

# Comment



## Draft NEP 2004: a flawed vision

THE draft National Environment Policy (NEP: <http://envfor.nic.in/nep/nep.pdf>) released by the Ministry of Environment and Forests (MoEF) has attracted much attention. It represents the first-ever attempt to draft a policy for the environment as a whole. At first glance, the document appears to be quite comprehensive and sophisticated. It endorses a broad set of concerns, including intra-generational and inter-generational equity. It identifies the major environmental problems that India faces, and outlines their proximate and ultimate causes. In addressing them, it proposes to follow several principles such as the 'precautionary principle', 'polluter pays', 'incomparable values', 'public trust', 'decentralisation', and 'integration'. It then tries to outline specific strategies and actions that should be given priority in each sector. We argue, however, that the draft is fundamentally flawed in its vision and its analysis of socio-environmental problems. Consequently, instead of mainstreaming environmental concerns into all development activities and sectors (its stated goal), it 'mainstreams' the current notion of unbridled development into even the limited environmental regulation we have.

The draft can be and has been criticised at many levels. At the most elementary level, it is guilty of a muddled language and structure. First, 'environment' is said to 'comprise all entities, natural or manmade, which provide value', a position that results in archaeological sites being included in an environment policy for the first time, although current dwellings are left out! Second, the draft outlines 'objectives', 'principles', 'strategies' and 'actions' rather carelessly. Thus, objectives (iv) to (vii) ('integration of environment concerns', 'ensuring efficiency of resource use', 'applying principles of good governance' and 'enhancement of resources for environmental conservation') are more like means or strategies to achieve the objectives (i)-(iii), viz., conservation, intra-generational equity and inter-generational equity (=sustainability) (see p. 4). Similarly, principles (i)-(iii) about 'human-centred development', 'right to development' and 'environmental protection as an integral part of development' are too broad to be meaningful, while principle (vii) regarding 'equity' reads like a repetition of objectives (ii) and (iii). Further, key strategies such as 'regulatory reforms', 'use of economic principles', 'environmental standards', 'technological innovation', 'awareness, education and information', and 'stakeholder involvement' are relevant to all sectors. But for some reason the sectoral discussions have been inserted as a section that parallels the sections on these strategies. Finally, some principles such as decentralisation and (cross-sectoral) integration are mentioned but never really converted into concrete strategies.

At the next level, even with respect to existing sectoral policies and programmes, one can identify many glaring contradictions and inexplicable silences in the specific strategies and actions identified in the draft. For

instance, the draft blithely talks of the integrated management of river basins, while the government is actually pursuing a massive plan for inter-linking of river basins (Sharma, 2004) – a classic case of taking an ostrich-like attitude to controversial issues. There is no mention of direct regulation of groundwater extraction, only vague talk of ‘taking account of impacts of [free] electricity’ for pumpsets, when in fact a model groundwater regulation bill has been pending with the states for several years. The section on biodiversity makes no mention of the National Biodiversity Strategy and Action Plan prepared by MoEF itself through a lengthy, nation-wide consultative process nor does it cover grasslands, deserts, or marine ecosystems (Kothari, 2004). And that on climate change contains no concrete suggestions for action, only political posturing, when in fact India has already signed the Kyoto protocol and has begun pilot-level activities on the so-called Clean Development Mechanism. The draft is also completely silent on environmental hazards of mining and nuclear energy generation as well as the workplace environment (Ghotge, 2004).

While the draft thus presents no bold strategies or actions for environmental conservation, it seems to be bent upon preparing the ground for diluting existing environmental regulations in the name of ‘streamlining’, ‘rationalising’ or ‘decentralising’ the process. There is loose talk of revisiting coastal zone regulations to avoid ‘unnecessarily impeding livelihoods or legitimate economic activity... or infrastructure development’, and of piecemeal decentralisation of environmental clearance to state authorities, without addressing the major problems of non-transparency and bias in EIA processes at large. Equally suspect is the introduction of ‘environmental offsetting’ and exemptions to the forest conservation act in the name of ‘overriding national interest’ without defining this, and by limiting the use of criminal law to only ‘potentially provable’ cases. Even more absurd is the notion that the private sector can be used to ‘monitor environmental compliance, with ironclad safeguards against possible conflict of interest or collusion’! These acts of commission are perhaps the most dubious features of this draft and need to be condemned in the strongest language possible.

It is, however, necessary to go deeper than these criticisms. In a way, to expect that an ‘national’ policy for the environment as a whole can do justice to the specifics of each sector, or to think that it can override individual sectoral or state-level policies and statutes is unreasonable. The real failure of the draft thus lies in it not recognising and acknowledging its constitutional and practical limits and not focusing on the only doable and yet non-trivial task, viz., to put forth a vision for environmentally sound development and broad principles for designing strategies and actions to achieve it. It is here that the draft, with all its slips and deficiencies, reveals its ideological underpinnings, and it is at this level that any debate on an alternative also would have to begin.

A careful reading of the draft, as well as other documents that have emerged over the past few years from the government (including the National Water Policy 2002), reveals a fairly coherent and inter-linked set of ideas – ideas that seem to transcend departmental, ministerial and even political boundaries. These are:

a) that development simply means poverty alleviation, and that in turn simply means increasing the material standard of living, or more generally raising incomes; so the environment matters because, but only to the extent

that, it provides material goods and services, or to the extent that it provides income for other reasons,

b) that poverty and environmental degradation are primarily caused by poorly assigned or enforced property rights, poorly designed fiscal policies and so-called governance constraints,

c) consequently, ensuring environmental conservation in a developing country like India only requires improved economic instruments, devolution of administrative responsibilities and public-private partnerships while one continues the pursuit of wealth and consumption, privatisation of resources and globalisation of capital.

Each of these ideas bears critical scrutiny.

The draft seems to start on the right note by saying that its goal is 'to mainstream environmental concerns in all developmental activities.' Unfortunately, it then defines 'development' only in terms of 'poverty alleviation', which in turn is defined essentially in material terms, thereby putting forth a highly *impoverished* notion of human well-being. The environment is important not only for the goods and services it provides but also because it constitutes a part of the world that we live in and provides aesthetic and cultural forms of well-being.

The problem is that while the direct material dependence of the rural and/or poor communities on natural resources is now acknowledged,<sup>1</sup> there is still a belief that only urban rich can afford to care about biodiversity or wildlife, while the rest have to give priority to raising their material standard of living. This belief is reinforced by those who see 'pure environmental concerns' such as biodiversity as being outside or beyond any notion of sustainable development (Upadhyay, 2004b). But this separation is a big mistake. Neither are the poor disinterested in the non-material aspects of the environment nor are the urban rich any less dependent on natural resources – in fact they are the bigger consumers. And enough evidence exists to suggest that biodiversity or wildlife can only be conserved by communities who somehow depend upon those ecosystems for their livelihoods and long-run development. More important, no community can divorce itself from the aesthetic and cultural values of nature in the pursuit of material wealth and then hope to re-connect with nature at some later stage. For India to adopt a model of 'environment-after-development' as has happened in many western capitalist countries (and in erstwhile socialist ones as well) would be a big mistake, because our dependence on nature for material and cultural needs is so much more intense. We need a broad and holistic vision of human well-being to inform our development process all the time in all contexts.

Why then are we not able to achieve this vision of environmentally sound development? What are the causes of environmental degradation? The NEP draft implies that economic growth (actually over-consumption) and poverty are equally important proximate causes. Such even-handed treatment is neither factually tenable nor morally supportable. For instance, in the case of forests, there is enough evidence now to say that the major portion of forest loss and degradation in India since the mid-1800s is due to indiscriminate industrial logging, conversion to commercial plantations of tea, coffee or wood, or submergence under reservoirs. And surely even where people have hacked forests for fuelwood headloading, should it be seen on the same footing as

degradation for the sake of capital accumulation?

More important, the draft NEP identifies the ‘deeper’ causes of poverty, population growth, and (over)consumption as ‘institutional failures, fiscal policies, market failures and governance constraints’ (p. 3). This is shallow analysis, to say the least. Surely these are not failures arising primarily out of ignorance of the policy-makers? There are deeper causes of these failures. First, the absence of well-defined property rights, as in the case of open-access forests and common lands being degraded by rural communities, is often a direct result of the colonial government consciously de-recognising community institutions. Second, where new regulatory mechanisms have been created, as in the case of pollution control, powerful polluting industries both lobby for lower environmental standards as well as flout these standards with impunity, while the voices of the affected communities remain unheard. And these imbalances of power are directly related to the structure of the economic system that allows (even exalts) capital accumulation and enables capital to ‘walk away’ from places with tighter environmental norms while not permitting free movement of labour. Third, as Gandhiji said, ‘there is enough for every man’s need but not for one man’s greed.’ So we cannot hope to achieve a sustainable and equitable society unless there is a sea change in the value systems held by the majority of society – an increased concern for nature, for others today and for future generations.<sup>2</sup> Finally, we need to recognise that these fundamental forces interact, and so efforts are needed simultaneously on all fronts to address these problems. In particular, the capitalist economy very actively fosters the culture of consumption by fetishizing commodities, because increasing demand is necessary to keep the capitalist enterprise going.

Given the focus of the draft NEP on economic and institutional factors, the principles it recommends are naturally focused on fiscal, regulatory and administrative reform, with some passing mention of technological innovation and awareness building. But the draft goes overboard in elaborating on the economic principles, while leaving the principles of decentralisation, transparency and participation vague and their application in the context of rights and regulation haphazard. And the lack of a political economy perspective means that the links between economic policies and environmental governance are left untouched.

*Deification of economic efficiency:* The idea of using ‘economic approaches’ to solving environmental issues has gained much currency in recent years and is linked to the exalted position that the concept of ‘economic efficiency’ has come to occupy in development thinking. Economic approaches consist of two major elements: the use of economic instruments to regulate behaviour and the use of cost-benefit analysis (CBA) to take decisions regarding specific projects.<sup>3</sup> The limitations of both need to be fully understood. The argument against ‘command-and-control’ or ‘fiat-based’ approaches to regulation is that they ‘do not permit individual actors to minimise their own costs of compliance. This leads, on the one hand, to non-compliance in many cases... Economic instruments work by aligning the interests of economic actors with environmental compliance, primarily through application of “polluter pays”.’ (p. 15)

This is highly misleading. At one level, there are major issues of incomplete information regarding economic benefits of pollution control and also of monitoring costs often being too high to make economic instruments

viable. At a more fundamental level, if pollution taxes (or emission quotas) are to result in significant reductions in pollution levels, the taxes have to be high enough (or the quotas low enough) to hurt the polluters. If they are so set, the polluters again have a strong incentive to not comply with the regulation!<sup>4</sup> And if they were powerful enough (or enforcement was weak enough) to get away with non-compliance under command-and-control, surely they can do so under 'polluter-pays'? Or they can lobby for exemptions or dilutions? So there is nothing automatic about the working of economic instruments – the political economy of regulation and the culture of compliance still matter very much.<sup>5</sup> Perhaps what is more urgent is 'a period of adequate enforcement of India's command and control environmental laws' (Rosencranz *et al.*, 1999, p. 171).

The draft NEP also blithely calls for 'the integration of environmental values into CBA to encourage more [economic efficiency]... while making public investment decisions' (p. 15). Of course, there are severe methodological challenges associated with valuing environmental phenomena. The principle of 'incomparable values' mentioned in the draft would actually have to be invoked repeatedly, whether it is when comparing value of lives saved versus cost of air pollution abatement or when comparing the value of the Silent Valley versus the cost of a proposed hydropower project. And the principle of 'cost-effective environmental offsetting' would be best dropped, as it contradicts the notion of incomparable value.

But much more important, there are fundamental politico-ethical problems with CBA that will affect any environmental valuation. CBA assumes that the impacts felt by different individuals or groups can be aggregated to come up with an estimate of the net change in social welfare. But there really is no 'objective' way of carrying out this aggregation. In practice, this aggregation has always been carried out using a one-rupee-one-vote approach, which biases the results of the CBA against the preferences of the poor. Similarly, CBA conventionally aggregates across time using an exogenously defined discount rate, but this negates the concept of intergenerational equity (which is espoused strongly by the draft NEP). What is really needed is what members of the Indian Society for Ecological Economics have called for, viz., 'educating decision-makers about the need to move away from simplistic cost-benefit calculations to a more broad-based understanding of the socio-environmental impact of development projects' (Lélé *et al.*, 2002, p. 55).

*Missing framework for institutional reform:* The real crux of environmental governance is not whether economic instruments are used to regulate pollution or not, but how the entire set of rights and responsibilities for resource use and regulation are set up, keeping in mind the ecological, social and politico-economic context. Typically, the draft NEP boldly adopts the principles of 'decentralisation', 'equity in access', and 'participation', which seem to be all related to ensuring better environmental governance. But, unlike the principle of economic efficiency, these other principles are not elaborated upon, and one has to look at the strategies and actions suggested in specific cases to deduce what these broad terms mean for the draft. Repeated invocation of terms such as 'holistic', 'integrated' 'synergies', 'amalgamation' and 'accountability' cannot hide the absence of concrete ideas and a coherent framework.

In the context of natural resources management, the only concrete proposals are (a) universalisation of Joint Forest Management (JFM), (b) some

vague noises about participation in Conservation Reserves and Community Reserves, and (c) giving legal recognition to the traditional rights of forest-dwelling tribes. There is, however, ample evidence that the JFM programme – in spite of all the hype surrounding it – has performed way below expectations. In fact, it has often produced socially and environmentally perverse outcomes as it results in the forest departments colluding with village elite to grow commercially important species (often exotics) on lands that earlier provided subsistence benefits, while leaving lands with better forest cover unprotected (e.g., Sundar, 2001).

The problem lies not just in the lackadaisical implementation by the forest departments, but also in the basic concept itself. Incomplete coverage of resource use areas and inadequate rights on forest produce, together with a lop-sided distribution of power between the department and the village institution, makes ‘joint management’ a parody of the principle of decentralised resource management. And the continued operation of JFM under Government Orders ensures lack of statutory support and security of resource tenure to the village institutions.<sup>6</sup> Similar problems are reported with participatory irrigation (canal) management programmes. In watershed programmes, the approach is limited to simply participation in *implementation* of technical interventions, not in the long-term management of the recharged water or treated common lands.

While we certainly believe that decentralisation should be grounded in a discourse of rights that privileges equity, it would be facile to think that simply handing over all natural resources to village communities is the solution. What is needed is a broad framework regarding how to identify ‘legitimate stakeholders’ in any resource (such as local villagers, non-adjacent villages, pastoral nomads and downstream communities in the case of forests), how to rank these in terms of primary (those who live next to and depend upon the resource directly) and secondary (others) stakeholders, how to determine the boundaries corresponding to particular stakeholder groups (say different hamlets in the case of forests), what constitutes fair limits on the kinds of activities that can be taken up with the resource by primary stakeholders (such as silvi-pastoral options in forests) so as to protect the stakes of the non-proximate or secondary stakeholders (such as downstream communities in watersheds), how rights can be structured locally so that the elite do not usurp the benefits, how resource use should be monitored by external agencies, what fiscal arrangements are appropriate to maintain a balance between external support and local stakes, and so on. From this would logically emerge a nested system of environmental governance (Lélé, 1996; 2004).

The sudden interest shown by the draft NEP in recognising customary tribal rights in forests is indeed laudable. But it rings hollow, both because it is not grounded in any such larger framework, and also because the draft ignores the only existing window for truly decentralised governance, viz., the Panchayats (Extension to the Scheduled Areas) Act (PESA). PESA was aimed at legislatively transferring powers related to resource management and development planning to the *gram sabhas* in notified tribal areas. However, a number of hurdles, ranging from state governments diluting the act to making the act subject to other rules or acts in force, have come in the way of it becoming an effective piece of legislation (Upadhyay, 2004a).

Similarly, in the context of regulating pollution, the terms ‘decentralisation’ and ‘participation by local communities in monitoring’ are

bandied about liberally without specifying what it means. Again, PESA or Panchayati Raj acts would have been a logical vehicle for actually decentralising some decision-making authority on these issues to the village-level. The pros and cons of this or other arrangements can only be discussed if there is clarity on a number of dimensions. For example, what is the appropriate level for decision-making for siting of industries or other projects – centre, state, district or village? Who constitutes a legitimate stakeholder in any decision-making process? What exact rights do these stakeholders have in terms of access to pre-decision information, role in the decision-making processes, in monitoring, and in enforcement, including *locus standi* for legal redressal under the pollution laws?

Finally, if the main goal of the NEP is to mainstream environmental concerns in all developmental activities, then it makes little sense to draft an ‘environment’ policy that is limited to discussing strategies and actions within the domain of the MoEF. It is necessary to redefine the very notion of development such that socio-environmental concerns get primacy. It is the agricultural policy, industrial policy, power policy, water policy, mining and even defence policy that must be rewritten to incorporate environmental concerns. Instead, by limiting the discussion to the ‘environment sector’, by unguarded use of the notion of ‘right to development’ and by harping on ‘economic instruments’ and ‘rationalising regulation’, the draft has actually ended up mainstreaming economic growth-based development into environmental governance!

It is perhaps unrealistic to expect that a government steeped in the ideology of economic growth based on privatisation, globalisation and rollback of the state or a bureaucracy that has enjoyed the fruits of centralised control since the colonial period would produce a radical vision for environmentally sound and socially just development. But the government must at the very least desist from using the NEP exercise as a cover for diluting existing regulations. And if it is seriously concerned about the environment, it must first try to educate itself and its supporters about the importance of environmental issues and the potential conflicts between the current paradigm of economic development on the one hand and environmental quality, equity and sustainability on the other. Changing mindsets is the priority, not drafting glib policy documents. And those in society at large would do well to steer clear of bland phrases such as ‘economic efficiency’, ‘stakeholder involvement’, ‘public-private partnerships’ or ‘joint management’, and work towards the more fundamental changes that are required in society and governance.

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Footnotes:

1. Thanks to the pioneering efforts of, among others, the Citizen’s Report of 1982 and 1985, CSE, Delhi.
2. Other semi-independent factors, such as a reductionist modern science and technology that creates a false sense of control over nature and gender discrimination that sidelines the suffering of women, are not elaborated upon here due to lack of space.
3. A related concept is to modify national income accounts so as to provide a better indication of overall environmental degradation to decision-makers.

4. And if they are not set high enough to affect the producer, then it is simply a case of ‘polluter-pays’ becoming ‘pay-and-pollute’!

5. And, as mentioned earlier, the mobility of capital makes it difficult for even well-meaning regulators to ensure compliance – companies can blackmail decision-makers that they will withdraw if standards or enforcement regimes are too strict. The draft NEP itself openly acknowledges this pressure when it makes the ‘polluter-pays principle’ subject to the condition ‘without distorting trade and investment’!

6. The channelling of funds for afforestation through Forest Development Agencies that are only notionally federations of JFM committees actually fully controlled by the forest department, again illustrates a basic difference in the notion of decentralisation – while activists talk of decentralised governance, MoEF is only thinking of decentralisation of implementation, not of control.

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