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How Michigan Laws Led to the Flint Water Crisis by Subverting Democracy

Appointed by the governor, emergency managers are not answerable to citizens; yet, these emergency managers are granted immense power.

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A protest against water shut-offs in Detroit.

Photo Credit: Detroit Water Brigade

The tragic situation in [Flint](#) is in many ways a cautionary tale of democracy subverted, one that ties directly to the United States' refusal to recognize basic human rights such as the right to water. These rights are enshrined in international law, including in the 2010 United Nations General Assembly declaration that all nations have a duty to ensure safe drinking water and sanitation.

The U.S. contributed to laying the groundwork for recognition of this right when it passed the [Safe Water Drinking Act](#) in 1974, which put in motion a new national program to ensure the

purity of the drinking water supply in the United States. That law was enacted after the Environmental Protection Agency (EPA) [warned](#) that “the old assumptions about the quality of drinking water were no longer valid,” and also in response to reports from around the country about water contamination in local water supply systems, including lead being found in the drinking water supply in Boston.

The Act places the primary responsibility for enforcement and supervision of public drinking water supply systems and sources of drinking water clearly upon the state as a safeguard. It also requires that states to demonstrate their ability to enforce standards at least as stringent as the National Primary Drinking Water Regulations, including procedures for monitoring and inspection and that they adopt plans for the provision of safe drinking water should an emergency arise.

Moreover, with the Public Notification Rule ([PN](#)), “the consumer becomes an enforcer and can exert pressure on the utility, the local government, and the State, demanding water that complies with the Federal and State regulations. The Safe Drinking Water Act has real ‘teeth’ from the Federal level down to each of us as consumers,” [wrote](#) James L. Agee, EPA Assistant Administrator for Water and Hazardous Materials, in 1975.

In essence, [the Safe Drinking Water Act assumes](#) a vibrant democracy, with public officials and local authorities being accountable. This assumption seems to have failed in Flint’s case. In fact, the State of Michigan failed not only in fulfilling its primary responsibility but even the test of safeguards. For a number of reasons, Flint residents were unable to enforce or make use of the provisions under the Safe Drinking Water Act.

The [story](#) really begins in the summer of 2014, [if not before](#), long before Flint residents began trying, albeit unsuccessfully, to draw attention to their problems. Flint is the fourth largest metropolitan area in Michigan. For most of 20th century its economy was closely tied to General Motors and jobs in the auto industry.

A number of factors, including trade agreements that resulted in the export of manufacturing jobs and closing of factories, saw the city becoming one of the poorest in the country in the first decade of 21st century, as captured in this somber [photo-essay](#). A similar fate awaited Detroit as well. The flight of manufacturing, combined with corrupt leadership, saw Detroit filing for a historic \$18 billion bankruptcy in mid-2013.

Michigan's Governor, Rick Snyder, who assumed office on January 1, 2011, signed [Public Act 4](#) into law less than three months later, giving him the authority to intervene early on in local affairs by appointing emergency managers with powers to break or modify agreements with workers. When, in a state-wide referendum in 2012, Michigan voters rejected this law, [Gov. Snyder and other lawmakers responded](#) by enacting [Public Act 436](#); the new law was very similar but [included a provision](#) ensuring that it could not be repealed through a referendum!

These laws have their basis in a law known as Local Government Responsibility Act, 1990, or [Public Act 72](#), which allowed the appointment of Emergency Financial Managers (EFM) to help local government manage their finances.^[ii] The law had rarely been used in the ensuing two decades, [according](#) to experts at the Michigan State University, but was [amended](#) several times.

Under this law, all existing Emergency Financial Managers were to transition to Emergency Managers (EM), with additional powers. Governor Snyder used the provisions of these laws to appoint emergency managers to take financial control of struggling cities such as Flint (effective as of December 1, 2011, under [PA 4](#)) and Detroit (effective as of March 25, 2013, under [PA 436](#))^[iii]

Clearly these laws, as they stand today, subvert democracy: they strip local elected officials of power. Appointed by the governor, emergency managers are not answerable to citizens; yet, these emergency managers are granted immense power to rewrite city's contracts and to liquidate city assets to help pay off debts, regardless of how residents feel about these actions. In fact, residents have limited or no power to question the law itself.

Detroit made international headlines when the water utility cut off drinking water and sanitation services to thousands of Detroit residents—crews were [shutting off](#) about 3,000 delinquent accounts per week at one point in the summer of 2014. (The initial cutoff was in March 2014.) According to [reports](#), while residents who were said to be indebted to the water utility had their service cut off, large scale water consumers who owed millions of dollars in arrears were not cut off.

In October 2014, the UN human rights experts who visited Detroit in response to civil society requests [said](#): “Disconnection of water services because of failure to pay due to lack of means constitutes a violation of the human right to water and other international human rights.”

One of the early proposals from Detroit Emergency Manager Kevyn Orr was to [create a regional water authority](#), the Metropolitan Area Water and Sewer Authority (MAWSA). This was perceived by water activists as opening a “clear path for privatization,” as the city was to permit MAWSA to “operate the Detroit Water and Sewerage Department (DWSD) through a concession agreement or via a lease of water department assets.”

The counties that were to join MAWSA balked at the hefty price they were to be charged, and some of them decided to develop their own regional water authority. Flint, which was under another Emergency Manager reporting to Snyder, was one of them. As the two cities, Detroit and Flint, [could not find](#) a mutually satisfactory solution, in April 2013 Flint joined the Karegnondi Water Authority, which would source its water from Lake Huron (and expects to be operational at the earliest by the summer of 2016), at the advice of the state.

Flint's final year-to-year contract with Detroit expired in April 2014. To cut costs, Flint's officials turned to the Flint River as a temporary source of water until the new pipeline was complete. On April 25, 2014, Flint [shut off](#) the water intake from Detroit, and connecting instead to the Flint River, despite years of [missed warnings](#) about the dangers of doing so.

Over the ensuing [18 months](#), the residents of Flint were consuming lead-contaminated water (a result also from yet another cost-cutting measure, that of avoiding corrosion control treatments despite Flint's aged water infrastructure), and the rest of the [story](#) is well known.

As the calamity in Flint was unfolding in early 2016, I came across an [announcement](#) from the Chief Minister of Delhi, Mr. Arvind Kejriwal, that the Delhi Water Board (DJB) earned the equivalent of \$25 million more in the last financial year than the year before, despite providing 20,000 litres of water without charge to Delhi households every month. DJB is the public agency responsible for supply of [potable water](#) to the [National Capital Territory](#) region of [Delhi](#). For a city of Delhi's size (Delhi is one of the most populated cities in the world, with more than [16.68 million](#) people in 2011), in a developing country, this is no mean feat.

Arvind Kejriwal's Party, the Aam Admi Party ([AAP](#)), came to power exactly a year ago, promising better services for Delhiites, especially for its poor. A career public official, Arvind left civil service to fight corruption in public services, and when Delhi, with the support of the World Bank, sought to privatize its water services (2001-2005), his organization was key to defeating those efforts. This required holding the then chief minister of Delhi accountable and exposing the unnecessary loans that India took that increased its debt to the World Bank, as well as showing World Bank's own role in pushing for privatization.

AAP emerged from the embers of the anti-corruption movement that swept through India in early 2011, around the same time as Governor Snyder's Public Act was becoming effective in Michigan. For [AAP and its supporters](#), "a system of governance that gives power to officials without providing transparency in their public dealings and societal supervision of their actions breed corruption."

AAP responded to political corruption, and the dysfunctional public delivery system, by building democracy from the ground up. A newcomer to politics, it debuted in the 2013 state elections and won 27 out of 70 seats. It formed a minority government, which survived only briefly before being brought down by the two other opposition parties. But when AAP went back to the hustings in the next election in early 2015, it won an unprecedented 67 out of 70 seats in the Delhi Assembly.

Within weeks of assuming power, AAP sought to [fulfill its promise](#) of the right to water—20,000 liters of free water, and a steep progressive pricing if consumption goes above 20,000—for every family. A year later, Delhiites are happier with their water services. They do not have to pay for water, and they can get water even if they are not connected to a piped water supply yet. Ordinary families also tend to conserve water to keep their total monthly use below 20,000 liters, since they know that the price rises steeply if the consumption goes above 20,000 liters.

A similar idea had been floated in Detroit. "Make those with higher incomes pay more for their water," said Gloria House of the Detroit People's Water Board, an activist group that essentially wants those who owe for their water to get it for free, "[t]he only humane course of action in a city with the highest poverty rate in the nation is to have people pay for water based on income." Unfortunately, her argument fell on [deaf ears](#) in Detroit. Not only that, many businesses in fact [did not have their water shut off](#), despite being in arrears.

Of course, despite the efficiency improvements, conservation measures and effective provision of free basic water services by DJB, by no means is the situation rosy. An important challenge for Delhi is ensuring the [reliability](#) and [sustainability](#) of its water sources, as has been pointed out during water crises in previous years. As the [crisis](#) on February 20 and 21 [shows](#), Delhi's access to water is precarious, even if it was [resolved quickly](#) this time. In addition, the AAP faces many challenges as it addresses historic liabilities of various kinds— economic, social and cultural.

The majority of its sanitation workers belong to the Balmiki community, the lowest of the low castes, working in inhumane conditions. One of AAP's promises was to regularize these

sanitation workers who tend to be contractual workers with very low pay and a large number of dependents. AAP has yet to make good on that promise.

Most of Delhi's water delivery and sanitation infrastructure is in dire need of repairs. Moreover, many settlements have so far been considered illegal, and are not yet connected to water services. Delhi, too, will need infrastructure assistance, both to make it safer for sanitation workers and to extend pipelines to unconnected areas that are currently served through water tankers.

It is heartening to see that the U.S. House of Representatives has [passed](#) its first piece of legislation to require the EPA to alert residents of high lead levels in circumstances where state officials or a local utility does not, clearly a positive fall-out of the Flint water crisis. No matter what happens in the Senate, it sends a strong political signal to EPA.

However, I cannot stop comparing Michigan, a state in the oldest democracy, and Delhi, capital of the largest democracy. In Michigan, under Snyder's leadership, we see how democracy was subverted, mostly to the detriment of disadvantaged sections of society. In Delhi, under Kejriwal's leadership, we see baby steps being taken to build accountability to people, benefiting the middle class and the poorer sections of the society. Most importantly, even as the right to safe water in adequate quantity is being violated in Michigan's cities, in Delhi, AAP is able to not only recognize citizens' right to free water, but also fulfill that obligation in a cost effective manner.

[\[i\]](#) Public Act No. 101 of 1988 for the first time allowed direct state intervention in the affairs of local units of government other than school districts. Public Act 72 of 1990 replaced Act 101 and extended its provisions to school districts.

[\[ii\]](#) Flint was under an EFM from 2004-2006, when they had limited powers

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