that are to be realised through various strategic interventions by public authorities at various levels. The use of terms such as 'critical' ecological systems and resources does raise questions of what is implied by it and who would be responsible for distinguishing the critical from the non-critical. Also, the non-use of terms like biodiversity in the principles reinforces the impression that the policy somehow does not accord biodiversity the importance it deserves. Most of the principles are adapted from those enunciated in the United Nations Conference on Environment and Development (UNCED) documents. The 'key environmental challenges' presented tend to be as general as they possibly can be and steer clear of any attempt to pinpoint current strengths, weaknesses and the focal themes for reform. In fact, there is hardly anything here that is India-specific. The document then invokes a set of 14 principles drawn mostly from UNCED declarations to guide the 'strategic interventions'. There is considerable ambiguity

on how these have been internalised into prevailing policies, and introspection, unfortunately, is missing.

Contrary to expectations, the right to information necessary to facilitate formal disclosures in public interest and for effective civil society participation in environmental protection, is not among the principles enunciated. Several environmental litigations and accidents like the Bhopal tragedy have repeatedly underlined the need for instituting a right to information regime for rational environmental governance. Another notable absence from the guiding principles is the provision to protect cultural identities, knowledge systems and livelihoods of diverse indigenous communities who are directly dependent on ecological resources. Admittedly, in the Indian context, very large numbers of indigenous communities are caught in a no-win situation between the pressures of modernity and the disempowerment inflicted by prevailing environmental laws, on the one hand, and the need to preserve cultural identities and secure livelihoods, on the other. The guiding principles are certainly necessary to provide direction to the policy. However, that is not sufficient to make it an effective instrument. The policy must also attempt some goal-setting for its implementation and translation into verifiable time-bound targets.

The suggested strategies and actions are grouped under eight categories: (1) regulatory reforms, (2) enhancing and conserving environmental resources, (3) environmental standards, management systems, certification, and indicators, (4) clean technologies and innovation, (5) environmental awareness, education, and information, (6) partnerships and stakeholder involvement, (7) review of the policy and (8) review of implementation. The regulatory reforms envisage reorientation of the system through changes in legislative framework and substantive reforms involving various aspects of regulatory decision-making and associated processes. The main thrust is to give primacy to civil law over what is perceived as the pre-eminence of criminal law in the prevailing regime. The current emphasis on criminal law, it is argued, has proved to be rather ineffective and has only helped to

'provide fertile opportunities for rent-seeking'. The NEP expects civil law to encourage 'preventive policing through orders and injunctions' and advocates 'a judicious mix of civil and criminal' approaches with preference for civil actions in most situations. The criminal law would be the last resort.

For such an approach to be effective, the judicial process must move at a faster pace. Reforms would also be needed to prevent money power from overwhelming civil litigation. Additionally, 'polluter pays' is proposed as a guiding principle of environmental law. It is also necessary to incorporate the principle of punitive damages to make this approach sufficiently robust. However, these principles are neither well-developed nor widely applied in India. Although the apex court has, in a few rare instances, pronounced certain judgments applying such principles, proper codification is required to deal with the complex ramifications of environmental litigation, where the disputes could range from cases involving an aggrieved individual to that of irreversible damage or complete loss of ecological entities of 'incomparable' value. Further, the concept of 'class action' also needs to be codified if the civil law is to assume the status that NEP envisions. Serious thinking is needed beyond what is contemplated in the NEP as all these have a bearing on the entire judicial process. While the NEP's larger goal is to provide a comprehensive regime, it has not addressed the policy challenges of a cleaner and safer working environment or issues of occupational health and safety – the question of environmental management related to industrial accidents and episodic events. These issues were highlighted after the Bhopal accident and the MoEF had taken certain initiatives. When a comprehensive policy is being developed, all these issues including environmental catastrophes from accidents and natural disasters must also be addressed.

Issue of Environmental Clearance

The suggestions grouped under the head 'substantive reforms' focus heavily on environmental clearances for development projects and related issues. It suggests that the state and central governments, may be 'encouraged' to institutionalise regional environmental assessments to identify major concerns before any specific project

is even thought of. In the prevailing system of environmental clearance, as the states compete to attract investments overlooking the environmental costs, the government's interests often coincide with those of the industry. The entire process has been considerably vitiated, with the soundness of environmental assessments being increasingly questioned. The NEP, unfortunately, appears to be concerned more with speeding up clearances than introducing comprehensive reform. It contemplates greater decentralisation of the clearance mechanism without presenting a review of the current system. The present system is already decentralised to an extent with each state having considerable say and public hearings being left to the district authorities. On several occasions, the apex court has had to step in to save critical environmental resources after denotification of protected areas or grant of clearances without adequate environmental safeguards. The pressing need is for a fundamental shift in the realm of environmental clearances and decision-making by moving towards a regime that will free the technical scrutiny, monitoring and evaluation from both government control and industry influence.

The extent of decentralisation desirable must be seriously examined in the context of current capabilities for independent scientific and technical scrutiny at the various tiers of administrative and political hierarchy. In fact, the NEP itself notes that 'technical capabilities, monitoring infrastructure, and trained staff' are inadequate even at the state level. Without these capabilities, minimum standards cannot be maintained uniformly and consistently in the environmental clearance process. It must also be noted that the devolution of powers from the state to

local bodies is a rather complex issue with considerable heterogeneity across states. It is important to carefully study the full ramifications of decentralisation with respect to environmental clearances before hastening to prescribe it as a means to expedite investment. While unwarranted delays ought to be eliminated, the emphasis must shift to ensuring genuine and conscientious scientific scrutiny of environmental concerns. Measures for streamlining the system must ensure proper completion of the due process in a transparent manner. For all practical purposes, environmental clearance is the last chance that the hapless biodiversity and dependent communities have before the interests of investors begin to dominate over environmental concerns in a regime of non-compliance and weak enforcement.

Considerable attention has been devoted to the coastal environment under the sections on substantive reforms (5.1) and resource conservation (5.2). It is repeatedly stated that the coastal environmental management must be 'firmly founded on scientific principles', almost implying that this is not so at present. It pleads for 'exempting certain activities' and vesting to the 'extent feasible' the environmental clearance for projects in the coastal zone, in the hands of the state government. The NEP seems oblivious of the stubborn refusal of almost all coastal states to fully cooperate on measures to address coastal environmental management. State after state had sought exceptions to the regulatory framework and allowed development activities deleterious to coastal ecology. There is no recognition in the NEP of the conservation challenges of riverine and coastal-marine biodiversity or the fisheries sector. It may be noted that exotic

INDIA FOUNDATION FOR THE ARTS

REQUEST FOR PROPOSALS

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India Foundation for the Arts (IFA) is an independent grant-making organisation in the arts. Under its arts research and documentation programme, IFA supports research that strengthens the practice and theoretical basis of the arts, funds documentation towards bringing valued cultural materials into the public domain, and also offers grants for preparatory research towards projects like novels, exhibitions, films or performances.

IFA recently announced its Request for Proposals (RFP), describing application requirements, for the latest round of grants to be made under the arts research and documentation programme. **If you want to apply for an IFA grant under this programme, please write for an RFP (available in English and some other Indian languages) to: The Executive Director, India Foundation for the Arts, Tharangini, 12th Cross, Raj Mahal Vilas Extension, Bangalore – 560 080; Tel/fax: 080 - 23610584/23610583; e-mail: ifabang@vsnl.com**

You can also download the RFP from the website: www.indiaifa.org

fishes have been introduced into the inland water bodies and riverine systems without effective mechanisms to examine ecological consequences, particularly on biodiversity and endemic aquatic life. Policy needs of the marine protected areas also find no mention. While the proposal to 'revisit the coastal regulation zone (CRZ) notifications', so as to provide a holistic approach, is welcome the suggested action points cast doubts on the direction in which the proposed review is headed. One major concern demanding the attention of policy-makers is the question of water allocations for maintaining ecological services. Also, as an environmental issue, the difficult problem of land-water linkage is not being addressed in the present water or land policies. For example, in many areas surface flows of water have in the past helped to prevent increase in soil salinity by leaching of the salts. Reduced surface flows have led to increase in soil salinity in many areas, with negative environmental and social impact. There is little that local action can do to reverse or arrest such problems. Integrated land-water resources management is one challenge crying out for a place in a comprehensive environmental policy initiative, because at present not even the broad contours of such a policy are in place.

The NEP has mooted several steps to internalise the environmental costs into the financial decisions of enterprises. The proposed policy shift is expected to usher in a new era in environmental regulation based on a judicious mix of economic and regulatory instruments. The NEP proposes to further strengthen the initiatives of Central Statistical Organization for incorporating natural resource accounting into the system of national accounts. This approach relies heavily on economic valuation of environmental resources and the use of environmental accounting practices and benchmarks in financial audits. Additionally, financial institutions will be encouraged to adopt appraisal practices that examine environmental risks adequately while financing projects. The NEP places much hope on the experiences gained in developed countries. However, in these countries the integration of economic instruments follows a long history of stringent environmental regulation, existence of institutional arrangements for ensuring full compliance, public participation assisted by the wide acceptance of the right-to-know principle and civil litigation based on the 'polluter

pays' principle, punitive damages and class actions.

Conservation of Resources

There is considerable continuity in the NEP with established approaches in meeting conservation challenges. It proposes to complement current efforts with multi-stakeholder partnerships involving the forest department, local communities and investors, 'rationalisation' of restrictions on the cultivation of 'forest species outside notified forests' and 'universalisation' of joint forest management. The most crucial policy issue is the relationship between indigenous communities and the forest department. If these communities have to truly exercise their civic rights, then a fundamental change is needed by due recognition of the governance institutions of communities and granting proper autonomy to these local institutions from the forest department. The proposal to 'give legal recognition of traditional rights' is ambiguous in the absence of even the broad contours of a policy for restructuring the role of the forest department. While most documents call for a change in the 'mindset' of the forest department, it is clear that this can never come about without policy support for mainstreaming of the forest department, mandating it to work in tandem with civil society initiatives.

Biodiversity, it must be emphasised at the risk of repetition, is a concept that encompasses several levels: (1) multiplicity of different, distinct species, (2) genetic variations within each species, (3) different populations of each species and (4) diverse life-support systems or habitats. In a national strategy, it must also cover domesticated biodiversity consisting of thousands of cultivated plants, local variants and many breeds of animals. Based on contemporary scientific knowledge, the policy ought to address challenges at all these levels. However, the NEP falls short of presenting even the broad outlines of such an enlightened approach. Further expansion of the protected area (PA) network is envisaged for wildlife protection, subject to certain norms. However, substantive changes are not considered in the institutional arrangements except for the rather loosely formulated suggestion promoting multi-stakeholder partnerships for enhancement of wildlife habitats in 'conservation reserves' and 'community reserves' to

'derive both environmental and eco-tourism benefits'.

A major national exercise – the national biodiversity strategy and action plan (NBSAP) – was undertaken by the ministry of environment to address the entire gamut of these issues. Instead of building on it, the NEP merely states that NBSAP requires to be reviewed in terms of the NEP. The NBSAP, recognised as the most participatory effort of the kind ever undertaken in the country, addresses the biodiversity conservation challenges at all levels rather comprehensively. The NEP, in contrast, appears to gloss over some of the major concerns. Many of the emerging policy challenges are not properly articulated in the NEP. The policy does a great disservice by avoiding any discussion on the specific suggestions emerging from NBSAP. Having promised a comprehensive policy framework cutting across sectors, one would have expected the approach towards biodiversity conservation to explicitly recognise the crucial linkages between biodiversity and livelihoods. The NEP does not appear to acknowledge that a large part of biodiversity lies outside the PA network. Both within and outside the PA network, conservation strategy cannot be complete without exploring the opportunity inherent in the complementarities between livelihood and ecological security that characterise people-nature relationships in a large number of contexts. Based on these kinds of considerations, an effort like NBSAP, for instance, suggests a major reworking of the conservation strategy, which has not been incorporated into the NEP.

When it comes to the protection of biodiversity hotspots, the NEP does not consider local communities as partners. Instead, in continuity with the present

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approach, the local communities would be persuaded to find alternative livelihoods. However, environmental clearance for large projects could be considered even in such areas, subject to regular 'cost-benefit analysis' with the proviso that hotspot bioresources would automatically be assigned 'values' that are either 'at or near the upper end of the range of uncertainty'! There is, of course, considerable ambiguity on how the values would be determined or who would adjudicate over the estimated ranges of uncertainty. In case of biodiversity hotspots, the wise approach would be to discourage all large alterations that would have an irreversible impact and adopt a truly multi-stakeholder conservation strategy involving the local community as empowered partners.

The NEP presents a new direction for environmental policy and conservation strategy, by seeking to give primacy to economic instruments and supporting such an approach by facilitating economic valuation of environmental resources and services. If the challenge is to provide credible policy directions for recasting biodiversity conservation and environmental protection as a true multi-stakeholder endeavour, then this approach needs considerable rethinking. Given the history of conservation ethics of diverse communities in the country, and the current state of scientific knowledge, environmental policy must be firmly rooted in stakeholder-based biodiversity conservation and sustainable development. **EPW**