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Patchwork laws can't solve India's water crisis, Modi govt must push these 2 key bills now

The water shortage in India needs to be addressed at all levels – ground and surface, state and Centre.

[Philippe Cullet](#) Updated: 12 June, 2019 9:00 am IST



A woman fetches water from a small tank outside her house in Beed district, Maharashtra|
Photo: Dhiraj Singh/Bloomberg

A Niti Aayog [report in 2018](#) confirmed what we all feared – India is facing the ‘worst water crisis in its history’. But the biggest crisis today is – the crisis of water governance.

In India, the governance of water is organised largely around laws and institutions tasked with allocating and regulating the use of water among various claimants, but doesn't involve water protection. This has resulted in poor outcomes since governance must include protection in order to ensure that water is available today and in the future. The failure to do so has led to conflicts among different water users.

Water governance & challenges

The challenge of water governance primarily emerges from an inappropriate and insufficient legal framework, which can be broken into different components:

- The rules governing access to water are often drawn from old case law, which gave [primary control](#) over water to landowners. This is problematic because there is no mechanism to coordinate the cumulative use of a river by all riparian landowners, leading to potential over-exploitation. This is also inappropriate because it only gives landowners rights over a resource that every single person needs to use on a daily basis for their domestic needs. In addition, it precludes any basin-wide or aquifer-wide protection measures since control over water is organised around the claims of individual landowners. This is particularly problematic for groundwater where each individual landowner has the right to take as much groundwater as they please, without thinking about replenishment.
- A specific problem with this scheme is that the rules for surface water and groundwater are not the same. This was determined in the 19th century when the connections between the two were not well understood. This has led to a situation where most water laws centre around issues related to surface water, leaving groundwater a poor parent in regulatory terms. Existing laws, for instance, consider irrigation as a surface water-sourced activity when in reality farmers rely overwhelmingly on groundwater for irrigation.
- Responsibility for governing water is divided between different institutions, from panchayats/municipalities to states and the Union. The Constitution gives primary responsibility to states, while the local dimensions of water governance have been confirmed in the 72nd/73rd constitutional amendments and the Union has some powers concerning matters that go beyond the state level. The recognition that water needs to be addressed at all levels is an excellent starting point. The Supreme Court has [repeatedly said](#) that the state at each level is a 'public trustee'. However, this is not yet reflected in legislation, leading to unnecessary governance conflicts.
- The rules for drinking water supply [are separate](#) for urban and rural areas. This fragmented governance is problematic because urban areas are increasingly relying on water from beyond the municipal limits to meet their needs.

Patchwork laws don't work

There are vast gaps between regulation and implementation, as well as between various arms of the regulatory framework. These issues have affected the water sector for a long time, and policy-makers at different levels have tried to address them. This, in turn, has led to various law-making initiatives at the state and central levels. But the resultant patchwork of laws does not necessarily address the most critical issues.

The new Narendra Modi government needs to focus, in particular, on two initiatives that have been in the making since the beginning of the decade: adoption of a framework water legislation and a model groundwater law, both proposed and developed by the last two governments at the Centre.

Need framework water legislation

The patchwork of water laws is not centred around a set of principles governing the water sector as a whole. Principles have been laid down by the higher judiciary over time, but they have not been enshrined in legislation. This gap impedes effective governance of water and prevents the resolution of water conflicts.

In the absence of framework legislation in any state, the Planning Commission of India had taken the initiative of [drafting such a law](#) in 2011. The underlying idea was to ensure that all water-related institutions would be able to rely on a single frame of reference, thereby making water governance more transparent and accessible. The Ministry of Water Resources, River Development & Ganga Rejuvenation came up with an [updated version](#), known as the Draft National Water Framework Bill, 2016.

There is a pressing need to ensure that all sources of water and their usage are governed by the same principles and that water protection and usage are clearly linked.

Need comprehensive groundwater legislation

Groundwater is and will remain the primary source of water for use over the next several years. Existing groundwater regulation is extremely dated. Recent regulatory interventions have focused on top-down attempts to control use, but have failed because they neither consider the broader aquifer-level protection nor do they reflect the fact that groundwater use is essentially a local issue that needs to be addressed at the local level. The rapidly deteriorating groundwater crisis calls for an entirely new perspective on groundwater protection and groundwater rights.

The Centre has played an important role in providing models that states can use to develop their own legislations. A first generation of model legislation, promoted between 1970 and 2005, focused essentially on introducing new control measures without either addressing rights to groundwater or the need to protect, manage and regulate use at aquifer level.

In 2011, the Planning Commission [drafted](#) a groundwater model law addressing protection and use, from the local to the state level. In 2015, the Ministry of Water Resources, River Development & Ganga Rejuvenation asked for an updated version of the draft. This was delivered in 2016, submitted to states and the Niti Aayog for comments, and a revised version was submitted in 2017.

The new Modi government must now ensure that the model Groundwater (Sustainable Management) [Bill](#), 2017 is taken forward at the earliest.

Priorities for the new legislature

Most regulatory interventions have been largely piecemeal. Some of the most glaring gaps, such as a missing framework of principles governing the water sector, have been filled in part

by the Supreme Court and the high courts. This is an appropriate start, but does not affect the governance of water on a daily basis at the local level.

Further, the lack of comprehensive legislation to address groundwater leads to a situation where the most important sector is almost unregulated.

The new government must act promptly on the two existing drafts on framework water legislation and a model groundwater law to ensure that India is ready to face the water challenges of the next decade.

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This is the tenth in a series of articles titled “Policy Challenges 2019-2024” under ThePrint-Centre for Policy Research (CPR) collaboration. A longer version of this piece is available on the CPR website at www.cprindia.org. The full policy document on a range of issues addressed in this series is available on CPR’s website.