

## BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

## PRINCIPAL BENCH, NEW DELHI

## ORIGINAL JURISDICTION

ORIGINAL APPLICATION NO. 879 OF 2022

IN THE MATTER OF:

GAURI MAULEKHI

.....APPLICANT

## VERSUS

UNION OF INDIA &amp; ORS.

....RESPONDENTS

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FILED BY:

DELHI

DATED: 02.05.2023

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ADDITIONAL AFFIDAVIT ON BEHALF OF THE APPLICANT IN  
RESPONSE TO REPLY AFFIDAVIT DATED 23.02.2023 FILED BY THE  
RESPONDENT NO.1.

I, Gauri Maulekhi, W/o Shri Dushyant Maulekhi, aged about 46 years, R/o Plot No.26, D.D.A, Opp. Gate No.3, Gulmohar Enclave, New Delhi-110049, do hereby solemnly affirm and state as under:

1. I state that I am the Applicant herein and have preferred the above-captioned Application seeking to raise a substantial question relating to environment under Section 14, 18 and 20 of the *National Green Tribunal Act, 2010* R/w Rule 24 of the *National Green Tribunal (Practices and Procedures) Rules, 2011*, regarding the need for inclusion of slaughterhouses and meat, poultry and fish processing units in India, within the ambit of the Environmental Impact Assessment Notification, 2006 [EIA Notification, 2006] and subjecting them to the process of granting an Environmental Clearance [EC] before starting operations, as they are highly polluting projects/ activities and have been classified as a red category industry.

2. I state that vide Order dated 06.12.2022, this Hon'ble Tribunal had directed the Respondent Nos.1-2 to file their response. The Respondent



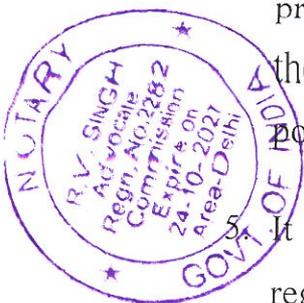
No.1 has accordingly filed its Reply Affidavit dated 23.02.2023. I counter the submissions made in the Reply Affidavit dated 23.02.2023 filed by the Respondent No.1 and state as follows:

3. The Respondent No.1 has relied on several legal safeguards such as the consent mechanisms under the provisions of the *Air (Prevention and Control of Pollution) Act, 1981* and *Water (Prevention and Control of Pollution) Act, 1974*; *Prevention of Cruelty to Animals (Slaughter House) Rules, 2001*; Environment (Protection) Sixth Amendment Rules, 2016 vide Notification No. G.S.R. 1016 (E) dated 28.10.2016 issuing Industry specific standards for the Slaughter houses or Meat Processing units; *Solid Waste Management Rules, 2016*; Letters dated 12.07.2012, 13.01.2022 issued by CPCB and 'Characterization, Waste Management Practices & Best available pollution control Technologies in Slaughter Houses' which culminated in CPCB Report titled Revised Comprehensive industry document on slaughter houses dated 23.10.2017. The Respondent No.1 has relied on the aforesaid legal safeguards to allege that requisite guidelines/ safeguards are already in place to regulate slaughterhouses and processing units from environment perspective [Ref: Para 4-7, 12-15 of Reply Affidavit dated 23.02.2023].

**EIA NOTIFICATION, 2006:**

4. It is submitted that as per the Respondent No.1, the entire regulatory process under the EIA Notification, 2006 seems to be redundant since there are already several legal safeguards in place to regulate majority of polluting projects/ industries/ activities.

5. It is submitted that despite the existence of several legal safeguards to regulate a majority of projects/ industries/ activities, the Respondent No.1 had itself notified the EIA Notification 2006 with the following forewords:



*“Whereas, a draft notification under sub-rule (3) of Rule 5 of the Environment (Protection) Rules, 1986 for imposing certain restrictions and prohibitions on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts as indicated in the Schedule to the notification, being undertaken in any part of India<sup>1</sup>, unless prior environmental clearance has been accorded in accordance with the objectives of National Environment Policy as approved by the Union Cabinet on 18<sup>th</sup> May, 2006....”*

6. With regard to EIA, it has been stated in the Annual Report 2006-2007 issued by the Respondent No.1, that, *“The objective of EIA is to foresee and address the potential environmental problems at an early stage of planning and design. Environmental clearances based on EIA study was introduced as an administrative measure in 1978-79 and was made mandatory for 32 categories of developmental projects through EIA Notification, 1994 under the Environment (Protection) Act, 1986. Over the period, certain bottle necks, limitations/ constraints were observed in smooth implementation of the Notification. Ministry had therefore undertaken a comprehensive review of the existing Environmental Clearance Process for further enhancing the quality of the appraisal and to reduce time in the decision-making within the prescribed statutory period. After holding extensive consultations with stakeholders over a period of one year, a draft notification on the revised environmental clearance process was notified on September 15, 2005 inviting objections and suggestions from the public within sixty days. After due consideration of all the suggestions received, the Ministry notified the final Notification on September 14, 2006 superseding the EIA Notification 1994.”* A copy of



the relevant pages of the Annual Report 2006-2007 issued by the Respondent No.1 is attached herewith as **ANNEXURE-1**.

7. The EIA Notification, 2006 also mentions that the grant of EC has to be in terms of the objectives and principles of the *National Environment Policy* as approved by the Union Cabinet on 18<sup>th</sup> May, 2006. The said objectives are:
- i. **Conservation of Critical Environmental Resources:** *To protect and conserve critical ecological systems and resources, and invaluable natural and man-made heritage, which are essential for life-support, livelihoods, economic growth, and a broad conception of human well-being.*
  - ii. **Intra-generational Equity: Livelihood Security for the Poor:** *To ensure equitable access to environmental resources and quality for all sections of society, and in particular, to ensure that poor communities, which are most dependent on environmental resources for their livelihoods, are assured secure access to these resources.*
  - iii. **Inter-generational Equity:** *To ensure judicious use of environmental resources to meet the needs and aspirations of the present and future generations.*
  - iv. **Integration of Environmental Concerns in Economic and Social Development:** *To integrate environmental concerns into policies, plans, programmes, and projects for economic and social development.*
  - v. **Efficiency in Environmental Resource Use:** *To ensure efficient use of environmental resources in the sense of reduction in their use per unit of economic output, to minimize adverse environmental impacts.*
  - vi. **Environmental Governance:** *To apply the principles of good governance (transparency, rationality, accountability, reduction in time and costs,*



participation, and regulatory independence) to the management and regulation of use of environmental resources.

vii. **Enhancement of Resources for Environmental Conservation:** To ensure higher resource flows, comprising finance, technology, management skills, traditional knowledge, and social capital, for environmental conservation through mutually beneficial multistakeholder partnerships between local communities, public agencies, the academic and research community, investors, and multilateral and bilateral development partners.”

8. The principles of the *National Environment Policy* are as follows: “This policy has 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. These strategic interventions, besides legislation and the evolution of legal doctrines for realization of the Objectives, may be premised on a set of unambiguously stated Principles depending upon their relevance, feasibility in relation to costs, and technical and administrative aspects of their application. The following Principles, may accordingly, guide the activities of different actors in relation to this policy. Each of these Principles has an established genealogy in policy pronouncements, jurisprudence, international environmental law, or international State practice:

i. **Human Beings are at the Centre of Sustainable Development Concerns:**

Human beings are at the centre of concerns for sustainable development.

They are entitled to a healthy and productive life in harmony with nature.



- ii. **The Right to Development:** *The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.*
- iii. **Environmental Protection is an Integral part of the Development Process:** *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.*
- iv. **The Precautionary Approach:** *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.*
- v. **Economic Efficiency:** *In various public actions for environmental conservation, economic efficiency would be sought to be realized. This Principle requires that the services of environmental resources be given economic value, and such value to count equally with the economic values of other goods and services, in analysis of alternative courses of action.*
- Further implications of this Principle are as follows:
- a) **Polluter Pays:** *Impacts of acts of production and consumption of one party may be visited on third parties who do not have a direct economic nexus with the original act. Such impacts are termed "externalities". If the costs (or benefits) of the externalities are not re-visited on the party responsible for the original act, the resulting level of the entire sequence of production or consumption, and externality, is inefficient. In such a situation, economic efficiency may be restored by making the perpetrator of the externality bear the cost (or benefit) of the same. The policy will, accordingly, promote the internalisation of environmental costs, including through the use of incentives based on instruments, taking into account*



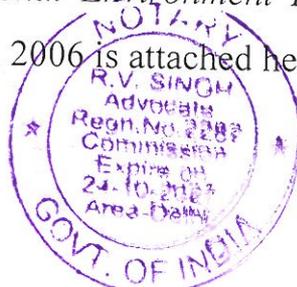
*the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest, and without distorting international trade and investment.....*

ix. **Public Trust 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.....*

xi. **Integration:** *Integration refers to the inclusion of environmental considerations in sectoral policymaking, the integration of the social and natural sciences in environment related policy research, and the strengthening of relevant linkages among various agencies at the Central, State, and Local Self- Government levels, charged with the implementation of environmental policies.*

xii. **Environmental Standard Setting:** *Environmental standards must reflect the economic and social development situation in which they apply. Standards adopted in one society or context may have unacceptable economic and social costs if applied without discrimination in another society or context. Setting environmental standards would involve several considerations, i.e. risks to human health, risks to other environmental entities, technical feasibility, costs of compliance, and strategic considerations.*

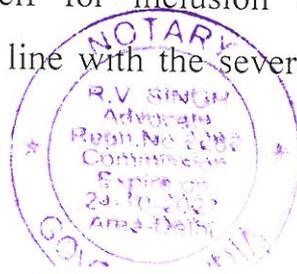
xiii. **Preventive Action:** *It is preferable to prevent environmental damage from occurring in the first place, rather than attempting to restore degraded environmental resources after the fact....” A copy of the relevant pages of the National Environment Policy as approved by the Union Cabinet on 18<sup>th</sup> May, 2006 is attached herewith as ANNEXURE-2.*



9. From a perusal of the aforesaid, it is evident that the EIA Notification, 2006 has been cemented by the Respondent No.1 only after detailed deliberation and taking into account recognized principles and objectives, despite the presence of various environmental laws. Even from a bare perusal of the *National Environment Policy* as approved by the Union Cabinet, it is evident that the slaughter industry merits inclusion under the EIA process *to prevent environmental damage, risks to human health, risks to other environmental entities, technical feasibility, costs of compliance, and strategic considerations...*
10. The Respondent No.1 cannot dispel and ignore the aforesaid principles and objectives at this stage, and state that the inclusion of slaughterhouses under the EIA Notification, 2006 is not called for due to the existence of legal environmental safeguards.

**INCLUSION OF SEVERAL RED CATEGORY INDUSTRIES UNDER THE EIA NOTIFICATION, 2006:**

11. It is submitted that out of the 39 projects/ activities/ industries requiring prior EC under the EIA Notification, 2006, **23** are red category industries.
12. Such severely polluting industries have been included under the ambit of the Notification after the Respondent No.1 had duly applied its mind and found that despite the existence of various environmental laws, the pollution index of such red category industries are extremely high and need prior EC.
13. The slaughter industry is categorized as Red Category Industry *vis a vis* most polluting industry having Pollution Index score of 60 and above. It has further been recommended by the Committee constituted by the Respondent No.1 itself for inclusion under the ambit of the EIA Notification, 2006. In line with the several other red category industries



already covered under the Notification, the slaughter industry also merits inclusion accordingly.

**INCLUSION OF SLAUGHTERHOUSES/ PROCESSING UNITS  
UNDER THE AMBIT OF EIA NOTIFICATION, 2006**

14. Furthermore, in its Reply Affidavit dated 23.02.2023, the Respondent No.1 has failed to refer to and acknowledge the fact that even after the issuance of the aforesaid legal safeguards, the issue of inclusion of slaughterhouses as well as processing units under the ambit of EIA Notification, 2006 has been deliberated and discussed in detail before the Respondent No.1 itself i.e. Ministry of Environment, Forest and Climate Change.
15. The Applicant has already submitted in the above-captioned Application that RTI Applications dated 30.12.2021 and 21.03.2022 had been preferred before the Respondent No.1 for information regarding deliberation on the environmental impact of slaughterhouses and its inclusion under the EIA Notification, 2006. That a perusal of the Responses from the Respondent No.1 has disclosed that vide Minutes of the Meetings of the Expert Committee dated 15.09.2015, 24.02.2016, 16.05.2016, 23.06.2016 and 02.05.2017, it had been specifically recommended that the EIA Notification, 2006 be amended and that all slaughterhouses as well as processing units need to obtain prior environmental clearance under the EIA Notification. [Ref: Para 14-17 of the above-captioned Original Application, along with Annexure-4 [Colly] at Pages 188-216].
16. The said meetings were attended by senior officials of the Respondent No.1 and they duly applied their mind, deliberated and recommended the inclusion of slaughterhouses and processing units under the EIA



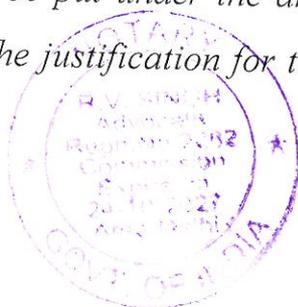
Notification, 2006, despite the existence of the aforesaid safeguards. The minutes dated 02.05.2017 duly records the reasoning of the Respondent No.1/ Expert Committee to amend the EIA Notification, 2006 in the following manner:

*“5. The illegal slaughtering contributes heavily in polluting the environment as the waste material generated from illegal slaughterhouses is mostly washed off into drains, which ultimately creates environmental havoc. The illegal slaughtering, therefore, needs to be regulated and monitored in more efficient manner. Presently, the control and monitoring of hygiene/ sanitation of slaughterhouses come under the control of State Governments, State Pollution Control Boards, FSSAI, APEDA.....”*

*7. In view of the huge meat production capacity of India and absence of national level regulation for this industry from environment as well as legal points of view, it is high time to introduce regulatory and monitoring mechanism at national level so that the negative impact of meat production industry on environment and hygiene can be minimised in India. It is, therefore proposed to bring all slaughterhouses along with large meat handling and processing units in the country under environmental clearance regime.”*

17. The minutes dated 15.09.2015 further records the reasoning of the Respondent No.1/ Expert Committee to amend the EIA Notification, 2006 in the following manner:

*“Based on the detailed deliberation in the matter the committee unanimously felt that all slaughter houses and meat processing units of any size should be put under the ambit of EIA Notification, 2006 under Category ‘A’. The justification for their inclusion inter-alia includes that*



*high strength organic waste, generated during slaughtering in slaughter houses as well as during meat processing , cause health hazards hence need to be handled in systematic manner. Inclusion of this activity in the schedule of EIA Notification, 2006 will provide this industry a mechanism to become organized sector equipped with better mechanized facilities for operation in both slaughterhouses as well as meat processing units and proper waste management facilities. This could lead to proper waste (liquid and solid management), minimize or if possible eliminate discharge with recourse to recovery of all value added products from both solids and liquids. Technologies are available to achieve this zero waste discharge standards.....*

*....organic waste generated on the poultry and chicken process if discharged without treatment, would pollute water bodies as well as cause severe health hazards”*

18. As such, it is evident that the Respondent No.1 and the Expert Committee itself found it feasible to include slaughterhouses/ processing units and its inclusion under the EIA Notification, 2006, despite the prevailing aforesaid legal safeguards.

**SLAUGHTERING ACTIVITY IS NOT BEING ASSESSED APPROPRIATELY:**

19. As regards the inspection of the modern poultry and egg market [Ref: Para 10, 11 of Reply Affidavit dated 23.02.2023], it is submitted that the Respondent No.1 conducted the environment impact assessment without considering the slaughter activity for which the infrastructure was proposed to be used, and disregarded its negative impacts such as environment degradation and pollution. That the EAC Sub-committee formulated by the Respondent No.1 had inspected the site and prepared its



Site Visit Report dated 25.11.2021 recommending the issuance of EC to the project proponent. A perusal of the Site Visit Report reveals that the Committee failed to appraise the slaughtering activity due to its non-inclusion under the EIA Notification, 2006 as per its discussion on the site visit findings in the following manner:

*“Discussion on the site visit findings:*

*iii) The committee also noted that the said project was appraised for EC under item 8(a) of the EIA notification, 2006 and its subsequent amendments which pertains to building and construction projects with build-up area > 20,000 sqm and <1,50,000 sqm. It was noted that, there is no separate provision under EIA notification, 2006 and its amendments for slaughtering activity. As per the provisions of said notification, the project does not require an EIA report and accordingly the project was appraised on the basis of submitted Form-I, Form-1A and Conceptual Plan.”*

20. Despite the prevailing efforts of the Applicant to highlight the operation of such a polluting industry and oppose the malafide grant of EC, the Respondent No.1 had granted the EC after evaluating the infrastructure without consideration of its purpose, based on the existing EIA Notification, 2006. It is evident that the Respondent No.1 is taking advantage of the non-inclusion of slaughterhouses under the ambit of the EIA Notification, 2006 while granting EC to unsuitable project proponents for slaughter related activities/ entities which are seeking EC under the veil of other activities. Despite the directions of this Hon'ble Tribunal to carry out an integral environment impact assessment of the slaughtering activity as well as any construction activity, the Respondent No.1



considered the project as a mere building project, not as an integrated project.

21. The activity of slaughter considerably increases the negative impact on the environment by producing highly polluting solid and liquid waste products. Such waste not only pollutes the environment but also serves as a fertile breeding ground for pathogens. Without considering the industry/ activity to be conducted in any infrastructure, the process of grant of EC to the infrastructure only based on the civil work done would be a travesty of the entire EC process and would not correctly assess the impact on the environment if that is the objective of the entire exercise. Thus, to spare the neighbourhood and the environment in and around the project areas from being severely and adversely impacted through water and soil pollution, such large projects/ infrastructure must be necessarily assessed as per the proposed activity to be carried out in the project/ infrastructure.
22. The Applicant states and submits that clearly the existing legal safeguards are not adequate to deal with the pollution being caused by the slaughterhouses and meat processing units in India. It is a matter of record that the Respondent No.1/ Expert Committee has already recommended in *Minutes of the Meetings* dated 15.09.2015, 24.02.2016, 16.05.2016, 23.06.2016 and 02.05.2017, that the EIA Notification, 2006 be amended and that all slaughterhouses as well as processing units need to obtain prior environmental clearance under the EIA Notification. It is thus humbly prayed that the said recommendations be implemented expeditiously to ensure inclusion of slaughterhouses and meat, poultry and fish processing units in India, within the ambit of the EIA Notification, 2006.



DEPONENT

**VERIFICATION:**

Verified at Delhi on this 02<sup>nd</sup> day of May 2023 that the contents of this affidavit which are true and correct based on official records. No part of it is false and nothing material has been concealed therefrom.

DEPONENT

Identified  
Eshu Dahi  
D/2467/2013

Identify the deponent/executioner who has signed in my presence



solemnly affirmed before me, read over & explained to the deponent

Notary Public, DELHI

2 MAY 2023

# 537 ANNEXURE-1



सत्यमेव जयते

Ministry of Environment  
&  
Forests (MoEF)

MINISTRY OF ENVIRONMENT & FORESTS  
GOVERNMENT OF INDIA



जहाँ है हरियाली ।  
वहाँ है खुशहाली ॥

## ANNUAL REPORT 2006-2007

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**Environmental  
Impact  
Assessment**



## Environmental Impact Assessment

### Introduction

Keeping in view the tenets of Sustainable Development, it has been realized that all developmental efforts need to be harmonized with conservation of environment and ecology. With this in view, the Ministry has formulated various policies and legislations for the protection and conservation of environment. It has been experienced that Environmental Impact Assessment (EIA) is an important management tool for integrating environmental concerns in development process and for improved decision making. To achieve this, the Ministry had notified certain developmental activities which could be taken up only after prior environmental clearance from the Ministry under environmental regulations such as Environmental Impact Assessment (EIA) Notification and Coastal Regulation Zone (CRZ) Notification.

### Objectives

The objective of EIA is to foresee and address the potential environmental problems at an early stage of planning and design. Environmental clearances based on EIA study was introduced as an administrative measure in 1978-79 and was made mandatory for 32 categories of developmental projects through EIA Notification, 1994 under the Environment (Protection) Act, 1986. Over the period, certain bottle necks, limitations/ constraints were observed in smooth implementation of the Notification. Ministry had therefore undertaken a comprehensive review of the existing Environmental Clearance Process for further enhancing the quality of the appraisal and to reduce time in the decision-making within the prescribed statutory period. After holding extensive consultations with stakeholders over a period of one year, a draft notification on the revised environmental clearance process was notified on September 15, 2005 inviting objections and suggestions from the public within sixty days. After due consideration of all the suggestions received, the Ministry notified the final Notification on September 14, 2006 superceding the EIA Notification 1994.

## The Re-engineered Environmental Clearance Process - EIA Notification, 2006

With the notification of Environmental Impact Assessment, 2006, environmental clearance process has been re-engineered. This path breaking re-engineered process is comparable to the best practices followed internationally. The important improvements/changes include introduction of screening and scoping of the project proposals for the identification of the actual environmental priorities without asking for irrelevant and time-consuming studies. The projects will require prior environmental clearance based on the impact potential instead of investment criteria. Public Hearing proceedings are also better structured and time bound. The environmental clearance process has also been decentralized for certain categories of projects, termed as Category 'B' projects, which are below a prescribed threshold level. Such projects will be appraised at State level by constituting a State Level Environment Impact Assessment Authority (SEIAA) and State Level Expert Appraisal Committee (SEAC). These will be constituted by the Central Government in consultation with the State Governments / UTs Administration. For construction projects, considerable simplification in the application and appraisal procedures has been proposed, so that development of this sector is not retarded. Such projects have been exempted from the public hearing also. The notification also provides for exemption from public hearing for certain categories/types of projects.

### Interim Operational Guidelines Providing Inter-Link between EIA Notifications, 1994 and 2006

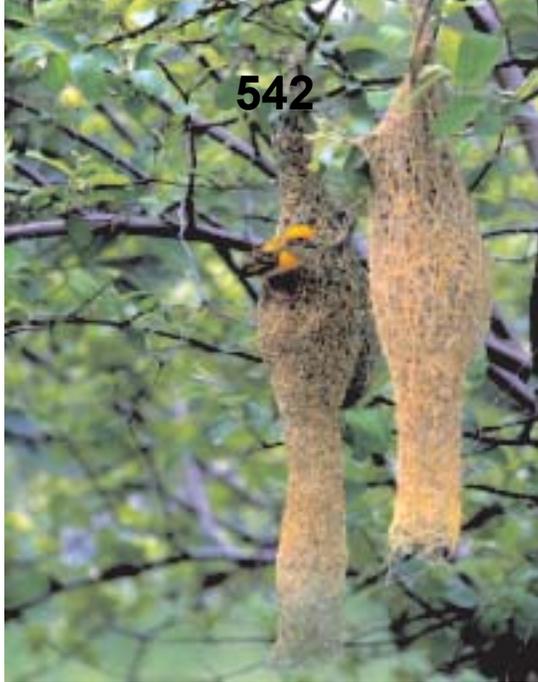
Para 12 of the EIA Notification, 2006 provides that Central Government may relax one or all provisions of EIA Notification 2006, except the activities requiring prior environmental clearance in Schedule 1 of the Notification. This provision is for disposing the applications submitted before September 14, 2006. The Ministry has issued Interim Operation Guidelines (IOG) from time to time providing methodology for disposing of pending cases with the Central and State Govt. at various stages. The following Interim Guidelines have been issued under this Para:

# National Environment Policy 2006



Government of India  
Ministry of Environment & Forests

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# National Environment Policy 2006

Approved by the Union Cabinet on 18<sup>th</sup> May, 2006



Government of India  
Ministry of Environment & Forests

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### 3 Objectives of the National Environment Policy

The principal Objectives of this policy are enumerated below. These Objectives relate to current perceptions of key environmental challenges. They may, accordingly, evolve over time:

**i. Conservation of Critical Environmental Resources:**

To protect and conserve critical ecological systems and resources, and invaluable natural and man-made heritage, which are essential for life-support, livelihoods, economic growth, and a broad conception of human well-being.

**ii. Intra-generational Equity: Livelihood Security for the Poor:**

To ensure equitable access to environmental resources and quality for all sections of society, and in particular, to ensure that poor communities, which are most dependent on environmental resources for their livelihoods, are assured secure access to these resources.

**iii. Inter-generational Equity:**

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

**iv. Integration of Environmental Concerns in Economic and Social Development:**

To integrate environmental concerns into policies, plans, programmes, and projects for economic and social development.

**v. Efficiency in Environmental Resource Use:**

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

**vi. Environmental Governance:**

To apply the principles of good governance (transparency, rationality, accountability, reduction in time and costs, participation, and regulatory independence) to the management and regulation of use of environmental resources.

**vii. Enhancement of Resources for Environmental Conservation:**

To ensure higher resource flows, comprising finance, technology, management skills, traditional knowledge, and social capital, for environmental conservation through mutually beneficial multistakeholder partnerships between local communities, public agencies, the academic and research community, investors, and multilateral and bilateral development partners.





## 4 Principles

This policy has 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. These strategic interventions, besides legislation and the evolution of legal doctrines for realization of the Objectives, may be premised on a set of unambiguously stated Principles depending upon their relevance, feasibility in relation to costs, and technical and administrative aspects of their application. The following Principles, may accordingly, guide the activities of different actors in relation to this policy. Each of these Principles has an established genealogy in policy pronouncements, jurisprudence, international environmental law, or international State practice:

**i. Human Beings are at the Centre of Sustainable Development Concerns:**

Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.

**ii. The Right to Development:**

The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

### iii. Environmental Protection is an Integral part of the Development Process:

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.

### iv. The Precautionary Approach:

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.

### v. Economic Efficiency:

In various public actions for environmental conservation, economic efficiency would be sought to be realized<sup>6</sup>.

This Principle requires that the services of environmental resources be given economic value, and such value to count equally with the economic values of other goods and services, in analysis of alternative courses of action.

Further implications of this Principle are as follows:

#### a) Polluter Pays<sup>7</sup>:

Impacts of acts of production and consumption of one party may be visited on third parties who do not have a direct economic nexus with the original act. Such impacts are termed “externalities”. If the costs (or benefits) of the externalities are not re-visited on the party responsible for the original act, the resulting level of the entire sequence of production or consumption, and externality, is inefficient. In such a situation, economic efficiency may be restored by making the perpetrator of the externality bear the cost (or benefit) of the same.

The policy will, accordingly, promote the internalization of environmental costs, including through the use of incentives based policy instruments, taking into

*If the costs (or benefits) of the externalities are not re-visited on the party responsible for the original act, the resulting level of the entire sequence of production or consumption, and externality, is inefficient.*



6. Economic efficiency refers to the maximization of welfare across all members of a society, given its human, natural, and manmade resources, its technology, and the preferences of its members. Welfare is reckoned as the aggregate of net value realized by each member of society, in his or her subjective perceptions, on a common monetary metric.

7. A polluter is one whose action potentially results in adverse impacts on third parties.

*Efficiency of resource use may also be accomplished by the use of policy instruments that create incentives to minimise wasteful use and consumption of natural resources.*



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.

**b) Cost Minimization:**

Where the environmental benefits of a course of action cannot, for methodological or conceptual reasons, be imputed economic value (as in the case of “Incomparable Entities” [see below]), in any event the economic costs of realizing the benefits should be minimized.

Efficiency of resource use may also be accomplished by the use of policy instruments that create incentives to minimize wasteful use and consumption of natural resources. The principle of efficiency also applies to issues of environmental governance by streamlining processes and procedures in order to minimize costs and delays.

**vi. Entities with “Incomparable”<sup>8</sup> Values:**

Significant risks to human health, life, and environmental life-support systems, besides certain other unique natural and man-made entities, which may impact the well-being, broadly conceived, of large numbers of persons, may be considered as “Incomparable” in that individuals or societies would not accept these risks for compensation in money or conventional goods and services. A conventional economic cost-benefit calculus would not, accordingly, apply in their case, and such entities would have priority in allocation of societal resources for their conservation without consideration of direct or immediate economic benefit<sup>9</sup>.

**vii. Equity:**

The cardinal principle of equity or justice requires that human beings cannot be treated differently based on irrelevant differences between them. Equity norms must be distinguished according to context, i.e. “procedural equity”, relating to fair rules for allocation of entitlements and obligations, and “end-result equity”, relating to fair outcomes in terms of distribution of entitlements and obligations. Each context, in addition, must be distinguished in terms of “intra-generational equity”, relating to justice within societies, and in particular, providing space for the participation of the underprivileged, and “inter-generational equity”, relating to justice between generations.

Equity, in the context of this policy refers to both equity in entitlements to, and participation of, the relevant publics, in processes of decision-making over use of environmental resources.

8. Termed “Incommensurable Values” in the relevant academic literature.

9. Examples of entities with “Incomparable Values” are unique historical monuments such as the Taj Mahal; charismatic species such as the Tiger; or unique landscapes, such as the Valley of Flowers.

**viii. Legal Liability:**

The present environmental redressal mechanism is predominantly based on doctrines of criminal liability, which have not proved sufficiently effective, and need to be supplemented.

Civil liability for environmental damage would deter environmentally harmful actions, and compensate the victims of environmental damage. Conceptually, the principle of legal liability may be viewed as an embodiment in legal doctrine of the “polluter pays” approach, itself deriving from the principle of economic efficiency.

*The principle of legal liability may be viewed as an embodiment in legal doctrine of the “polluter pays” approach, itself deriving from the principle of economic efficiency.*

The following alternative approaches to civil liability may apply:

**a) Fault Based Liability**

In a fault based liability regime a party is held liable if it breaches a pre-existing legal duty, for example, an environmental standard.

**b) Strict Liability**

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<sup>10</sup>.

**ix. Public Trust 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.

**x. Decentralization:**

Decentralization involves ceding or transfer of power from a Central Authority to State and Local Authorities, in order to empower public authorities having jurisdiction at the spatial level at which particular environmental issues are salient, to address these issues.

**xi. Integration:**

Integration refers to the inclusion of environmental considerations in sectoral policymaking, the integration of the social and natural sciences in environment related policy research, and the strengthening of relevant linkages among various agencies at the Central, State, and Local Self-Government levels, charged with the implementation of environmental policies.

**xii. Environmental Standard Setting:**

Environmental standards must reflect the economic and social development situation in which they apply. Standards adopted in one society or context may have unacceptable economic and social costs if applied without discrimination in another society or context.

*Environmental standards must reflect the economic and social development situation in which they apply.*

10. In terms of the Supreme Court's decisions in the Shriram Gas Leak case and the Bhopal Gas Leak case, strict liability applies whenever the liable party damages a third party.

*It is preferable to prevent environmental damage from occurring in the first place, rather than attempting to restore degraded environmental resources after the fact.*

Setting environmental standards would involve several considerations, i.e. risks to human health, risks to other environmental entities, technical feasibility, costs of compliance, and strategic considerations.

**xiii. Preventive Action:**

It is preferable to prevent environmental damage from occurring in the first place, rather than attempting to restore degraded environmental resources after the fact.

**xiv. Environmental Offsetting:**

There is a general obligation to protect threatened or endangered species and natural systems that are of special importance to sustaining life, providing livelihoods, or general well-being. If for exceptional reasons of overriding public interest such protection cannot be provided in particular cases, cost-effective offsetting measures must be undertaken by the proponents of the activity, to restore as nearly as may be feasible, the lost environmental services to the same publics.



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Proof of service

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Esha Dutta &lt;eshadutta7@gmail.com&gt;

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**Reply on Behalf of MoEFCC In Case of GAURI MAULEKHI vs UOI & Anr in OA No 879 of 2022**

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**Esha Dutta** <eshadutta7@gmail.com>

Tue, May 2, 2023 at 2:28 PM

To: Pratyaksh Gupta &lt;lawquery89@hotmail.com&gt;, secy-moef@nic.in, mscb.cpcb@nic.in, animalwelfareboard@gmail.com

Cc: Gauri Maulekhi &lt;gaurimaulekhi@gmail.com&gt;

Dear Sirs,

Please find attached the service/ soft copy of the Rejoinder Affidavit dated 02.05.2023, being filed by the Applicant herein in the OA No.879/2022 titled '*Gauri Maulekhi V/s. Union of India & Ors.*', listed tomorrow i.e. 03.05.2023 before the Hon'ble National Green Tribunal.

Thanking you,  
Yours faithfully,  
Esha Dutta  
Advocate

[Quoted text hidden]

**Additional Affidavit dated 02.05.2023.pdf**

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