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Saturday 8 March 2014

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### In defence of free water

#### Beyond The Delhi Experiment

**philippe cullet**

THE decision of the Aam Aadmi Party government in Delhi to provide 666 litres of free water a day to each household was a landmark and progressive development. This will remain one of the key interventions of the short-lived AAP government. Yet, the idea of providing free water has also been roundly criticised from a variety of angles. It is thus important to consider its rationale in detail so that the potential benefits of this measure outlive the AAP regime that only sanctioned free water until the end of March.

The sensitive nature of the Delhi government's intervention is due to the fact that water is a fundamental right. At the most general level, no one would question the existence of the right. Controversy erupts when ways of realising it are discussed and the single most controversial element in recent years has been free water.

The Delhi government's decision thus forces us all to examine what we understand by a fundamental right to water. Unsurprisingly, the realisation of the right to water has long been a priority of governmental agencies. For decades, the policy framework concerning drinking water was based on the premise that it was the government's duty to provide the necessary infrastructure allowing individuals to access sufficient safe free water for their domestic use. This is, for instance, the policy that was followed in rural areas where the government made an immense difference to people's

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lives by installing millions of hand pumps.

In other words, the government provided means to access free water to the great majority of people for many years before this came to be understood as being part of the fundamental right to water whose existence was first confirmed by the Supreme Court in 1991 in the Subhash Kumar case. More recently, in the 2006 Vishala Kochi Kudivella Samarkshana Samithi case where people of West Kochi were complaining of inadequate water supply, the High Court of Kerala castigated the government for not giving 'foremost importance to providing safe drinking water even at the cost of other development programmes'. The judiciary has thus in part reinforced what the government was already doing and in part given the government the central duty to realise the right to water. It is in this light that the decision of the AAP government is a momentous one. In effect, it reverses the tendency in recent years for the government to progressively disengage from the provision of drinking water, either by letting water-users take on an increasing share of the financial and managerial burden or by bringing in water services companies.

The recent Delhi framework is, however, not isolated or novel since South Africa introduced more than a decade ago a formal free-water policy. The decisions taken in such distant places as South Africa and Delhi confirm that the provision of free, basic, safe water is central to the realisation of the fundamental right to water. This should not come as a surprise since the government often uses its resources to foster the realisation of fundamental rights. In fact, this has been done in various contexts and there is nothing particularly novel about the free-water policy of the Delhi government. The right to education is a fundamental right whose realisation has been undertaken through free universal primary school education in India, as well as around the world.

A free-water policy achieves something that targeted benefits, such as 'lifeline tariffs' can never achieve. Instead of attempting to target the poor ~ an impossible exercise since poverty cannot be captured in an in/out fashion ~ a free-water policy for the realisation of the human right to water starts from the perspective that every individual has a right to water and requires water for survival and a life of dignity. What can then be done is to exclude a percentile of the wealthiest households. In effect, the Delhi Government takes this approach, even if in a crude way, in making people who use more than their free entitlement pay for all the water they use.

The free-water policy in Delhi is also noteworthy because it goes much further than what policy-makers have proposed at the international level and what South Africa has implemented. While the 200 litres per day that South African families get is often acknowledged as being insufficient for a life of dignity (as opposed to survival), Delhi has raised the bar to a level which is neither an incentive for wasteful use of water nor clearly insufficient for a decent and healthy life. Regardless of which exact number of litres is the most appropriate, the Delhi Jal Board (DJB) decision is a signal to the whole world that recent policy thinking with regard to basic water needs must be revisited.

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Seen in this light, the decision of the DJB is not only in accordance with the decisions of the higher judiciary and international law but also a necessary step towards the realisation of the fundamental right to water for all. Yet, it has been heavily criticised from several completely different perspectives.

Firstly, the decision has been heavily criticised as an unaffordable drain on the exchequer. In fact, whether the cost will be Rs 165 crore as estimated by the DJB or more, this is not a major percentage of the Delhi government's revenue, estimated at Rs 30,454 crore for 2013-14. Even if this was a much bigger figure, the real question is whether it is a measure that deserves particular prioritisation. As noted by the High Court of Kerala, there can be nothing more fundamental that the government can do. In case a choice has to be made between building more flyovers and spending more on water, it would thus be the government's duty to put water first.

Secondly, the DJB has been criticised for not going far enough. Indeed, the notification of 1 January is quite restrictive, in that it only covers families who receive piped water supply. The original decision even stated that free water would be dependent on the existence of a functional meter. Such restrictions are inappropriate in the context of a universal entitlement. What is in fact needed is a policy that starts from the premise that every family is covered, regardless of how water is supplied.

This is very important because, in Delhi, people access water in a variety of ways. Focusing on piped water supply ends up sidelining the important (though insufficient) role played by DJB tankers. More importantly, it forgets people living in unauthorised colonies who are forced to rely on private vendors because DJB water is not provided. The aim of the government should thus be to provide free water to all families that are already supplied water by DJB while speeding up the reach of DJB through tankers, community access points, pipes or other means to areas of the city where people suffer from insufficient water supply.

Thirdly, the announcement has also been attacked as providing an incentive for wasteful use of water. It is a fair critique of the government that its decision addresses mostly the distribution of water within the city without addressing the chronic insufficient availability of water within the city-state. In the long term, both must be looked at simultaneously. This can be done in part by emphasising rainwater harvesting, water re-use, measures to reduce leakage in pipes, all of which have already been considered but need to be given much more importance.

The beginning of 2014 will be remembered for the landmark notification of the Delhi government. Supplying enough free water for a decent life is a big step towards the realisation of the fundamental right to water. It is not, however, as momentous as the critiques have made it out to be, since until a few years ago, the DJB used to provide 6,000 litres of water free to all households receiving DJB water. The announcement must thus be put in perspective. On the one hand, it simply goes back to a policy that contributes significantly to the realisation of the fundamental right to

water. On the other hand, it needs to be further refined so that everyone gets to enjoy its benefits. The DJB has already rectified its notification by adding group housing societies to the list of beneficiaries. It must go beyond and formally include everyone else.

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