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A GATHERING CRISIS

THE NEED FOR GROUNDWATER REGULATION

Philippe Cullet

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A Gathering Crisis

A new regulatory regime for groundwater, that provides for equitable use, is urgently needed

Philippe Cullet

The water crisis India faces is of such a magnitude that urgent measures are necessary to address it. Yet, while the crisis is often discussed, law and policy measures to address it remain insufficient. This is partly due to the fact that the primary source of domestic water and irrigation is groundwater but the media and policymakers still and often focus on surface water. This needs to change as water tables have been falling rapidly in many parts of the country, indicating that use generally exceeds replenishment.

One of the underlying reasons for excessive use of groundwater is the legal framework governing access to the resource. This was first introduced in the mid-19th century when judges decided that the easiest way to regulate this ‘invisible’ substance was to give landowners what amounts to a right to access groundwater found under their land, even if in the process they also used water found under their neighbours’ land. Over the following decades, this led to a framework whereby landowners see groundwater as their own and as a resource they can exploit without considering the need to protect and replenish it since there are no immediate consequences for over-exploiting it. Access to a source of groundwater has progressively become a source of power and economic gain. The latter has become increasingly visible in recent decades with the propagation of mechanical pumps, which allows big landowners to sell water to others.

An inadequate framework

The Union government recognised the need to modernise the regulatory framework for accessing groundwater soon after massive expansion in mechanical pumping led to the realisation that recharge could not keep pace with use. The measures proposed were in keeping with the policy paradigm of the early 1970s when a model Bill was first introduced. It focussed on adding some State-level control over new, additional uses of groundwater but did not address the iniquitous regime giving landowners unlimited control over groundwater. This was only taken up by around a dozen States from the late 1990s onwards. The States that now have groundwater legislation based on the model Bill conceptualised in 1970 have on the whole failed to manage to address the problem of falling water tables due to increasing use. In addition, there is no provision in the existing legal regime to protect and conserve groundwater at the aquifer level. Further, since the legal regime fails to give gram sabhas and panchayats a prevailing say in the regulation of what is essentially a local resource, the present framework remains mostly top-down and is incapable of addressing local situations adequately.

Over the past decade, the situation has become increasingly dire not only in States where water tables are falling but also in those that are less affected by quantity

concerns. Indeed, the quality of the water pumped is increasingly becoming cause for concern; thus the worry is about accessing a sufficient amount of groundwater that is not harmful to health. The present legal regime has clearly failed to address the growing multiple crises of groundwater. This has been officially recognised since at least the beginning of this decade, first in the Planning Commission and more recently by the Ministry of Water Resources, River Development & Ganga Rejuvenation. The result is the Groundwater (Sustainable Management) Bill, 2017, which is based on current understandings of groundwater and its links with surface water and on the legal framework as it has evolved since the 19th century.

Based on decentralisation

The Groundwater Bill, 2017 consequently proposes a different regulatory framework from the century-old, outdated, inequitable and environmentally unfriendly legal regime in place. It is based on the recognition of the unitary nature of water, the need for decentralised control over groundwater and the necessity to protect it at aquifer level. The Bill is also based on legal developments that have taken place in the past few decades. This includes the recognition that water is a public trust (in line with the oft-quoted statement that groundwater is a common pool resource), the recognition of the fundamental right to water and the introduction of protection principles, including the precautionary principle, that are currently absent from water legislation. The Bill also builds on the decentralisation mandate that is already enshrined in general legislation but has not been implemented effectively as far as groundwater is concerned and seeks to give regulatory control over groundwater to local users.

A new regulatory regime for the source of water that provides domestic water to around four-fifths of the population and the overwhelming majority of irrigation is urgently needed. For decades, policymakers behaved like the proverbial ostrich because the ‘invisibility’ of falling groundwater tables made it possible not to address the problem immediately. In many places, the situation is now so grave that regulatory action is unavoidable. The proposed new regime will benefit the resource, for instance through the introduction of groundwater security plans, and will benefit the overwhelming majority of people through local decision-making. Overall, the increasing crisis of groundwater and the failure of the existing legal regime make it imperative to entrust people directly dependent on the source of water the mandate to use it wisely and to protect it for their own benefit, as well as for future generations.