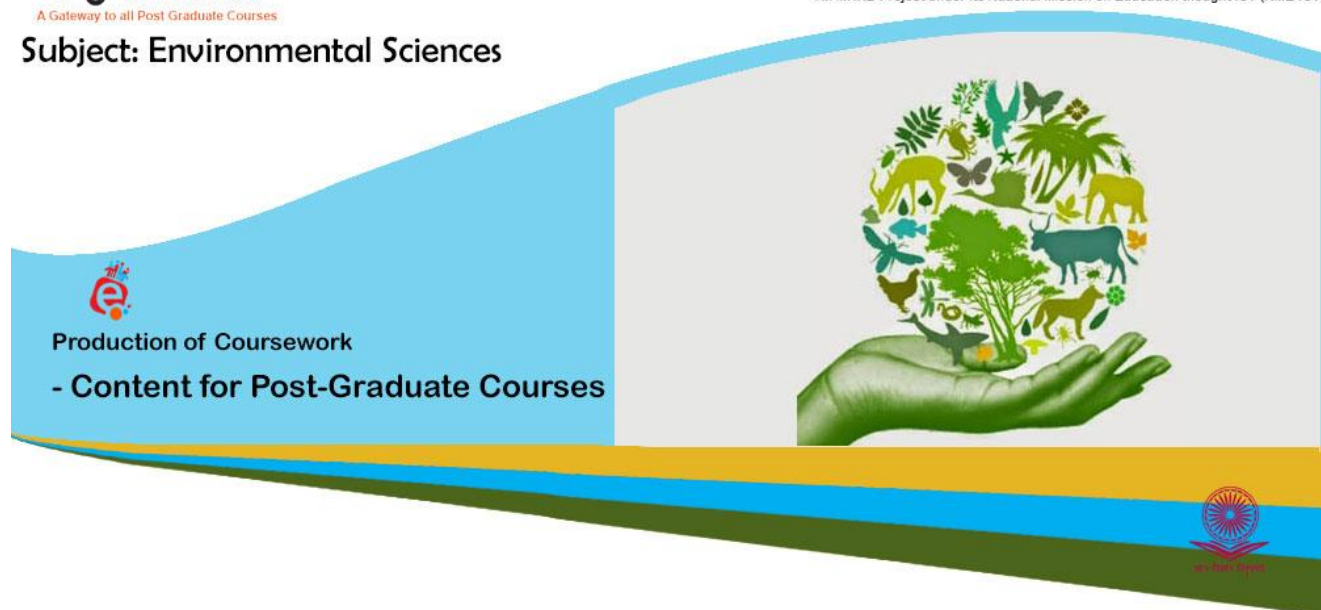


Subject: Environmental Sciences



**Production of Coursework
- Content for Post-Graduate Courses**

Paper No: 13 Environmental Law and Policies

Module: 20 National Environment Policy 2006



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Description of Module	
Subject Name	Environmental Sciences
Paper Name	Environmental Law and Policies
Module Name/Title	National Environment Policy 2006
Module Id	EVS/ELP-XIII/20
Pre-requisites	Environmental Studies in any Discipline
Objectives	To introduce the importance of the Environment Law Policy 2006, the legislative measures taken by the Government for Environmental Governance
Keywords	Pollution Pays Principle, Environment Impact Assessment, Desert Habitat, Wild Life, Wet Land

National Environment Policy 2006

Introduction

National Environment Policy 2006 is a response to India's national commitment to a clean environment, mandated in the **Constitution in Articles 48 A and 51 A (g), (DPSP) strengthened by judicial interpretation of Article 21**. It is recognized that the maintenance of the Healthy environment is not the responsibility of the state alone. It is the responsibility of every Citizen and thus a spirit of partnership is to be realized through the environment Management of the country. Here is the summary of the National Environment Policy 2006

The National Environment Policy is intended to be a guide to action: in regulatory reform, programmes and projects for environmental conservation; and review and enactment of legislation, by agencies of the Central, State, and Local Governments.

The policy also seeks to stimulate partnerships of different stakeholders, i.e. public agencies, local communities, academic and scientific institutions, the investment community, and international development partners, in harnessing their respective resources and strengths for environmental management¹.

The National Environment Policy seeks to extend the coverage, and fill in gaps that still exist, in light of present knowledge and accumulated experience. It does not displace, but builds on the earlier policies². The main Objectives of the Policy are mentioned as under:

2. Objectives of the Policy

¹ National Environment Policy 2006, Ministry of Forest and Environment, Government of India, available on <http://www.moef.gov.in/sites/default/files/introduction-nep2006e.pdf>.

² Ministry of Environment and Forest, Government of India, available at <http://www.indiawaterportal.org/articles/national-environment-policy-nep-ministry-environment-and-forests-2006>

The principal Objectives of this policy are enumerated below. These Objectives relate to current perceptions of key environmental challenges. The detailed objectives are mentioned as under:

1. Conservation of Critical Environmental Resources:

To protect and conserve critical environmental resources and invaluable natural and man-made heritage which are essential for life-supporting livelihoods and welfare of the society.

2. Inter-generational Equity:

To ensure judicious use of environmental resources to meet the needs and aspirations of present and future generations.

3. Efficiency in Environmental Resources Use:

To ensure efficient use of environmental resources in the sense of reduction in their use per unit of economic output and to minimize adverse environmental impacts on society.

4. Environmental Governance in the Management of Resources:

To apply the principles of resources. To apply the principles of good governance (i.e. transparency, rationality, accountability, reduction in costs and time, and public participation) to the management of environmental resources.

5. Enhancement of Resources:

Appropriate technology and traditional knowledge, managerial skills, and social capital will be used for conservation and enhancement of resources.

6. Livelihood Security for the Poor:

To ensure equitable access to environmental resources for poor tribal community, which are most dependent on environmental resources for their livelihood.

7. Integration of Environmental Concerns for Socio-economic

Development; to integrate environmental concerns into policies, plans, programmes and projects for socio-economic development³.

There are various Principles of the National Environment Policy 2006. These are discussed as under:

3. Principles of National Environment Policy 2006

The Policy evolved from the recognition that only such development is sustainable, which respects ecological constraints, and the imperatives of justice. The Objectives stated above are to be realized through various strategic interventions by different public authorities at Central, State, and Local Government levels. They would also be the basis of diverse partnerships. The principles followed in the policy are:

- (a) Human Beings are at the Centre of Sustainable Development Concerns:
- (b) Right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.
- (c) In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.
- (d) Where there are credible threats of serious or irreversible damage to key environmental resources, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
- (e) In various public actions for environmental conservation, economic efficiency would be sought to be realized

³ Pooja Mondal, Objectives and Strategies of New National Environment Policy, 2006 of India, available at:

4. Strategic Plan:

The foregoing statement of policy Objectives and Principles are to be realized by concrete actions in different areas relating to key environmental challenges. A large number of such actions are currently underway, and have been for several years, in some cases, for many decades. In some aspects new themes would need to be pursued to realize the Principles and Objectives. Action plans is needed to encourage and to formulate their own strategies or action plans consistent with the National Environment Policy. Therefore, the empowerment of Panchayats and the Urban Local Bodies, particularly, in terms of functions, functionaries, funds, and corresponding capacities, will require greater attention for operationalizing some of the major provisions of this policy.

The following Strategic Themes, and outlines of actions to be taken in each, focus on both ongoing activities, functions, and roles, as well as new initiatives that are necessary.

4.1 Revisiting the Policies

There are various laws available on the protection of environment. For example; The present legislative framework is broadly contained in the umbrella Environment Protection Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, The Air (Prevention and Control of Pollution) Act, 1981 etc. Therefore, there are several other enactments, which complement the provisions of these basic enactments. The following specific actions may be taken:

- (a) Integrated approach to the management of environmental and natural resources
- (b) Identify emerging areas for new legislation, due to better scientific understanding, economic and social development, and development of multilateral environmental regimes, in line with the National Environment Policy.
- (c) Review the body of existing legislation in order to develop synergies among relevant statutes and regulations, eliminate obsolescence, and amalgamate provisions with similar objectives, in line with the National Environment Policy.

- (d) Take steps to adopt and institutionalize techniques for environmental assessment of sector policies and programmes to address any potential adverse impacts, and enhance potential favourable impacts.
- (e) Ensure accountability of the concerned levels of Government (Centre, State, Local) in undertaking the necessary legislative changes in a defined time-frame, with due regard to the Objectives and Principles of National Environment Policy, in particular, ensuring the livelihoods and well-being of the poor by ensuring improved access to the necessary environmental resources.

4.1.2 Process Related Reforms

The process related reforms are required at two levels: (a) at the Approach and (b) at the level of the Framework of Legal action.

1. **The approach** is to reduce delays and levels of decision-making, realize decentralization of environmental functions, and ensure greater transparency and accountability.
2. **Framework for Legal Action:**
 - a. **Criminal Law:** At present approach to dealing with environmentally unacceptable behaviour in India has been largely based on criminal processes and sanctions. Although criminal sanctions, if successful, may create a deterrent impact, in reality they are rarely fruitful for a number of reasons.
 - b. **Civil law,** on the other hand, offers flexibility, and its sanctions can be more effectively tailored to particular situations. The evidentiary burdens of civil proceedings are less daunting than those of criminal law. It also allows for preventive policing through orders and injunctions.
 - c. Accordingly, a judicious mix of civil and criminal processes and sanctions will be employed in the legal regime for enforcement, through a review of the existing legislation. Civil liability law, civil sanctions, and processes, would govern most situations of non-compliance. Criminal processes and sanctions would be available for serious, and potentially provable, infringements of environmental law, and their initiation would be

vested in responsible authorities. Recourse may also be had to the relevant provisions in the Indian Penal Code, and the Criminal Procedure Code. Both civil and criminal penalties would be graded according to the severity of the infraction.

- d. Tortious Liability:** The alternatives to Civil Liability may also apply viz. Fault Based liability and Strict Liability.

In Fault Based Liability a party is held liable if it breaches a preexisting legal duty, for example, an environmental standard.

Strict liability imposes an obligation to compensate the victim for harm resulting from actions or failure to take action, which may not necessarily constitute a breach of any law or duty of care.

- e. The Doctrine of Public Trust**

As per this doctrine, the State is not an absolute owner, but a trustee of all natural resources, which are by nature meant for public use and enjoyment, subject to reasonable conditions, necessary to protect the legitimate interest of a large number of people, or for matters of strategic national interest.

- f. “Polluter Pays” principle**

The National Environment Policy promotes the internalization of environmental costs, including through the use of incentives based policy instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest, and without distorting international trade and investment.

4.1.3 Substantive Reforms:

Although there are various judicial measures available still various substantive reforms are also available. These are explained as under:

4.1.3.1 Environment Impact Assessment

The policy focuses on encouraging the regulatory authorities, Central and State, to institutionalize regional and cumulative environmental impact assessments (R/CEIAs) to ensure that environmental concerns are identified and addressed at the planning stage itself.

4.1.3.2 Costal Regulations Zone

The policy aims to revisit the Coastal Regulation Zone (CRZ) notifications to make the approach to coastal environmental regulation more holistic, and thereby ensure protection to coastal ecological systems, coastal waters, and the vulnerability of some coastal areas to extreme natural events and potential sea level rise. In pursuance with the Policy CRZ Notification 2011 was released recently.

4.1.3.3 The Problem of LMOs

LMO refers to the **Living Modified Organisms**. Living modified organisms (known as LMOs) result from modern biotechnology is broadly equivalent to genetically modified organisms.

4.2 Enhancing and Conserving Environmental Resources

The causes of degradation of environmental resources lie ultimately in a broad range of policy, and institutional, including regulatory shortcomings, leading to the direct causes.

4.2.1 Land Degradation

The degradation of land, through soil erosion, alkali-salinization, water logging, pollution, and reduction in organic matter content has several proximate and underlying causes. The proximate causes include loss of forest and tree cover (leading to erosion by surface water run-off and winds), unsustainable grazing, excessive use of irrigation (in many cases without proper drainage, leading to leaching of sodium and potassium salts), improper use of agricultural chemicals (leading to accumulation of toxic chemicals in the soil), diversion of animal wastes for domestic fuel (leading to reduction in soil nitrogen and organic matter), and disposal of industrial and domestic wastes on productive land.

4.2.2 Desert Habitats

The arid and semi-arid region of India covers 127.3 mha (38.8%) of India's geographical area and spreads over 10 states.

The Indian desert fauna is extremely rich in species diversity of mammals and winter migratory birds. However, the pressures of a rapidly increasing population on the natural resource base necessitate adoption of innovative and integrated measures for conservation of desert ecosystems. The policy aims at measures such as Intensive water and moisture conservation through practices based on traditional and science based knowledge, and relying on traditional infrastructure.

4.2.3 Forests and Wildlife:

(i) Forests

Forests provide a multiplicity of environmental services. Foremost among these is the recharging of mountain aquifers, which sustain our rivers. They also conserve the soil, and prevent floods and drought. They provide habitat for wildlife and the ecological conditions for maintenance and natural evolution of genetic diversity of flora and fauna. They are the homes of traditional forest dependent communities. They yield timber, fuel wood, and other forest produce, and possess immense potential for economic benefits, in particular for local communities, from sustainable eco-tourism.

(ii) Wildlife

The status of wildlife in a region is an accurate index of the state of ecological resources, and thus of the natural resource base of human well-being. This is because of the interdependent nature of ecological entities, in which wildlife is a vital link. Moreover, several charismatic species of wildlife embody "Incomparable Values", and at the same time, comprise a major resource base for sustainable eco-tourism.

4.2.4 Biodiversity, Traditional Knowledge, and Natural Heritage

Conservation of genetic diversity, is crucial for development of improved crop varieties resistant to particular stresses, new pharma products, etc., apart from ensuring the resilience of ecosystems. Traditional Knowledge (TK), referring to ethno-biology knowledge possessed by local communities, is the basis of their livelihoods, and also a potent means of unlocking the value of genetic diversity through reduction in search costs.

4.2.5 Fresh water Resources

India's fresh water resources comprise the single most important class of natural endowments enabling its economy and its human settlement patterns. The freshwater resources comprise the river systems, groundwater, and wetlands. Each of these has a unique role, and characteristic linkages to other environmental entities

4.2.6 Wetlands

The Ramsar Convention defines wetlands as, 'areas of marsh, fen, peat land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which **at low tide does not exceed six meters**', thereby giving a wide scope to the term. Wetlands are under threat from drainage and conversion for agriculture and human settlements, besides pollution. The policy aims at setting up a legally enforceable regulatory mechanism for identified valuable wetlands, to prevent their degradation and enhance their conservation. Develop a national inventory of such wetlands.

4.2.7 Pollution Abatement

Pollution is the inevitable generation of waste streams from the production and consumption of anything. Pollution directly impacts the quality of the receiving medium, i.e. air, water, soil, or electromagnetic spectrum, and when this impaired medium acts upon a receptor, say, a living being, also impacts the receptor. In general, the impacts on the receptor are adverse, but not always. Typically, ecosystems have some natural capacities to assimilate pollution; however, these vary considerably with the nature of the pollutant and the ecosystem. In general, it is cheaper to reduce the emissions of pollution, than to mitigate it after generation, or to treat the receiving medium or receptor. The impacts of pollution may differentially impact the poor, or women, or children, or developing regions, who may also have relatively low contributions to its generation, and accordingly the costs and benefits of abatement may have important implications for equity.

4.2.8 Conservation of Manmade Heritage

The criteria for, and processes of identification of heritage sites, besides legislation and fiscal measures to ensure that they are not damaged or converted by direct human interference, are outside the scope of the National Environment Policy. However, the impact of environmental quality on their conservation is an environmental policy concern. Heritage sites may be impacted by pollution, or they may face threats of inundation or conversion by development projects. Several prominent heritage sites may be held to possess “Incomparable Values”.

4.2.9 Climate Change

Climate change, resulting from anthropogenic emissions of a suite of gases (called “greenhouse gases” or GHGs) due to fossil fuel use, certain agricultural and industrial activities, and deforestation, leading to their increasing concentrations in the atmosphere, has the potential, over the next few generations, to significantly alter global climate. This would result in large changes in ecosystems, leading to possibly catastrophic disruptions of livelihoods, economic activity, living conditions, and human health. On the other hand, abatement of GHGs, would involve significant economic costs.

4.3 Environmental Standards, Management Systems, Certification, and Indicators

4.3.1 Environmental Standards

It is now well understood that environmental standards cannot be universal, and each country should set standards in terms of its national priorities, policy objectives, and resources. These standards, may, of course, vary (in general, become more stringent) as a country develops, and has greater access to technologies and financial resources for environmental management. While within the country different states, UTs and local bodies may adopt stricter standards, based on local considerations, they would require concurrence of the Central Government to ensure adherence to the provisions of this policy. Environmental standards also need to relate to other measures for risk mitigation in the country, so that a given societal commitment of resources for achieving overall risk reduction yields the maximum aggregate reduction in risk.

4.3.2. Environmental Management Systems, Ecolabeling and Certification

Environmental Management Systems (EMS), such as ISO 14000, by requiring the adoption of standardized environmental management practices, documenting their actual use, and credible third party verification of the fact may significantly ease the public burden of monitoring and enforcement of prescribed emissions standards. On the other hand, their adoption may involve transaction costs, which, for small and medium enterprises may be significant in relation to their total investment. Global harmonization of EMS, however, is a safeguard against adoption of arbitrary national EMS regimes to serve as non-tariff barriers. Ecolabeling (and other voluntary certification mechanisms) differ from the EMS in that they address the preferences of environmentally conscious consumers, rather than ensuring adherence to national environmental standards.

4.3.4 Clean Technologies and Innovations

Clean technologies, as distinct from “end-of-pipe” abatement technologies minimize the generation of waste streams in the production processes and utilize waste from other consumption goods and production processes, rather than treating the waste after generation. In general, clean technologies are less intensive in use of raw materials and energy, than conventional technologies, which rely on pollution abatement after generation. For this reason, they may also offer significant cost advantages to the producer.

4.3.5 Environment Awareness, Education and Information

Enhancing environmental awareness is essential to harmonize patterns of individual behaviour with the requirements of environmental conservation. This would minimize the demands placed on the monitoring and enforcement regimes; in fact, largescale non-compliance would simply overwhelm any feasible regulatory machinery. Awareness relates to the general public, as well as specific sections, e.g. the youth, adolescents, urban dwellers, industrial and construction workers, municipal and other public employees, etc. Awareness involves not only internalization of environmentally responsible behaviour, but also enhanced understanding of the impacts of irresponsible actions, including to public health, living conditions, sanitation, and livelihood prospects.

4.4 Research and Development

In order to rapidly advance scientific understanding of environmental issues, it is necessary to promote properly focussed research by competent institutions. A continuous engagement with the scientific community, in government, academic, and private institutions, will provide important insights for policy making and regulation, including in the field of multilateral negotiations, and help realize deeper and broader skills in the scientific community.

4.5 Panchayats & Women Participation

The policy aims at working towards giving the legal recognition of the traditional entitlements of forest dependent communities taking into consideration the provisions of the (PESA). This would remedy a serious historical injustice, secure their livelihoods, reduce possibilities of conflict with the Forest Departments, and provide long-term incentives to these communities to conserve the forests.

4.6 International Cooperation

India has participated in major international events on the environment, since 1972. The country has contributed to, and ratified several key multilateral agreements on environmental issues in recognition of the transboundary nature of several environmental problems, and has complied with its commitments. It has also participated in numerous regional and bilateral programs for environmental cooperation. Given the need to enhance our own capacities to comply with our commitments, and ensure sustained flows of resources for environmental management, the following steps would be taken:

- (a) Avail of multilateral and bilateral cooperation programs, for capacity building for environmental management, particularly in relation to commitments under multilateral instruments
- (b) Participate in mechanisms and arrangements under multilateral agreements for enhancing flows of resources for sustainable development
- (c) Provide assistance to other developing countries, in particular for scientific and technical capacity building for environmental management.

4.7 Review of the Policy

A prudent course would be to provide for updating every few years in light of new knowledge and developments, and a comprehensive review in about a decade. Review is also important to grow and

improve the policy in future as per the change of the society. So review shall be done from time to time.

4.8 Review of Implementation

Any policy is only as good as its implementation. The National Environment Policy outlines a significant number of new and continuing initiatives for enhancing environmental conservation. These require the coordinated actions of diverse actors, for the major part organized and stimulated by one or more public agencies.

Accordingly, the Cabinet or a nominated Committee of the Cabinet may be requested to review the implementation of the National Environment Policy, once a year, within three months from the close of the previous fiscal year. The findings of the review should be publicly disclosed, so that stakeholders are assured of the seriousness of the Government in ensuring implementation of the Policy.

5. Conclusion

The environmental degradation is a major causal factor in enhancing and perpetuating poverty, particularly among the rural poor, when such degradation impacts soil fertility, quantity and quality of water, air quality, forests, wildlife and fisheries.

Poverty itself can accentuate environmental degradation, given that institutional failures persist. For the poor, several environmental resources are complementary in production and consumption to other commodities (e.g. water in relation to agricultural production, fuel wood in relation to consumption of food), while a number of environmental resources are a source of income or food (e.g. fisheries, non-timber forest produce). This is frequently a source of cumulative causation, where poverty, gender inequalities, and environmental degradation mutually reinforce each other. Poverty and environmental degradation are also reinforced by, and linked to population growth, which in turn, depends on a complex interaction of diverse causal factors and stages of development. The social and economic

context of population growth has been detailed in the National Population Policy 2000, which recognizes stabilization of population as a necessary condition for sustainable development.

Economic growth, in its turn, bears a dichotomous relationship to environmental degradation. On the one hand, growth may result in “excessive” environmental degradation through use of natural resources and generation of pollution aggravated by institutional failures.

